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WP.No.9494 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

WP.No.9494 of 2022

A.Sekar

.. Petitioner

Versus

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

2.The Management
Tiruvannamalai District Consumer Cooperative
Wholesale stores
Tiruvannamalai District

3.The Deputy Registrar of Co-operative Societies
Tiruvannamalai
(R3 Suo Motu impleaded vide Order dated
28.04.2023 made in W.P.No.9494/2022 by PDAJ) .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the order passed by the 1st respondent revision petition No.04/2019 Sa.Pa(Na.Ka.No.2442/2019 Sa.Pa) dated 05.08.2020, quash the same and consequently, directing the respondents to pay my retirement benefits namely, Gratuity and Leave Encashment totalling a sum of Rs.8,24,855/- with 12% interest from the date of retirement till the payment.

For Petitioner : Mr.L.P.Shanmugasundaram

For Respondents : Mr.B.Vijay for R1 & R2
Additional Government Pleader
Mr.S.Arumugham, for R3
Government Advocate



WP.No.9494 of 2022

ORDER

This Writ Petition has been filed challenging the order passed by the 1st respondent in revision petition No.04/2019 Sa.Pa(Na.Ka.No.2442/2019 Sa.Pa) dated 05.08.2020, quash the same and consequently, directing the respondents to pay my retirement benefits namely, Gratuity and Leave Encashment totalling a sum of Rs.8,24,855/- with 12% interest from the date of retirement till the payment.

2. It is the case of the writ petitioner that he was allowed to retire on 31.05.2016 as Assistant/Superintendent in-charge in the second respondent Society. At the time of retirement, there was no proceedings whatsoever against the petitioner. However, thereafter, it appears that surcharge proceedings has been initiated on 29.12.2017 and surcharge passed in the year 2017 is also challenged. Now, under the pretext of surcharge proceedings, entire retirement benefits have been withheld by the respondent. Hence, he has filed a Revision before the Joint Registrar and the Revisional Authority by order dated 05.08.2020 has passed the order stating that with-holding the terminal benefits is not proper. Challenging the same, this writ petition has been filed.

3. Counter has not been filed. It is the contention of the learned counsel
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WP.No.9494 of 2022

for the respondents that despite repeated reminders, they are not able to contact the respondents. As the respondent failed to file any counter, this Court is inclined to dispose of the writ petition.

4. Admittedly, the petitioner was permitted to retire from service, it appears that no departmental proceedings were also initiated against him, however, now, the surcharge proceedings is sought to be put against the petitioner. It is relevant to note that even assuming that any surcharge proceedings culminates as against the petitioner which is enforceable order. Whereas as per Sections 78 and 79 of the Tamil Nadu Co-operative Societies Act, there is clear bar for attaching the Provident Fund as well as Gratuity. 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 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.

5. Similarly, in W.P.No.30602 of 2019 vide Order dated 06.11.2019, this



Court considering the judgment of the Hon'ble Apex Court reported in 2013

(12) SCC 2120 (*State of Jharkhand and others vs. Jitendra Kumar Srivastava*

and another, wherein, it is held as follows:

*"...4. Learned counsel appearing for the petitioner submitted that even if the surcharge proceedings is pending, the petitioner is entitled to get gratuity and encashment of earned leave and the respondent cannot withhold the terminal benefits, which is non-est in the eye of law and it is unsustainable. He further submitted that there is no bar for the respondent to recover the surcharge amount in the manner known to law. In support of his contention, he relied on the decision of the Hon'ble Apex Court reported in 2013 (12) SCC 210 (*State of Jharkhand and others vs. Jitendra Kumar Srivastava and another*) and the relevant paragraphs are extracted hereunder:*

"?14. Article 300A of the Constitution of India reads as under:

"?300A Persons not to be deprived of property save by authority of law : No person shall be deprived of his property save by authority of law.?"

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

15. It hardly needs to be emphasized that the executive instructions are not having statutory character and therefore, cannot be termed as 'law' within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned,



there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different"

5. Learned Special Government Pleader appearing for the respondent did not dispute the facts submitted by the learned counsel appearing for the petitioner. However, he prays that liberty may be granted to the respondent to proceed with the surcharge proceedings in the manner known to law.

6. Considering the facts and circumstances of the case, pending surcharge proceedings is not a reason for withholding the terminal benefits of the petitioner. In view of the decision of the Hon'ble Apex Court cited supra, this Court hereby directs the respondent to disburse the gratuity, encashment of earned leave and eligible terminal benefits to the petitioner within a period of four weeks from the date of receipt of a copy of this order. However, liberty is granted to the respondent to recover the surcharge amount from the petitioner in the manner known to law.

7. The writ petition is disposed of on the above terms. No costs. "

6. Considering the above fact that the petitioner is already retired, no disciplinary proceedings is pending, now, under the pretext of surcharge proceedings, entire retirement benefits cannot be withheld by the respondent. If at all, surcharge proceedings is passed, the same is enforceable in the manner known to law and the same cannot be sought to be used against the retirement benefits.

7. Such view of the matter, the respondents are directed the release the retirement benefits within a period of two months from the date of receipt of a



WP.No.9494 of 2022

copy of this Order.

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8. Accordingly, this writ petition stands allowed. No costs.

11.09.2023

dhk

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

To

1. The Joint Registrar of Co-operative Societies

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WP.No.9494 of 2022

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N.SATHISH KUMAR, J.



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