

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.10.2019

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.28531 of 2019

L.Thirupathy

..Petitioner

vs

The Joint Registrar of Co-operative Societies
Salem Region, O/o. Joint Registrar of
Co-operative Societies, Salem. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent to review the original order of suspension Rc 513/2016 DA dated 20.05.2016 along with the subsequent order Na.Ka.No.513/2016 ON(1) dated 07.11.2016, to revoke the suspension and to permit the petitioner to retire from service with all attendant benefits as per the Rules.

For Petitioner: Mr.S.Venkataraman

For Respondents: Mr.L.P.Shanmugasundaram
Special Govt. Pleader (Co-op)

O R D E R

Writ Petition is filed for issuance of Writ of Mandamus directing the respondent to review the original order of suspension Rc 513/2016 DA dated 20.05.2016 along with the subsequent order Na.Ka.No.513/2016 ON(1) dated 07.11.2016, to revoke the suspension and to permit the petitioner to retire from service with all attendant benefits as per the Rules.

2.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent. By consent, the writ petition is taken up for final disposal.

3.The case of the petitioner is that the petitioner was employed as Cop Sub-Registrar under the control of respondent. He was deputed to work as Special Officer of the Palace Nagar Co-op Housing Society. He was implicated in a criminal case and was facing trial before the learned Judicial Magistrate No.I,

Salem. He filed a petition for discharge under various legal grounds and the trial Court accepting the legal grounds, discharged the petitioner from the criminal proceedings. Against which, the State filed Criminal Revision Petition in Crl.R.P.No.61 of 2015 before the Principal Sessions Court, Salem. The petitioner was due to retire from service on superannuation with effect from 31.05.2016. However, the petitioner was suspended from service. While being so, a separate order was passed not permitting the petitioner to retire from service in view of suspension and retained him in service under Rule 56(i)(c) of the Fundamental Rules. Therefore, the petitioner made a representation dated 05.09.2016 to revoke the order of suspension stating various reasons more particularly that the trial Court discharged the petitioner from the criminal case. Since there was no reply, the petitioner filed W.P.No.32480 of 2016 before this Court to quash the suspension order and release all the benefits. However, on 16.09.2016, this Court issued a direction to the Joint Registrar of Co-operative Societies to consider the petitioner's representation and pass orders on merits. Subsequently, the Joint Registrar has rejected the petitioner's representation. Till date, the departmental enquiry and the surcharge proceedings are not completed. Therefore, the petitioner has come out with the present writ petition seeking the above said prayer.

4. Learned counsel appearing for the petitioner submitted that the Criminal Revision Petition filed by the State against the discharge order came to be allowed on 18.10.2016. Challenging the same, the petitioner filed Crl.R.C.No.1628 of 2017 before this Court and the same was allowed on 24.10.2018 and the petitioner was discharged from the criminal case. Hence, there is no legal impediment for the respondent to disburse the terminal benefits to the petitioner within the reasonable time. The petitioner again made a representation dated 07.06.2019 to revoke the order of suspension and permit the petitioner to retire from service. He further submitted that the petitioner was retained in service under Rule 56(i)(c) of the Fundamental Rules on the ground that the criminal revision against the petitioner was pending before the Principal Sessions Court, Salem. As per the order of this Court dated 24.10.2018, no criminal proceedings is pending against the petitioner. Citing pendency of the surcharge proceedings against the petitioner could not be the reason to place the petitioner under suspension and even otherwise, if any loss is caused by the petitioner to the society, the respondent can very well recover the surcharge amount from the petitioner.

5. Learned Special Government Pleader appearing for the respondent submitted that retiring the petitioner from service

will be decided within a period of four weeks from the date of receipt of a copy of this order. He fairly conceded that there is no criminal revision pending against the petitioner as on date and the same was ended in favour of the petitioner. During pendency of the criminal revision, surcharge proceedings were initiated against the petitioner and five others under Section 87 of the Tamil Nadu Co-operative Societies Act for the loss caused to the Society, which amounts to Rs.81 Lakhs. However, recovery proceedings will not be a bar for revoking the suspension order.

6. Considering the facts and circumstance of the case along with the submissions made by both sides, admittedly, there is no criminal case pending against the petitioner. Therefore, I am inclined to issue a direction to the respondent to take a decision with regard to revocation of suspension order and permit the petitioner to retire from service, within a period of four weeks from the date of receipt of a copy of this order. However, this order will not stand on the way, if the respondent to recover the surcharge amount from the petitioner in the manner known to law.

7.The writ petition is accordingly disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

The Joint Registrar of Co-operative Societies
Salem Region, O/o. Joint Registrar of
Co-operative Societies, Salem.

+1cc to Mr.S.Venkataraman, Advocate SR.No.83905

+1cc to Special Government Pleader Co.Op in SR.No.83053

W.P.No.28531 of 2019

SS(CO)
GMY(04/11/2019)