



WEB COPY

W.P.No.24794 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.08.2023

Coram:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.24794 of 2017
and WMP No.26177 of 2017

V.Rajendran

... Petitioner

Vs.

1. Joint Registrar of Cooperative Societies,
Villupuram Zone, Villupuram.
2. President,
E-2028 Kandamanady Primary Agricultural
Cooperative Society,
Kandamanady, Villupuram Taluk & District.

.... Respondents

Prayer: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the concerned records from the 1st respondent, quash the order of the 1st respondent dated 10.04.2017 bearing Ref.No.Na.Ka.7136/2016/Sa.Pa rejecting the Revision on the ground that the terminal benefits need not be settled till the conclusion of the Disciplinary Proceedings as illegal, arbitrary, contrary to law and violation of Article 21 of the Constitution of India and for a consequential direction directing the 2nd respondent to settle all the terminal benefits with interest at the rate of 18% per annum.



WEB COPY

W.P.No.24794 of 2017



For Petitioner : Mr.Balan Haridas

For Respondent : Mr.S.Ravikumar

Special Government Pleader – R1

Mr.L.P.Shanmugasundaram - R2

ORDER

This Writ Petition has been filed in the nature of a Certiorarified mandamus seeking records of the first respondent Joint Registrar of Cooperative Societies, Villupuram and to quash the order dated 10.04.2017 bearing Ref.No.Na.Ka.7136/2016/Sa.Pa, by which order, it had been stated that the terminal benefits payable to the petitioner should not be settled till the conclusion of the Disciplinary Proceedings, which were pending against the petitioner herein.

2. The petitioner had joined the second respondent E-2028 Kandamanady Primary Agricultural Cooperative Society, Villupuram Taluk as Salesman in the year 1987 and finally retired from service on 30.06.2015 as senior clerk. Thereafter, he had been seeking settlement of his terminal benefits. Since the same has not been paid, the petitioner has filed a revision petition before the first respondent seeking payment of terminal benefits, like, gratuity, provident fund, staff security deposit and such other benefits.

3. However, the said revision petition had been returned necessitating the petitioner to file a Writ Petition in W.P.No.33919 of 2016 before this



Court, wherein a direction was issued to the first respondent to dispose the revision petition filed by the petitioner within a stipulated period. Thereafter, it had been stated by the first respondent that since the disciplinary proceedings were pending against the petitioner, the terminal benefits could not be paid.

4. In the counter affidavit filed by the second respondent it had been stated that as against the petitioner, since there had been allegations about the financial irregularities, enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 (in short 'Act') had been initiated on 08.08.2013. Pending the said enquiry, the petitioner had attained the age of superannuation and it is stated that he was relieved from his duty but not permitted to retire from service. It had been further stated that subsequently, charges have also been framed against the petitioner on 09.02.2017 and an order of dismissal was passed on 17.11.2017.

5. It had been further contended that the petitioner has not challenged the order of dismissal. Thereafter, surcharge proceedings were issued under Section 87 of the Act and the petitioner was called upon to pay a sum of Rs.13,85,086/- together with interest.

6. The petitioner had filed an appeal under Section 152 of the Act before the Cooperative Tribunal/Principal District Judge, Villupuram with a



delay of 1137 days. The application seeking condonation of delay in I.A.No.2 of 2022 in unnumbered CMA was dismissed. The petitioner appears to have filed a revision petition before this Court in CRP.No.2218 of 2023, which is pending before this Court.

7. Quite apart from that, the respondents had also given a complaint before the CCW.CID, Villupuram and an FIR in Crime No.2 of 2017 has been registered under Sections 120(B), 408, 471 and 477(A) of IPC for misappropriation of funds. It was stated that consequent to the filing of the final report, the trial is pending before the jurisdictional Magistrate. Therefore, it was contended that the petitioner is not entitled to the relief sought, viz, payment of terminal benefits.

8. Heard the learned counsel for the petitioner, learned Special Government Pleader for R1 and the learned Standing Counsel for R2.

9. The order of the first respondent, which, according to the petitioner, has permitted the petitioner to retire from service and according to the respondents, the petitioner was only relieved from the duty and not permitted to retire, reads as follows:

"ஆணை"

பார்வை 1 மற்றும் 2ல் கண்டுள்ளவாறு
1938ம் ஆண்டு தமிழ்நாடு கூட்டுறவு சங்கங்களின்
சட்டப்பிரிவு 81ன் கீழான விசாரணை நிலுவையில்
உள்ளதால் சங்கத்தில் முதநிலை எழுத்தர்
திரு.V.ராஜேந்திரன் வயது முதிர்வு காரணமாக



W.P.No.24794 of 2017

WEB COPY

பணியில் இருந்து ஓய்வு பெற அனுமதிக்காமல்
30.06.2015 பிற்பகல் பணியில் இருந்து
விடுவிக்கப்படுகிறார். இவர் தன்வசம் உள்ள
பொறுப்புக்களை திரு.K.மணிக்கண்ணன்
சிற்றெழுத்தர் வசம் ஒப்படைக்க
அறிவுறுத்தப்படுகிறார்.

ஓம்/=
தலைவர்
இ.20 கண்டமானடி தொடக்க கூட்டுறவு
வேளாண்மை கூட்டுறவு கடன் சங்கம்

10. The aforesaid order is a little difficult to decipher. A reading of it shows that since an enquiry under Section 81 of the Act is pending and the petitioner herein is not permitted to retire upon attaining the age of superannuation on 30.06.2015. But however, it is also stated that from the forenoon of 30.06.2015, he was discharged from service. The word used is 'பணி'. Whether it indicate service of the petitioner or the duties which the petitioner was to perform are not explained properly in the order.

11. However, it is now informed that the petitioner had been paid the terminal benefits substantially except the surrender leave salary and gratuity payment, which he now seeks in this Writ Petition.

12. Learned counsel for the petitioner had placed reliance on on the judgment of the Full Bench of this Court reported in **2015 [3] LW 513 [S.Andiyannan Vs. The Joint Registrar, Cooperative Societies, Madurai Region, Madurai and Another]**. The reference before the Full Bench was



"Whether the disciplinary proceedings initiated against an employee of a cooperative Society, governed by the Tamil Nadu Cooperative Societies Act, 1983, could be continued even after retirement of the said employee?"

13. There was yet another reference. But in answer to the aforementioned reference, the Full Bench had answered as follows:-

"29.The first legal question referred to this Bench is whether the disciplinary proceedings initiated against an employee of a cooperative Society governed by the Tamil Nadu Cooperative Societies Act can be continued even after the retirement of the said employee. The decisions relied on by both the learned counsel have categorically make it clear that the legal position is that the authority could continue the departmental enquiry against retired employee, only subject to applicable statutory Rules or bye-law, which govern the terms and conditions of his service of the employee. Hence, the relevant Rules governing the service conditions of the employee is the determining factor as to whether and in what manner a domestic enquiry can be continued against an employee, who retired after reaching the age of superannuation. Hence, had there been any enquiry initiate while the delinquent employee was in service, it could be continued even after his retirement, subject to the service Rules or bye law of the cooperative society. If the service Rules relating to the employee permits for



WEB COPY

continuation, there would be no bar in continuing the departmental proceeding, that was initiated while he was in service, even after his retirement. It is also categorically held by the Hon'ble Supreme Court in the latest decisions, that in such circumstances, even if the guilt is proved, there is no possibility of imposing punishment of dismissal or removal from service, as the same is not legally sustainable.

30. Answer to the first question referred to this Bench:

Under the Tamil Nadu Cooperative Societies Act, 1983, once an employee retired from service, there could be no authority vested with the employer for continuing any disciplinary proceeding in the absence of relevant service Rules permitting the employer to continue the disciplinary proceeding. In other words, if there is no service Rules or bye-law of the society empowering the employer to continue the departmental proceeding, the employer, would have no authority to continue the departmental proceeding after the retirement of the employee."

14. It is therefore contended that the respondents had no authority to continue the departmental proceedings.

15. Learned counsel for the 2nd respondent pointed out the Special Bye Laws relating to the 2nd respondent/Primary Agricultural Cooperative Credit



Society and in particular, placed reliance on the following portion:

"The disciplinary proceedings initiated against an employee, while he was in service, shall be deemed to be proceedings under this Special Bye Law, even after his retirement and be continued and concluded by the competent authority in the same manner as if the employee had continued in service. In the event of any such disciplinary proceedings having been initiated and if the society has reason to believe that the disciplinary proceedings will result in the removal or dismissal of the employee from service, the society shall place the employee under suspension. The society also, shall not make payment of the terminal benefits like gratuity etc., payable to the employee until the disciplinary proceedings are finally concluded."

16. It is seen that very specifically an employee should be placed under suspension. In the instant case, the petitioner had not been placed under suspension. The proceedings dated 30.06.2015 can equally be interpreted as having relieved him from service.

17. The ratio laid down by the Full Bench therefore, directly applies to the petitioner herein.

18. It is not known as to why the respondents have passed order dated 30.06.2015 which very vague and ambiguous. Either way, since the petitioner had been paid all other benefits, only the surrender leave salary and gratuity



alone are yet to be paid, a direction is given to the respondents to effect such payments. Necessary proceedings in this regard shall be issued within a period of twelve (12) weeks from the date of receipt of a copy of this order. If there is any loan which is recoverable from the petitioner, the same should be made in accordance with the relevant Rules and Regulations.

19. However, it made clear that this order will not prevent the respondents from proceeding further with the proceedings under Section 87 of the Act as well as with the criminal case which is now pending against the petitioner.

20. It is also made clear that this order is passed only with respect to the payments to be given to the petitioner and not in respect of any pending proceedings, either under Section 87 of the Act or in the criminal case pending against the petitioner, as they will have to be adjudicated only on the basis of the evidence produced before the particular authority/Court.

21. This Writ Petition stands disposed of with the above directions. No costs. Connected Miscellaneous Petition is closed.

21.08.2023

Index: Yes/No
Speaking/Non-speaking order
Neutral citation: Yes/No
sl



W.P.No.24794 of 2017

C.V.KARTHIKEYAN,J.

Sl

WEB COPY To

1. Joint Registrar of Cooperative Societies,
Villupuram Zone, Villupuram.
2. President,
E-2028 Kandamanady Primary Agricultural
Cooperative Society,
Kandamanady, Villupuram Taluk & District.

W.P.No.24794 of 2017
and WMP No.26177 of 2017

21.08.2023