IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.30936 of 2005
and
W.M.P.Nos.33908 of 2005 and 12882 of 2017

K.M.Loganathan ... Petitioner

Vs.

1.The Managing Director,
The TamilNadu Co-operative Milk,
Producers Federation Ltd.,
Aavinllam, Madhavaram Milk Colony,
Chennai - 51.

2.The Commissioner for Milk Production & diary,
Chennai - 51.

3.The General Manager,
Erode District Union,
Erode District Co-operative Milk producers Union Ltd.,
Erode - 638315. ... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India praying to issue a writ of certiorari calling for the records of the 1st respondent herein made in his proceedings Ref.No.27667/Pers&Estt 1/2004 dated 29.07.2005 and quash the same in so far withholding the terminal benefits of the petitioner.

For Petitioner : Mr.A.R.Nixon
For Respondents
R1 & R3 : Mr.P.Narayanamoorthy
R2 : Ms.T.Girija
Additional Government Pleader

O R D E R

The petitioner was working as Manager in the third respondent Co-operative Milk Producers Union Limited, Erode. There were certain audit objections found with respect to Erode, Dharmapuri, Coimbatore and Kancheepuram, Tiruvallur Unions. In view of the same, criminal proceedings, disciplinary proceedings and surcharge proceedings under

Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 (In brevity "the Act") were initiated against the petitioner. It appears that the criminal and disciplinary proceedings were dropped. Insofar as the surcharge proceedings is concerned, the same is still pending. The petitioner, in the meanwhile, attained the age of superannuation on 31.07.2005. The 1st respondent, in his proceedings No.27667/Pers & Estt/1/2004 dated 29.07.2005 permitted the petitioner to retire from service on the afternoon of 31.07.2005 and withheld the terminal benefits in view of the audit objections and also the surcharge proceedings under Section 87 of the Act pending against the petitioner. Challenging the same, the petitioner is before this Court.

2. The respondents have filed detailed counter affidavit along with documents. It is submitted that the criminal proceedings and disciplinary proceedings initiated against the petitioner were dropped. However, the proceedings under Section 87 in the Act is still pending.

3. It is seen that till date the matter is pending at the stage of audit objections and no orders were passed pursuant to the proceedings initiated under Section 87 of the Act, in the year 2005.

4. From a perusal of the records, it is seen that several Government orders were passed and Proviso to Section 80 of the Act clearly mandates that the proceedings shall be concluded within a period of six months. Even assuming that the proceedings have been initiated beyond the stipulated period, it shall be completed within a reasonable period of one year. It is seen that the audit objections from the year 1993-1994 onwards is pending at the same stage. Till date, no recovery orders were passed by the respondents. Status quo cannot be maintained for a long period on the basis of oldest audit objections of the year 1993-1994, which continued till 2001-2002.

5. I do not find any independent and specific reason against the petitioner for issuance of surcharge proceedings. Only on the basis of audit objections, the petitioner cannot be held responsible. Unless an enquiry was conducted as contemplated under Section 87 of the Act and liability is fixed against him, the terminal benefits cannot be withheld 'sine dine". The delay by itself vitiates the proceedings and it is also violative of principles of natural justice. Withholding the terminal benefits for a period of 15 years itself is a grave punishment. Since the respondents are not in a position to complete the proceedings, even after 15 years of the petitioner's retirement, they are not entitled to continue the same any further and they cannot withhold the terminal benefits payable to him any further. In that view of the matter, the impugned proceedings dated 29.07.2005 passed by the first respondent stands vitiated on account of delay and accordingly quashed. The respondents are directed to disburse

all the terminal and monetary benefits to the petitioner, within a period of twelve weeks from the date of receipt of a copy of this order.

The writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

1.The Managing Director,
The TamilNadu Co-operative Milk,
Producers Federation Ltd.,
Aavinllam, Madhavaram Milk Colony,
Chennai - 51.

2.The Commissioner for Milk Production & diary,
Chennai - 51.

3.The General Manager,
Erode District Union,
Erode District Co-operative
Milk producers Union Ltd.,
Erode - 638315.

+1cc to Mr.A.R.Nixon, Advocate SR.No.10807

+2cc to Mr.P.Narayanamoorthy, Advocate SR.No.10936

+1cc to Special Government Pleader(CO-OP) SR.No.10834

W.P.No.30936 of 2005
and
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MRJK(CO)
GMY(22/07/2020)