



W.P.(MD)No.15968 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated: 26.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P.(MD)No.15968 of 2021
and
W.M.P(MD).No.16064 of 2021

M.Sukumar

Vs

... Petitioner

- 1.The Joint Registrar of Co-operative Societies,
Tirunelveli Region.
- 2.The Deputy Registrar of Co-operative Societies,
Cheranmahadevi Circle,
Tirunelveli District.
- 3.The President,
TA23, Kallidaikurichi Primary Agricultural
Co-operative Credit Society,
Kuthukkal Street, Kallidaikurichi,
Tirunelveli District.
- 4.The Secretary,
TA23, Kallidaikurichi Primary
Agricultural Co-operative Credit Society,
Kuthukkal Street, Kallidaikurichi,
Tirunelveli District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to settle all the terminal benefits viz., Encashment of Earned Leave, Provident Fund, Gratuity and Social Security Fund to the petitioner within the stipulated time.



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For Petitioner : Mr.D.Venkatachalam
For Respondents : Mr.R.Ragavendran
Government Advocate (R1 to R3)
Mr.A.K.Manikkam
Special Government Pleader
(for R4)

ORDER

Heard the learned counsel on either side.

2.The writ petitioner joined the third respondent society as Salesman on 01.08.1991. He reached the age of superannuation on 30.06.2018. On account of surcharge proceedings as well as criminal prosecution, his terminal benefits were withheld. Seeking their disbursement, this writ petition has been filed.

3.There is no dispute that the surcharge proceedings have been ended in favour of the writ petitioner. The only impediment is the pendency of the criminal prosecution.

4.The learned counsel appearing for the writ petitioner drew my attention to the judgment reported in CDJ 2014 MHC 5905 (K.Anbarayan & another Vs., The Joint Registrar of Co-operative



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Societies, Namakkal Region, Namakkal District and others). In the said decision, the learned Judge of this Court has held that pendency of the criminal proceeding cannot be a reason to deny payment of gratuity or disbursement of the provident fund amount or encashment of leave salary. The learned counsel for the petitioner has enclosed a few other decisions, all of which clearly support his contention.

5.The only contention advanced by the learned Special Government Pleader is that the said decisions are inapplicable in view of the issuance of G.O.(Ms).No.100, Human Resources Management (FR.II) Department, dated 07.09.2022. The said Government Order has introduced an amendment to the Fundamental Rules. One of the amendment is to the effect that encashment of earned leave and leave on private affairs shall be deferred till the criminal proceedings get concluded.

6.It is obvious that the said amendment does not cover disbursement of gratuity or provident fund amount. That apart, as rightly pointed out by the learned counsel for the petitioner, the aforesaid Government Order applies only to Government servants and not to employees of Co-operative societies. More than anything else, the said



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Government Order, which was issued only on 07.09.2022, cannot be retrospectively applied. Thus, looked at from any angle, the prayer sought for by the writ petitioner has to be necessarily granted. The respondents 3 and 4 are directed to settle the petition mentioned benefits to the writ petitioner within a period of eight weeks from the date of receipt of a copy of this order.

7. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

17.10.2022

Index : Yes/No

Internet : Yes/No

Rmk

To

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3. The President,
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4.The Secretary,
TA23, Kallidaikurishi Primary,
Agricultural Co-operative Credit Society,
Kuthukkal Street, Kallidaikurichi,
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G.R.SWAMINATHAN, J.,

Rmk

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