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W.P.No.9671 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2023

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.9671 of 2022

A.R.Sekar

... Petitioner

Versus

1.The Joint Registrar of Co-operative
Societies,
Tiruvannamalai Region,
Tiruvannamalai District.

2.The Management,
H.H., 498, Nadalaganandal Primary
Agricultural Co-operative
Credit Society,
Chengam Taluk,
Tiruvannamalai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the order passed by the 1st respondent revision petition No.04/2020 Sa.Pa (Na.Ka.No.2227 of 2020 Sa.Pa) dated 24.02.2021 quash the same and consequently, direct the respondents to pay my retirement benefits namely, Gratuity and Leave Encashment totalling a sum of Rs.11,88,204/- with 12% interest from the date of retirement till the payment.



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For Petitioner : Mr.L.P.Shanmugasundaram
For Respondents : Mr.S.Arumugham
For R1 : Government Advocate
For R2 : Mr.B.Vijay
Additional Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the 1st respondent in revision petition No.04/2020 Sa.Pa (Na.Ka.No.2227 of 2020 Sa.Pa) dated 24.02.2021 and consequently, direct the respondents to pay the retirement benefits namely, Gratuity and Leave Encashment totalling a sum of Rs.11,88,204/- with 12% interest from the date of retirement till the payment

2. It is the case of the writ petitioner that he was appointed as Clerk on 15.06.1985 in the 2nd respondent Society and thereafter, he was promoted as Assistant Secretary on 12.12.2000. After completing 34 years of service in the 2nd respondent Society, he attained the age of superannuation on 31.03.2020. However, his retirement benefits namely Employees Provident Fund, Gratuity



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and Leave Encashment and other statutory retirement benefits have not been paid. The petitioner was charge sheeted for a criminal case and hence, surcharge order was passed. Aggrieved by the same, the petitioner preferred CTA appeal before the Co-operative Tribunal / Principal District Judge, Tiruvannamalai, in CTA No.02 of 2015 and the same has been allowed by the Tribunal. Though the petitioner was relieved from service on 31.03.2020, the retirement benefits such as Gratuity and leave salary etc., have not been paid and Provident Fund has been paid after a period of eight months. Thereafter, the petitioner filed revision petition before the 1st respondent challenging the 2nd respondent's order dated 31.03.2020. The 1st respondent passed the impugned order on 24.02.2021 stating that after disposal of criminal case and surcharge proceedings only the retirement benefits will be disbursed. The said surcharge order was set aside by the Co-operative Tribunal on 09.09.2021 and the petitioner was exonerated from the surcharge orders. At that juncture, the 1st respondent passed the impugned order in revision petition No.04 of 2020. Hence, the writ petition.

3. It is the main contention of the writ petitioner that admittedly no charge whatsoever framed against the petitioner and no enquiry either under Sections 81 or 90 of the Tamil Nadu Co-operative Societies Act, as contemplated, has



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commenced. Under such circumstances, the 2nd respondent has no jurisdiction to withhold the retirement benefits particularly Gratuity, Provident Fund and Leave Encashment which have already been ordered to be settled by the Division Bench of this Court in W.A.No.1466 of 2015.

4. Counter affidavit has not been filed despite several opportunities granted to the respondents.

5. Heard the learned counsel on either side and perused the materials available on record.

6. Admittedly, the petitioner was permitted to retire from service on 31.03.2020 and it also appears from the records. The proceedings initiated under Section 87 of the Co-operative Societies Act is also set aside by the Tribunal/Principal District Judge, Tiruvannamalai, in C.T.A.No.02 of 2015 by order dated 09.09.2021. Further, the Division Bench of this Court in W.A.No.1466 of 2015, after perusing various statutory proceedings including the Payment of Gratuity Act, 1972, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Sections 78 and 79 of the Tamil Nadu



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Co-operative Societies Act, 1983, held that the terminal benefits cannot be withheld in the absence of any statutory provision enabling the same and directed the respondents to pay the amount.

7. In such view of the matter, this Court is of the view that if any appeal is filed and the order has been restored, it is well open to the respondents to initiate the proceedings to recover the amount as per law. However, the respondents are not entitled to withdraw the retirement benefits particularly, Gratuity, Provident Fund and Leave Encashment.

8. In such view of the matter, the respondents are directed to release all the retirement benefits namely Gratuity and Leave Encashment to the petitioner, within a period of two months from the date of receipt of a copy of this order and liberty is hereby granted to the respondents to proceed against the petitioner in the event of any surcharge proceedings reached its logical conclusion for recovery of any alleged amount as per law. However, the respondents are directed to disburse the retirement benefits as indicated above with statutory interest at the rate of 10% per annum, within a period of two months from the date of receipt of a copy of this order and in the event of failure to settle the



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amount within a period of two months, the amount shall carry 12% interest till the amount is settled.

9. With the above direction, the writ petition stands disposed of. There shall be no order as to costs.

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N. SATHISH KUMAR, J.



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