IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	12/12/2023
Pronounced on	14/12/2023

CORAM

THE HONOURABLE DR.JUSTICE D.NAGARJUN

Writ Petition No.7067 of 2015

R.Natesan ..Petitioner

vs.

1.The Registrar of Co-operative Societies,
O/o.The Registrar of Co-operative Societies,
Kilpauk, Chennai-10

2.The Joint Registrar of Co-operative Societies,
O/o. The Joint Registrar of Co-operative Societies,
Ariyalur, Ariyalur District.

3.The Deputy Registrar of Co-operative Societies,
O/o.The Deputy Registrar of Co-operative Societies,
Ariyalur, Ariyalur District

4.The President/Board of Directors,
DYSPL, 73, Keelapazhur,
Primary Agriculture Co-operative
Society Limited,
Keelapazhur Post, Ariyalur District. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents, to sanction interest for the belated payment of terminal benefits (i) Societies share contribution, (ii) DCRG, (III) Employees provident fund and (iv) amount for surrender of Earned Leave, for the period from 01.02.2011, to till date of payment made on 10.10.2013, at the rate of 18% to the petitioner, after adjusting rate of interest 4%, in respect of amount for Societies share contribution and DCRG already paid on 10.10.2013.

For Petitioner	: Mr.V.Ravikumar
For Respondents	: R.U.Dinesh Raj Kumar

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ORDER

This writ petition has been filed seeking for issuance of a Mandamus, to direct the respondents, to sanction interest for the belated payment of terminal benefits (i) Societies share contribution, (ii) DCRG, (III) Employees provident fund and (iv) amount for surrender of Earned Leave, for the period from 01.02.2011, to till date of payment made on 10.10.2013, at the rate of 18% to the petitioner, after adjusting rate of interest 4%, in respect of amount for Societies share contribution and DCRG already paid on 10.10.2013.

2. The brief facts, which led to the filing of the present Writ Petition, are as follows:

2.1 The petitioner was appointed as a Clerk in the Keelpazhur Primary Agriculture Co-operative Society Ltd., Keelapazhur on 08.2.1978 and in the year 1980, he was promoted as Secretary and retired from service on attaining the age of superannuation on 31.01.2011.

2.2. During his tenure as Secretary in the year 2008, the 3rd respondent, vide proceedings dated 29.12.2008, issued surcharge order against the petitioner to the tune of Rs.1,59,713/- on the allegation that he had sanctioned agriculture loan for three persons who did not own any land in their names. However, according to the petitioner, after getting necessary records from the Revenue Authorities and after getting approval from the Board of Directors of Society, he sanctioned the loans to them. Even the Central Co-operative Bank after thorough scrutiny of the loan applications and documents, sanctioned the loans. Later, the Government of Tamil Nadu has waived the loan amounts payable by the borrowers, however despite the same, surcharge proceedings were initiated against the petitioner. He made a detailed representation dated 21.02.2001 to the authorities, requesting to settle all his retiral benefits. Since no response was forthcoming, the petitioner approached this Court by way of W.P.No.26612 of 2011, seeking a *mandamus* to the respondents therein, to settle the retiral benefits. This Court, vide order dated 16.08.2013, while allowing the Writ Petition, directed the respondents to settle the retiral benefits to the petitioner within a period of 4 weeks from the date of receipt of a copy of the order. Pursuant to the same, vide proceedings dated 10.10.2013, the petitioner was sanctioned Rs.10,72,000/- apart from paying Rs.73,000/- towards interest on the amount of DCRG at 4% p.a.

2.3 According to the petitioner, since he was permitted to retire from service as early as on 31.01.2011 and the respondents deliberately withheld the retiral benefits, he is entitled for interest at the rate of 18% p.a. Hence, the petitioner made a representation 21.02.2014 to the respondents, to sanction interest at 18% p.a. for the belated payment of his retiral benefits.

As no response was evincing from the respondents, the petitioner has come forward with the present Writ Petition.

3. Counter affidavits have been filed on behalf of the respondents 2 to 3 as well as on behalf of the 4th respondents. The sum and substance of the counter affidavits, is that while allowing the earlier writ petition, this Court directed only to settle the retiral benefits, but has not ordered any payment of interest thereof. However, the retiral benefits of the petitioner were settled on 11.10.2012 with 4% interest on gratuity and with 10 ½% interest on Provident Fund amounting to Rs.8,58,995/-. After retirement of the petitoner on 31.10.2011, the petitioner has got Rs.3,78,083/-towards Provident Fund. Therefore, the petitoner is not entitled to any further interest as claimed by him in the Writ Petition. Hence, the respondents sought for dismissal of the Writ Petition.

4.Heard the learned counsel for the petitioner as well as the learned counsel for the respondents and perused the records.

5.It is submitted by the learned counsel for the petitioner that the petitioner was appointed as a Clerk in the Keelapazhur Primary Agricultural Co-operative Society Ltd. on 09.02.1978 and retired on 31.01.2011 after attaining the age of superannuation. The Surcharge proceedings have been issued against the petitioner on 29.12.2008 in Na.Ka.No.921 of of 2007 in respect of the amount of Rs.1,59,713/-. The petitioner has filed CMA No.6 of 2011 before the learned District Judge, Perambalur. In the meanwhile, the petitioner was permitted to retire on 31.01.2011 without prejudice to the surcharge proceedings as well as criminal proceedings. The petitioner has submitted a detailed representation on 21.02.2001 requesting to settle terminal benefits. When it was not attended, the petitioner has filed WP No.26612 of 2011 before this Court. The said Writ Petition was allowed on 16.08.2013, directing the petitioner to settle the terminal benefits. It is further submitted by the learned counsel for the petitioner that as per the subsequent directions of this Court, the fourth respondent has settled the terminal benefits. However, in so far as Earned Leave Encashment for 138 days. interest has not been paid. Therefore, the petitioner sought suitable directions.

6.The learned counsel for the respondents has filed a detailed counter stating that the amount which are due to the petitioner has already been paid to the petitioner. He has taken this Court to paragraph no.8 of the counter affidavit, wherein, it was mentioned that the Gratuity amount of Rs.4,98,001/- with 4% interest and EPF (Society Contribution) of Rs.2,49,646/- with 10 ½ interest, EPF (Own Contribution) of Rs.3,78,083/- have already been paid to the petitioner. However, in sofar as the Earned Leave encashment is concerned, an amount of Rs.1,11,348/- has been paid. But the interest has not been paid thereof. The learned counsel for the respondents further submitted that there is alternative remedy, thereby the petitioner should have availed the same, however, without doing so, the petitioner has approached to this Court under Article 226 of the Constitution of India.

7. The question arises for consideration in the writ petition is, as to whether the petitioner can seek for grant of interest for the belated terminal benefits?

10. The learned counsel for the petitioner relied upon a decision of the Hon'ble Apex Court in the case of "***Vijay L.Mehrotra Vs. State of U.P. & Others***" reported in (2000(2) SLR page 687, wherein, it would be relevant to extract Paragraph nos.3 & 4, which read as under:

> "(3) In case of an employee retiring after having rendered service, it is expected that all the payments of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement.
>
> (4)In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the respondent to pay to the appellant within 12 weeks from today simple interest at the rate fo 18% with effect from the date of her retirement, i.e., 31st August, 1997 till the date of payments."

11.Considering the above, the petitioner is entitled for the interest towards the belated payment of Earned Leave Encashment.

12.The learned counsel for the respondents has submitted that the respondents are the officials of the Co-operative Society and they are not instrumentalities of the State within the meaning of Article 12 of the Constitution of India. Therefore, the writ petition shall not lie. He has cited an authority in the case of "***K.Marappan Vs. The Deputy Registrar of Co-operative societies and the Special Officer, Vattur Co-operative Agricultural Bank"*** reported in 2006 (8) CTCOL 117 (Mad), wherein, in paragraph no.21 it has been held as under:

> "21. From the above discussion, the following propositions emerge:
>
> (i) If a particular co-operative society can be characterised as a "State" within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be "an authority" within the meaning and for the purpose of Article 226 of the Constitution. In such a situation, an order passed by a society in violation of the bye-laws can be corrected by way of writ petition.

(ii) Applying the tests in Ajay Hasia it is held that the respondent society carrying on banking business cannot be termed as an instrumentality of the State within the meaning of Article 12 of the Constitution.

(iii) Even if a society cannot be characterised as a "State" within the meaning of Article 12 of the Constitution, even so a writ would lie against it to enforce a statutory public duty cast upon the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a "person" or "an authority" within the meaning of Article 226 of the Constitution and what is material is the nature of the statutory duty placed upon it and the Court will enforce such statutory public duty. Although it is not easy to define what a public function or public duty is, it can reasonably said that such functions are similar to or closely related to those performable by the State in its sovereign capacity.

(iv) A society, which is not a "State" would not normally be amenable to the writ jurisdiction under Article 226 of the Constitution, but in certain circumstances, a writ may issue to such private bodies or persons as there may be statutory provisions which need to be complied with by all concerned including societies. If they violate such statutory provisions a writ would be issued for compliance of those provisions.

(v) Where a Special Officer is appointed in respect of a co-operative society which cannot be characterised as a "State" a writ would lie when the case falls under Clauses (iii) and (iv) above.

(vi) The bye-laws made by a co-operative society registered under the Tamil Nadu Co-operative Societies Act, 1983 do not have the force of law. Hence, where a society cannot be characterised as a "State", the service conditions of its employees governed by its bye-laws cannot be enforced through a writ petition.

(vii) In the absence of special circumstances, the Court will not ordinarily exercise power under Article 226 of the Constitution of India when the Act provides for an alternative remedy.

(viii) The decision in M. Thanikachalam and others Vs. Maduranthakam Agricultural Producers co-operative Marketing Society and others, is no longer good law, in view of the decision of the seven-Judge Bench of the Supreme Court in Pradeep Kumar Biswas case and the other decisions referred to here before."

14. It is submitted by the learned Additional Government Pleader that the respondents are the Co-operative Society registered under the Co-operative Societies Act and thereby, writ petition will not lie, as per the decision of the Larger Bench of this Court in ***K.MARAPPAN Vs. THE DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES AND THE SPECIAL OFFICER, VATTUR CO-OPERATIVE AGRICULTURAL BANK {2006 (8) CTCOL 117 (Mad).***

15. In W.P.No.25113 of 2015 (G.SUNDARAMOORTHY Vs. 1. THE JOINT REGISTRAR OF CO-OP SOCIETIES, CUDDALORE DISTRICT AND ANOTHER), a similar question was confronted by this Court. The respondents therein were also Societies registered under the Co-operative Societies Act, 1983.

16. It is submitted by the learned counsel for the petitioner that non-payment of terminal benefits as a statutory violation and thereby principles laid down by the Larger Bench of this Court need not be applied to the cases of settlement of terminal benefits. The Larger Bench decision referred above, it is ruled that writ petition cannot be maintained against the Co-operative Societies. However, in case, if there is a statutory violation, writ petition can be entertained against the co-operative Societies. Granting of terminal benefits are statutory obligations on the part of the employer which are required to be taken for the welfare of the employees. With holding the terminal benefits and delayed payment of terminal benefits and non-payment of interest for delayed payments also part of the statutory obligation of the State. Therefore, it cannot be said that because of the respondent is a Co-operative Society, writ petition will not lie.

17. However, Section 153 of the Act, runs as under:-

> 153. Revision (1) The Registrar may of his own motion or on application, call for and examine the record of any officer subordinate to him or of the board or any officer of a registered society or of the competent authority constituted under sub-section (3) of section 75 and the Government may, of their own motion or on application, call for and examine the record of the Registrar, in respect of any proceedings under this Act or the rules or the by-laws not being a proceedings in respect of which an appeal to the Tribunal is provided by sub-section (1) of section 152 to satisfy himself or themselves as to the regularity of such proceedings, or the correctness, legality or propriety of any decision passed or order made therein; and, if, in any case., it appears to the Registrar or the

Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, he or they may pass orders accordingly. Provided that every application to the Registrar or the Government for the exercise of the powers under this section be preferred within ninety days from the date on which the proceedings, decision or order to which the application relates was communicated to the applicant.

(2) No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representation.

(3) The Registrar or the Government, as the case may be, may suspend the execution of the decision or order pending the exercise of his or

their power under sub-section (1) in respect thereof.

(4) The Registrar of the Government may award costs in any proceedings under this section to be paid either out of the funds of the society or by such part to the application for revision as the Registrar or the Government may deem fit.

18. The issues with regard to payment of Settlement of terminal benefits, delayed payment of interest on late payment of terminal benefits will also be a subject matter of revision under Section 153 of the Act. The revision of power will be exercised by the competent authority. In case if the petitioner herein has not approached the competent authority under Section 153 of the Act, no reason is explained as to why revision has not been filed, aggrieved by the non-payment of interest for the delayed payments. Once alternative efficacious remedy is available in the form of a revision under Section 153 of the Act, the petitioner ought to have approached the competent authority by way of a revision and in case if the petitioner is

aggrieved by the orders passed, then should have approached this Court. However, in certain circumstances, the petitioner can still approach this Court under Article 226 of the Constitution even bye passing the revision, alternative remedy. In the case on hand, the petitioner has not made out any grant for bye passing the effective alternative independent remedy. Therefore, when the alternative effective remedy is available within the Scheme of the Act under Section 153 of the Act, the petitioner shall exhaust the said remedy prior to approach this Court.

19. In view of the above, though the petitioner has made out a strong case for awarding of interest for delayed payments, still on account of the fact that the petitioner has directly approached this Court under Article 226 of the Constitution of India, without exhausting remedy revision under Section 153 of the Act, the same cannot be granted.

20. Accordingly, writ petition is disposed of, giving liberty to the petitioner to approach the competent authority under Section 153 of the Act and file a revision. On filing of such revision, competent authority is directed to dispose of the same, as expeditiously as possible, not later than

four months from the date of filing of the revision. No costs. Consequently, the connected Miscellaneous Petition is closed.

14.12.2023

Index : Yes/No

Neutral Citation: Yes/No

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Dr.D. NAGARJUN, J

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Pre-delivery order made in
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