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W.P.(MD)No.2886 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.2886 of 2015

and

M.P.(MD)No.1 of 2015

P.Kamatchiraj

... Petitioner

VS.

1.The Principal Secretary/
Industries Commissioner,
Director of Industries and Commerce,
Mandavelipakkam, R.A.Puram,
Chennai-28.

2.The Assistant Director,
(Industrial Co-operatives),
District Industries Centre,
Thirunelveli-11.

3.The General Manager,
District Industries Centre,
Thirunelveli-11.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents to settle the terminal benefits and pension with interest from the date of superannuation.

For Petitioner : Mr.R.Murali

For Respondents : Mr.P.Thambidurai
Government Advocate (Civil side)

ORDER

This writ petition is filed for writ of Mandamus, to direct the respondents to settle the terminal benefits and pension with interest from the date of superannuation.

2. The petitioner was appointed as Assistant Supervisor of Industrial Cooperatives by the first respondent, vide order, dated 24.10.1986 and has rendered 10 years of service, thereafter conferred with special grade Supervisor of Industrial Cooperatives, vide proceedings, stated 15.11.2011. The petitioner was imputed with charges and punishment of stoppage of increment without cumulative effect for one year was imposed and the currency of punishment was



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over by 2012 and he was eligible for promotion. After considering all aspects, the 1st respondent promoted the petitioner to the post of Industrial Cooperative Officer and posted the petitioner in the office of the 3rd respondent, vide proceedings, dated 31.01.2013. After assuming the charge, the petitioner was appointed as Special Officer / Administrator 18 such cooperative societies and was entrusted with the task of administration as well as working into day-to-day affairs of the societies.

3.The contention of the petitioner is that huge fire broke out in the first respondent premises and most of the records including the service particulars for 3 volumes were destroyed in the fire. The files were reconstituted by obtaining particulars from other Officers. The petitioner was about to retire on 30.04.2013 on attaining superannuation. The 3rd respondent processed the papers for granting terminal benefits and the petitioner has sent the requisite undertaking and other papers to the first respondent. Thereafter, the first respondent by proceedings, dated 27.04.2013, permitted the petitioner to retire from service on the afternoon



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of 30.04.2013 and accordingly, the petitioner had retired from the service on 30.04.2013. The 3rd respondent directed the petitioner to hand over the charges to Mrs.K.Bakialakshmi, Supervisor of Industrial Cooperative Society who was the petitioner's subordinate. The said Bakialakshmi was not available from 30.04.2013 and the charges could not be handed over. On 09.07.2013, the petitioner met with an accident and hospitalized and was under treatment till October 2013. Therefore, the petitioner could not hand over the charges as directed by the 3rd respondent. However, the charges in respect of 18 societies were handed over to the concerned Officers from 09.07.2013 to 19.05.2014. The petitioner had handed over the charges in respect of the each and every society to one Mr.A.Subramani as per the directions of the 3rd respondent. The petitioner had received the handing over of the entire accounts in all particulars in respect of the societies. Thereafter, the petitioner approached the 3rd respondent on several occasions from July 2013 onwards to disburse the petitioner's terminal benefits. The petitioner issued a legal notice on 20.11.2014 and in response to the same, a reply, dated 05.12.2015, was received levelling various allegations and



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differences in the Service Register and other records.

4.The specific contention of the petitioner is that after superannuation on 30.04.2013. The petitioner has not received any communication as mentioned in the reply notice, dated 05.12.2014. Since the petitioner has issued lawyer's notice, the respondents started accusing the petitioner. Further, enquiry under Section 81 of Tamil Nadu Co-operative Societies Act was initiated and the same was separately conducted. Admittedly, no charges or departmental proceedings were pending against the petitioner. At the time of retirement, no orders to retain the petitioner into service was issued. In fact, till date, no departmental proceedings were initiated against the petitioner and the petitioner was not even paid benefits for the past 20 years.

5. The respondents have filled a counter affidavit stating that 17 (b) charges were initiated against the petitioner and punishment was imposed as stoppage of increment without cumulative effect for a period of one year. When there was



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currency of punishment, the employee is eligible to selection grade and special grade only on expiry of the punishment. Hence in the petitioner's case rightly it was conferred after the expiry of punishment. During the tenure of the petitioner in the above societies, the petitioner has never written or arranged to write cash books or other connected records and a report was submitted to this regard. The contention of the petitioner that the said Bakialakshmi was on leave was denied by the respondents. The respondents submitted that the said Bakialakshmi was on election duty on 30.04.2013 and she was not on leave. Hence, the allegation levelled by the petitioner is incorrect and baseless. The petitioner might have met with an accident on 09.07.2013 but the petitioner ought to have handed over the charge before 09.07.2013. Since the petitioner has not done so, the society was not running. Because of the attitude of the petitioner, section 81 enquiry was initiated and the statutory report also states that bogus vouchers and bills have been prepared for Rs.8,36,400/- towards the purchase of clay and fire wood in the name of Mr. Ramajeyam and the amount is said to have been paid in the form of cash for which joint responsibility has been fixed against the petitioner and



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another member, namely, Ms. Pushpa Sollazhagan besides joint responsibility has been fixed for Rs.2,15,700/- against both the persons. Likewise, the respondents have initiated several other actions regarding other allegations. The petitioner is liable to the loss to the tune of Rs.14,99,569/-. Therefore, the petitioner's terminal benefits was withheld.

6.Heard Mr.R.Murali, learned Counsel appearing for the petitioner and Mr.P.Thambidurai, learned Government Advocate appearing for the respondents and perused the records placed before this Court.

7. When the writ petition was taken up for hearing, the learned Government Advocate appearing for the respondents submitted a communication of the 3rd respondent sent to the Accountant General, seeking permission from the Accountant General to withheld the amount, since an amount ought to be deducted from the petitioner's account towards loss to the society. Once permission is granted, the balance would be disbursed to the petitioner. In the said communication, the loss is quantified as Rs.11,41,113/-. Even according to the respondents, it is the joint responsibility. The learned Counsel appearing for



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the petitioner submitted that already the surcharge proceedings has been initiated against the petitioner. In such circumstances, the amount cannot be withheld by the respondents. However if in the surcharge proceedings it has been decided that the amount ought to be recovered from the petitioner, then the respondents would be prejudice. Hence, in order to meet the ends of justice, this Court is directing to deduct Rs.5,50,000/-(Rupees Five Lakh Fifty Thousand only) and the balance shall be disbursed along with interest at the rate of 7.5% per annum within a period of 10 weeks from the date of receipt of a copy of this order. After the enquiry proceedings and surcharge proceedings are over against the petitioner, the respondents may pass orders on the deducted amount.

8. With the above said observation, the writ petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

Index : Yes / No

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Internet : Yes

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