

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2021

CORAM :
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.17048 of 2020

S.Sundaramoorthy

... Petitioner

Vs.

1. The Registrar of Co-operative Societies,
Kilpauk, Chennai 600 010.
2. The Joint Registrar of Co-operative Societies,
Vellore Region,
Vellore - 9.
3. The Deputy Registrar of Co-operative Societies (PDS),
Vellore. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the 2nd Respondent in Na.Ka.No.4679/2010/A1, dated 16.07.2020 and quash the same, and consequently direct the Respondents to forthwith pay the Encashment of Earned Leave and Unearned Leave on Private Affairs and Special Provident Fund.

For Petitioner : Mr.N.Kolandaivelu

For Respondents: Mr.L.P.Shanmugasundaram,
Special Government Pleader

सत्यमेव जयते
O R D E R

Petitioner has come up with this Writ Petition challenging the order dated 16.07.2020 passed by the 2nd Respondent vide proceedings in Na.Ka.No.4679/2010/A1 and for a consequential direction to the Respondents to forthwith pay the Encashment of Earned Leave and Unearned Leave on Private Affairs and Special Provident Fund.

2. It is seen that, the Petitioner was placed under suspension on 30.06.2010 by an order of the 2nd Respondent, on the allegation that, he failed to supervise and therefore, caused loss to the Society. However, two Charge Memos issued against him were dropped by the Respondents on 23.01.2008 and

08.06.2015, respectively. Even though a criminal case is pending against the Petitioner, he was allowed to retire initially and thereafter, departmental action has been dropped, in view of the fact that, the Enquiry Officer found that, the charges are not proved against the Petitioner and the Enquiry Officer's Report has been accepted by the Respondent/Society. It is also seen that, except Gratuity, the Petitioner has almost received all the terminal benefits.

3. At this juncture, it is worth referring to a Full Bench decision of this Court in a batch of Writ Appeals and Writ Petitions i.e. in W.A.No.158 of 2016 etc. batch, dated 03.12.2019, wherein, this Court held that, if the service of an employee has been regularized before 01.04.2003 only, his half of past service will be counted for the purpose of determination of qualifying service for pension. For better appreciation, relevant portion of the said judgment is extracted hereunder:

"45. In the light of the above, we answer the reference as follows:-

(i) Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O. Ms. No. 259 dated 06.08.2003.

(ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.

(iii) In case, a government employee/servant had also rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.

(iv) Those government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and absorbed into regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of

determination of qualifying service for pension.

(v) Those government servants who were appointed in the aforesaid four categories before 01.04.2003 but were absorbed in regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension."

4. Subsequently, the Apex Court has considered a case under Section 4(6)(a) under the Payment of Gratuity Act, 1972 pertaining to disbursement of various service benefits including Gratuity, and held that, only depending upon the clean chit obtained in the departmental enquiry or in the departmental proceedings, Gratuity would be extended. Normally, this Court would have applied the same yardstick for grant of other benefits also, but in the absence of Rule 7 of the Tamil Nadu Leave Rules, 1933, the Government has withheld the benefits.

5. In the case on hand, as the Petitioner has retired, moreso, charges against him have been held to be not proved in the domestic enquiry and that, the same have been dropped, the relief sought by the Petitioner cannot be held to be illegal and his request cannot be unceremoniously rejected in view of the Full Bench ruling of this Court in the case of Kaliyamoorthy (cited supra).

6. Hence, this Court is of the view that, the benefits requested by the Petitioner have to be extended to him. However, Gratuity shall be extended to him only after the outcome of the criminal case, as he has not sought for disbursement of Gratuity in the present Writ Petition.

This Writ Petition is ordered to the extent indicated above. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

(aeb)

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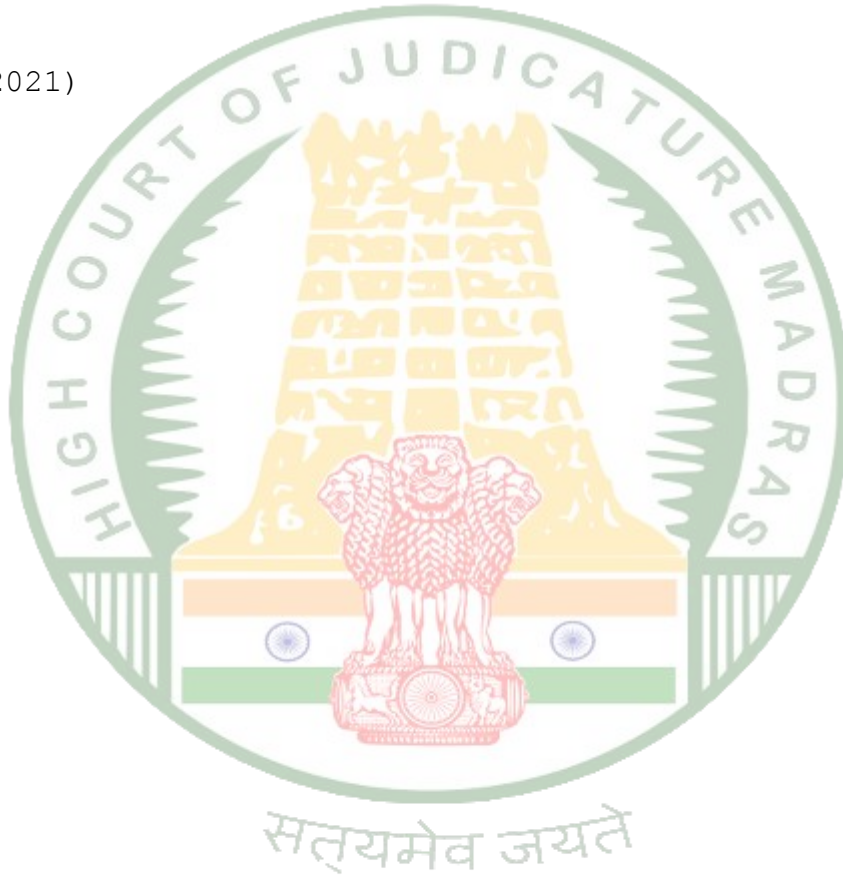
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Vellore.

+1cc to Mr..Kolandaivelu, Advocate, S.R.No. 7618
+1cc to the Government Pleader, S.R.No.7884

W.P.No.17048 of 2020

PMK (CO)
GN (24/03/2021)



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