

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.11.2019

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.30602 of 2019

K.Selvaraj

..Petitioner

vs

S.672, Attur Agricultural Manufacturers
Co-operative Marketing Society
Represented by the Deputy Registrar of
Co-operative Societies/Managing Director
(Full additional in-charge)
Attur, Salem District.

.. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings Na.Ka.1880/2018/A1, dated 31.01.2019 of the respondent, quash the same and consequently, direct the respondent to release the entire amount of gratuity and encashment of earned leave due to the petitioner by virtue of his retirement from service on attaining the age of superannuation, without any further delay.

For Petitioner : Mr.S.Venkataraman

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

O R D E R

Writ Petition is filed for issuance of Writ of Certiorarified Mandamus calling for the records relating to the proceedings Na.Ka.1880/2018/A1, dated 31.01.2019 of the respondent, quash the same and consequently, direct the respondent to release the entire amount of gratuity and encashment of earned leave due to the petitioner by virtue of his retirement from service on attaining the age of superannuation, without any further delay.

2. Heard the learned counsel appearing for the petitioner as well as the learned Special Government Pleader appearing for the respondent.

3. The case of the petitioner is that he is an employee of the respondent Society. While he was in service, he was issued with surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, with regard to sale of cotton on credit basis in the year 1995-1996. However, even after retirement, his terminal benefits were not settled and the same was withheld by the respondent on the ground that surcharge proceedings are pending. On 26.06.2019, surcharge order came to be passed holding the petitioner jointly and severally liable for loss of Rs.81,97,628/-.

4. Learned counsel appearing for the petitioner submitted that even if the surcharge proceedings is pending, the petitioner is entitled to get gratuity and encashment of earned leave and the respondent cannot withhold the terminal benefits, which is non-est in the eye of law and it is unsustainable. He further submitted that there is no bar for the respondent to recover the surcharge amount in the manner known to law. In support of his contention, he relied on the decision of the Hon'ble Apex Court reported in 2013 (12) SCC 210 (State of Jharkhand and others vs. Jitendra Kumar Srivastava and another) and the relevant paragraphs are extracted hereunder:

"14. Article 300A of the Constitution of India reads as under:

"300A Persons not to be deprived of property save by authority of law : No person shall be deprived of his property save by authority of law."

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

15. It hardly needs to be emphasized that the executive instructions are not having statutory character and therefore, cannot be termed as "law" within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such

provision in these rules, the position would have been different. "

5. Learned Special Government Pleader appearing for the respondent did not dispute the facts submitted by the learned counsel appearing for the petitioner. However, he prays that liberty may be granted to the respondent to proceed with the surcharge proceedings in the manner known to law.

6. Considering the facts and circumstances of the case, pending surcharge proceedings is not a reason for withholding the terminal benefits of the petitioner. In view of the decision of the Hon'ble Apex Court cited supra, this Court hereby directs the respondent to disburse the gratuity, encashment of earned leave and eligible terminal benefits to the petitioner within a period of four weeks from the date of receipt of a copy of this order. However, liberty is granted to the respondent to recover the surcharge amount from the petitioner in the manner known to law.

7. The writ petition is disposed of on the above terms. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

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Sub Assistant Registrar

To

The Deputy Registrar of
Co-operative Societies/Managing Director
(Full additional in-charge)
S.672, Attur Agricultural Manufacturers
Co-operative Marketing Society
Attur, Salem District. सत्यमेव जयते

+1 cc to Mr.S.Venkataraman, Advocate, S.R.No.92349

+1 cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.92404

+1 cc to the Spl.Government Pleader(CO-OP), S.R.No.92448

W.P.No.30602 of 2019

RGN(CO)
SSM(07/11/2019)