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W.P.No.27249 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2023

CORAM:

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

Writ Petition.No.27249 of 2014

G.Gopal

... Petitioner

Vs.

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

2. S.909, Anangoor Primary
Agricultural Co-operative Credit Society Ltd,
Rep by its President, Anangoor,
Aiyampalayam Post, Paramathi Velur Taluk,
Namakkal District.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking to issue a Writ of Ceitorarified Mandamus, calling for the records of the first respondent in Na.Ka.876/2006 PAS dated 04.03.2014 quash the same and consequently direct the respondents to regularize the medical leave, suspension period as duty period, bonus and settle all withheld benefits with interest to the petitioner.

For Petitioner : Mr.C.R.Chandrasekar

For R1 : M/s.C.Sangamithrai
Special Government Pleader



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For R2 : Mr.M.S.Palanisamy
ORDER

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This Writ Petition is filed by the petitioner seeking for quashment of the impugned orders of the first respondent dated 04.03.2014, vide Na.Ka.876/2006 PAS.

2. The facts in brief as per the affidavit enclosed this Writ Petition are that the petitioner was appointed as Call Boy in the second respondent society on 01.12.1978. He has taken Medical Leave from 15.12.2008 to 20.02.2009 and he has submitted a representation to the second respondent to consider his Medical Leave as duty period on the ground that as per the bye laws of the society, petitioner is entitled to take Medical Leave upto 540 days.

3. On 24.07.2009 the petitioner was suspended from service and a charge memo dated 30.09.2009 was issued to the him. On 29.10.2009, the petitioner submitted his explanation, however no further action was taken by the second respondent. The petitioner joined duty on 29.01.2010 and retired from service on 30.04.2013.



4. The second respondent has withheld the pay of the petitioner for the period between 15.12.2008 to 20.02.2009 and 24.07.2009 to 29.01.2010.

The petitioner made a representation to the respondents dated 12.07.2013, however the same was not considered. Thereafter, the petitioner has preferred W.P.No.28025 of 2013 before this Court and this Court has directed the first respondent to consider the petitioner's representation dated 12.07.201 and pass orders on merit within a period of eight weeks from the date of receipt of copy of that order. Subsequently, the first respondent has passed the impugned orders vide Na.Ka.876/2006 PAS dated 04.03.2014 rejecting the request of the petitioner. Aggrieved by the same the petitioner is before this Court by way of this Writ petition.

5. Heard both sides and perused the materials placed on records.

6. An employee will be suspended in anticipation of initiation of disciplinary proceedings. The petitioner was suspended on 24.07.2009 and he has submitted his explanation requesting to revoke his suspension and permit him to join the duty. The respondent department has considered the request and the suspension imposed on 24.07.2009 was revoked on 29.01.2010, thereby, he joined the duty with effect from 30.01.2010.



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Subsequently, no disciplinary proceedings have been initiated. The respondents are under the obligation to decide the nature of suspension period either as duty period or leave period. Once suspension, has been revoked and no disciplinary proceedings have been initiated, the suspension period has to be treated as duty period. Therefore, the impugned orders rejecting to consider the request of the petitioner to treat the suspension period as duty period is erroneous.

7. Petitioner has filed the copy of service rules along with amended bye-laws. On considering the same, it is clear that every employee is entitled for sick leave for about 90 days if he has put up five years of service, 180 days if he has put up 10 years of service, 270 days if has put up 15 years of service and 360 days in case he has put up 20 years of service and finally 540 days in case if has completed 25 years of service. The petitioner was absent from 15.12.2008 to 20.02.2009 (65 days). It is not the case of the respondent that the petitioner has not completed five years of service. As already mentioned above, as per the amended by laws, in case, if an employee completed five years of service, he is entitled for medical leave for about 90 days. Therefore, there is no reason as to why the medical leave has not been considered. At least at the time of retirement, when the retirement



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benefits were being settled, the respondent should have considered the request of the petitioner. The petitioner was allowed to retire from service on attaining the age of superannuation on 30.04.2013. The respondent having extracted the work from the petitioner for a longer period should not have dragged the issue for long time.

8. Considering the circumstances, this Writ Petitioner is allowed by setting aside the impugned order passed by the first respondent in Na.Ka.876/2006 PAS dated 04.03.2014 and the respondents are directed to regularize the medical leave, suspension period as duty period and settle all the retiral benefits with interest to the petitioner. No costs.

06.12.2023

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Index:Yes/No

Neutral Citation: Yes/No



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Dr.D. NAGARJUN, J.

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To

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