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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.23548 OF 2009

AND

M.P.NOS.1 & 2 OF 2009

A.Selvaraj

...Petitioner

Vs

- 1.The Managing Director,
Tamil Nadu Co-op. Milk Producers
Federation Ltd., "Aavin Illam",
Madhavaram Milk Colony,
Chennai - 600 051.
- 2.The Commissioner for Milk Production
and Dairy Development,
Madhavaram Milk Colony,
Chennai - 600 051.
- 3.The Managing Director,
(Re-designated as General Manager
in the year 2005),
The Coimbatore District Co-op.
Milk Producers Union Limited,
Pachapalayam, Kalampalayam Post,
Coimbatore - 10.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings issued by the 1st respondent in Ref.No.11181/Pers.Lr.3/1997 dated 07.08.2007 in pursuant of his order dated 26.08.2004 and to quash the same and consequently directing the 1st respondent to pay the petitioner all the attendant service benefits with cost, interest and adequate compensation.

For Petitioner : Mr.K.Desingh

For R1& R3 : Mr.S.Sathishrajan



For R2

: Mr.C.Selvaraj,
Additional Government Pleader

ORDER

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The petitioner herein, while serving as a Deputy Manager in the third respondent Milk Producers Union, was levelled with certain charges, through a charge memo dated 17.08.1998. Prior to the charge memo, the petitioner was placed under suspension with effect from 16.05.1997. The order of suspension was revoked on 26.04.2000. The Enquiry Officer, in his report dated 30.06.2000, had held the charges against the petitioner as 'not proved'. However, the Disciplinary Authority had deferred with the views of the Enquiry Officer and had held some of the charges to have been proved and after issuance of a show cause notice, the first respondent had imposed the punishment, through the impugned order dated 26.08.2004, by ordering for stoppage of annual increment for a period of 3 years without cumulative effect. The said order states that though the proven charges evidences gross negligence on the part of the petitioner, a lenient view was taken and accordingly, the suspension period from 16.05.1997 to 26.04.2000 was treated as leave to which he is eligible. Aggrieved against this punishment, the present writ petition has been filed.

2. Pending the writ petition, the petitioner had reached the age of superannuation on 30.06.2009. On 20.12.2011, the first respondent herein had passed an order by regulating the suspension period from 16.05.1997 to 30.05.1997 as privilege leave and the period from 31.05.1997 to 26.04.2000 as leave on loss of pay. Apparently, the first respondent had deviated from the original order of punishment dated 26.08.2004, which states that the suspension period from 16.05.1997 to 26.04.2000 was to be treated as leave to which the petitioner is eligible. In other words, this suspension period is required to be considered as duty period for all purposes.

3. When the subsequent order dated 20.12.2011 was passed by altering the original punishment order dated 26.08.2004, no notice was served on the petitioner for their decision to treat the 1062 days between 31.05.1997 and 26.04.2000 as leave on loss of pay. Even otherwise, this order, treating such leave on loss of pay, is not in accordance with the original order, which period was required to be treated as leave for which he is eligible. As such, the consequential proceedings dated 20.12.2011, which was passed during the pendency of the writ petition, cannot be sustained. Apparently, the punishment of stoppage of increment shall commence from 26.08.2004 onwards.



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4. The learned counsel for the petitioner would submit that in view of the suspension order, the retirement benefits, including the pensionary benefits, have not been disbursed to the petitioner.

5. Since this Court is of the view that the suspension period requires to be treated as duty period, the petitioner would be eligible for all the retirement benefits, including the pensionary benefits, without reference to the subsequent proceedings of the first respondent dated 20.12.2011.

6. In the light of the above findings, there shall be a direction to the first respondent herein to forthwith disburse all the retirement benefits due to the petitioner, including the pensionary benefits, after adjusting the subsistence allowance that may have been paid to the petitioner from 16.05.1997 to 26.04.2000, within a period of six (6) weeks from the date of receipt of a copy of this order. In view of the petitioner having reached the age of superannuation and the punishment having already been implemented, no interference is required to the punishment, as such.

7. In the result, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

hvk

To

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Pachapalayam, Kalampalayam Post,
Coimbatore - 10.

+1cc to Mr.S.Sathish Rajan, Advocate Sr.No.13325

+1cc to Mr.K.Desingh, Advocate Sr.No.13279

+1cc to the Government Pleader Sr.No.14186

W.P.No.23548 of 2009
and
M.P.Nos.1 & 2 of 2009

MT (CO)
RVM(16/03/2022)