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IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D : 13.08.2021

C O R A M

The Hon'ble Mr. Justice C.SARAVANAN

Writ Petition No.21623 of 2017
(Through Video Conferencing)

1.M.Arivazhagan (Deceased)

2.Rajambal

3.Devika

4.Gayathri

5.Mathibharathi

6.Sivasankari

(P2 to P6 Substituted as LRs of Deceased Sole Petitioner
as per order dated 31.01.2020 made in
WMP.No.3074/2020 in
WP.No.21623/2017

... Petitioners

Vs.

1.The Managing Director,
Salem Co-Operative Sugar Mills Ltd,
Mohanur (Post), Namakkal Tk & Dt.

2.The Commissioner of Sugar Mills,
No.690, Anna Salai, Periyar EVR Building,
2nd Floor, Nandanam,
Chennai - 600 35.

... Respondents

Writ Petition filed under Article 226 of the
Constitution of India, to issue a writ of Mandamus by
directing the respondents to pay the petitioner, the interest
accrued on the delayed payment of Gratuity and notice period
salary along with the Earned leave salary with interest till
the date of payment within the time limit stipulated by this
Court.

For Petitioner : Mrs.S.Rajini Ramadass

For Respondents : Mr.L.Ramanathan for R1
Mr.L.S.M. Hasan Fizal for R2
Government Advocate

O R D E R

On the date of this writ petition, the petitioner has
passed away and therefore, the legal representatives of the
petitioners are pursuing the remedy in this writ petition.



2. The learned counsel for the petitioner submits that the writ petition was filed for a writ of mandamus to direct the respondents to consider and pass orders on the representation of the petitioner for payment of interest on the delayed payment of Gratuity in terms of Section 73 and 73 (a) of Payment of Gratuity Act, 1972 and payment of Earned Leave in terms of Section 79(3) of the Factories Act, 1978. The learned counsel for the petitioner submits that the deceased petitioner submitted a resignation letter dated 12.01.2008 for resigning the post of Senior Chemist/ Distillery I/c and to relieve him from the said post as early as on 04.03.2008. The resignation was eventually accepted only on 20.08.2011 three years later with effect from 11.04.2008. It is therefore submitted that the petitioner was entitled to interest on delayed payment of gratuity in terms of section 73 of the Payment of Gratuity Act, 1973 and Earned Leave in terms of section 79(3) of the Factories Act, 1978 and interest of 11 days salary and therefore, prays that the respondents may be directed to pay the same.

3. Appearing on behalf of the Respondents, the learned counsel for the respondents submits that the writ petition itself was misconceived inasmuch the deceased petitioner was an employee of the Co-operative Society. It is submitted that as per the decision of the Full Bench of this Court in K.Marappan vs. The Deputy Registrar of Co-operative Society, Namakkal Circle, Namakkal 2016 (4) CTC 689 a writ petition is not maintainable. The learned counsel for the respondents further placed reliance on yet another decision of the Full Bench of this Court in W.A.No.968 of 2007 vide order dated 05.09.2017 in the case of T.K.Ananda Sayanan vs. The Joint Registrar, Co-operative Societies, Vellore Region, Vellore and another. Paragraph no.18 of the said judgment reads as under:-

'18. Therefore, every order affecting the service of a workman would not automatically amount to an infringement of his right under Article 21 enabling him to move the writ court. We cannot ignore the settled position that applications to secure performance of obligations owed by a Government or a society towards its employees or to resolve any private dispute cannot be decided on the basis of the Article 21. The appellant herein may perhaps have a good case on other grounds. But the order of suspension suspending him from the post of Secretary does not amount to infringement of Article 21 and while the decision in the judgment of the Division Bench in The Nazarath Urban Co-operative Bank Ltd.'s case (cited supra) may be right on the facts of that case, the observations made regarding the application of Article 21 need to be and are clarified as



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above. The mere fact that he was kept under suspension beyond one year without the approval of the Registrar cannot be said to violate Article 21. It must be seen whether the invocation of Article 21 is justified in the particular case and whether the order challenged by a workman of a co-operative society is of such a nature that it would truly take away his right under Article 21 of the Constitution and that it is taken away otherwise than by due process of law.

He therefore submits that the writ petition is liable to be dismissed by directing the petitioners were approached the authority under Section 156(3) of the Tamil Nadu Co-operative Societies Act 1983 in terms of the above decisions of this Court.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

5. Though the Division Bench of this Court has answered the issue stating that no writ petition is maintainable by an employee against the order of the Co-operative Society in para 6 of the Full Bench judgment of this Court in 2006 (4) CTC 689 it has also indicated that in appropriate cases, the writ court can exercise jurisdiction under Article 226 of the Constitution of India.

6. Considering the fact that there are no disputed questions in this case as a record themselves speak that the petitioners deserve a relief at this stage instead of driving the petitioners to work out their remedy at this distant point of time under section 153(3) of the Tamil Nadu Co-operative Societies Act. Also considering the fact that the deceased M.Arivazhagan died without getting the terminal benefits during his life time after he resigned from services as early as on 11.04.2008, this Court is inclined to order to the respondents to pay interest on delayed payment of salary for 11 days, interest under Section 73 and 73(a) of the Payment of Gratuity Act 1973 and the Earned leave not paid to deceased petitioner under Section 79(3) of the Factories Act. The Respondents shall calculated the same, settle the same within a period of 6 weeks from the date of receipt of copy of this order to petitioners.

7. Under the scheme of the Act there is a absolute bar for a civil Court to entertain a civil suit. There is no absolute bar under Article 226 of the Constitution. This writ petition is disposed by considering the fact that the respondents have themselves admitted in the case of another employee, namely, G.Devendran by their order dated 03.10.2004 in Na.Ra.No.9315/T(m) A-1/2004, that the persons resigning



from the post will be entitled to get earned leave on the date of resignation.

8. This writ petition stands allowed with the above direction. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

rrg

To

- 1.The Managing Director,
Salem Co-Operative Sugar Mills Ltd,
Mohanur (Post), Namakkal Tk & Dt.
- 2.The Commissioner of Sugar Mills,
No.690, Anna Salai, Periyar EVR Building,
2nd Floor, Nandanam,
Chennai - 600 35.

+1cc to Mr.S.Rajeni Ramadass, Advocate, S.R.No.41130
+1cc to the Government Pleader, S.R.No.40761

W.P.No.21623 of 2017

CA(CO)
GN(17/09/2021)