IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 23634 of 2017

A.Natarajan … Petitioner

-vs-

1. The State of Tamil Nadu
Represented by the Secretary to Government
Co-operation, Food & C.P. Department,
Fort St.George,
Chennai-600 009.

2. The Registrar of Co-operative Societies,
No. 170, E.V.R. Periyar High Road,
Kilpauk, Chennai-600 010.

3. R.656, Rajapuram Primary Agricultural
Cooperative Credit Society Ltd.,
Represented by its President,
Rajapuram – 639 201.
(Via) Aravakuruchi, Karur District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Respondents to pay and settle the terminal benefits of Rs. 6,51,420/- along with interest at the rate of 9% p.a. for the belated payment from the date of due on 01.04.2015 till its payment.

For Petitioner : Mr. K.Premkumar

For Respondents: Mrs. C.Sangamithirai
Special Government Pleader (For R1 & R2)

Mr. L.P.Shanmugasundaram
Special Government Pleader (For R3)

O R D E R

Heard Mr. K.Premkumar, Learned Counsel for the Petitioner and Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the First and Second Respondents and Mr.

L.P.Shanmugasundaram,Learned Special Government Pleader appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who was working as Salesman in the Co-operative Society of the Third Respondent, had retired from the service on 31.03.2015 when he attained the age of superannuation. Since his terminal benefits had not been paid despite repeated reminders, he had filed the Writ Petition in W.P. No. 14180 of 2017 in which an order dated 07.06.2017 had been passed directing to consider his representation dated 13.04.2017 on its own merits in accordance with law within a period of four weeks from the date of receipt of the copy of that order. In furtherance to that order, the Third Respondent had passed the order dated 07.08.2017, which reads as follows:-

> " The R.656 Rajapuram Primary Agriculture Cooperative Credit Society is a Cooperative Society registered under the TNCS Act 1983 and later to the needs of the agriculturists in the area of operation of the society, comprising three villages in Aravakurichi, Karur District. The Society is running Four Village Fair Price Shops on full time basis and one part time Fair Price Shop. The society is being our on the borrowings from the Trichirappalli District Cooperative Bank. The society is running on loss and the cumulative loss for the year 2015-16 is about Rs.1,17,66,966.32. The society is in financial constraint even to the run the society. The employees of the society could not even receive the monthly salary regularly upto 2015, there were six employees working in the society. In the year from 2015-16, four employees have retired and the retirement benefits of all these employees could not be settled because of the stringent financial position of the society.
>
> Being the retired employees, Thiru.A.Natarajan also aware of the above facts. The retirement benefits to be settled to the four retired employees are as follows:-
> 1. P.Palanisamy, Secretary
> 2. Maruthamuthu, Clerk
> 3. Ganesan, Salesman
> 4. Natarajan, Salesman
>
> The financial position of the society is going down day by day. By the waiver of loan to farmers announced by the government. The members loan are not recovered.

> In the above circumstances the society is not in a position to disburse the retirement benefit to the Petitioner. The payment of retirement benefits to the Petitioner could be considered only after the settlement of retirement benefits of the employees of the society who have retired earlier to Thiru. A.Natarajan.
>
> It is ordered that you claim for the settlement of your retirement benefits will be considered in the due course, after the settlement of the retirement benefits of the 3 employees who have retired form the services of the society earlier to Thiru. A.Natarajan."

In that backdrop, the Petitioner has filed this Writ Petition for directing the Respondents to pay his terminal benefits of Rs.6,15,420/- with interest at the rate of 9% from 01.04.2015 till payment. The Second and Third Respondents have filed separate Counter-Affidavits acknowledging that the terminal benefits consisting of employees provident fund of Rs.3,92,460/-, gratuity Rs.1,80,675/- and encashment of surrender leave Rs.78,285/- remains due by the Third Respondent to the Petitioner and on account of its financial position and liability to pay the terminal benefits of the other employees who had retired before the Petitioner, the same could not be paid at this point of time.

3. It must be recapitulated here that the Hon'ble Supreme Court of India in State of Jharkhand -vs- Jitendra Kumar Srivastava [(2013) 12 SCC 210] has highlighted that the terminal benefits which have been conferred in favour of the employees by statute partake the character of emoluments protected as a right to property of the concerned employee under Article 300-A of the Constitution, which cannot be arbitrarily taken away without any authority of law. Since the withholding of such terminal benefits would amount to depriving the employee of his legitimate right to make use of his property at the time when he ought to have been paid the same on attaining the age of superannuation, he would also have to be compensated for such delay by awarding interest.

4. The Hon'ble Supreme Court of India in catena decisions in State of Kerala -vs- M.Padmanabhan Nair [(1985) 1 SCC 429], Vijay L.Mehrotra -vs- State of U.P. [(2001) 9 SCC 687] and D.D.Tewari -vs- Uttar Haryana Bijli Vitran Nigam Ltd., [(2014) 8 SCC 894] has reiterated the legal position that an employee has to be compensated by way of interest for delayed payment of his terminal benefits. It has been ruled by the Hon'ble Supreme Court of India in S.K.Dua -vs- State of Haryana [(2008) 3 SCC 44] that even in the absence of statutory rules, administrative

instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution inasmuch as the retiral benefits are not in the nature of bounty and needs no authority in support thereof.

5. In such circumstances, the Petitioner is entitled to his terminal benefits along with interest at the current rate of 6% per annum from 01.04.2015 till payment. As already noticed earlier, the Third Respondent has expressed inability to make payment of the terminal benefits of the Petitioner on account of its financial position which is attributed to the waiver of loan to farmers announced by the State Government and has led to preventing the Third Respondent from recovering the dues from its members. Inasmuch as it is the obligation of the State Government to reimburse the loan amounts of the Co-operative Societies to farmers that have been waived, it would be appropriate in the backdrop of the said peculiar features of this case that the First Respondent would have to make payment of the terminal benefits with interest due to the Petitioner by the Third Respondent at the first instance and thereafter take necessary action for adjusting the same either from the amounts that would have to be paid towards reimbursement of the loans to farmers that have been waived or through the sale proceeds of the properties of the Third Respondent following the prescribed procedure. In this context, reference may be made to Sections 64(f) and 143(b) of the Tamil Nadu Co-operative Societies Act, 1983, which are extracted below:-

> "64. Other forms of State aid to registered societies.__ Notwithstanding anything contained in this Act or any other law for the time being in force, the Government may subject to such conditions as they may, by general or special order, specify in this behalf –
> ....
> (f) give financial assistance in any other form including subsidies, to any registered society.
> ....
>
> 143. Power of the Registrar to recover certain sums by attachment and sale of property.__ The Registrar or any person subordinate to him empowered by Registrar in this behalf may, subject to the rules and without prejudice to any other mode of recovery provided by or under this Act, recover-
> ....
> (b) any sum due from a registered society or from an officer, former officer, member or past or deceased member of a registered society as such to the Government including any costs awarded to the Government in any proceedings under this Act; or

....
together with the interest, if any, due on such sum and the costs of process by the attachment and sale or by the sale without attachment of the property of the person against whom such decree, decision, award, order or certificate, has been obtained or passed."

Having due regard to that legal position, the First Respondent shall ensure that the terminal benefits of the Petitioner with interest as stated earlier is immediately paid under written acknowledgment and file a report of compliance by 30.09.2022 before the Registrar (Judicial) of this Court and shall be at liberty to recover the same from the Third Respondent in the manner recognized by law.

In the result, the Writ Petition is ordered on the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gd
To

1. The State of Tamil Nadu
   Represented by the Secretary to Government
   Co-operation, Food & C.P. Department,
   Fort St.George, Chennai-600 009.

2. The Registrar of Co-operative Societies,
   No. 170, E.V.R. Periyar High Road,
   Kilpauk, Chennai-600 010.

3. R.656, Rajapuram Primary Agricultural
   Cooperative Credit Society Ltd.,
   Represented by its President,
   Rajapuram – 639 201.(Via) Aravakuruchi, Karur District

4. Copy to :- The Registrar (Judicial)
   High Court, Madras.

+1cc to Mr. K.Premkumar, Advocate, S.R.No.30353
+1cc to the Government Pleader, S.R.No.30945

W.P. No. 23634 of 2017

EV(CO)
CT 15/06/2022