



W.P.(MD).No.14937 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.08.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.14937 of 2023

K.Chinnapandi

... Petitioner

Vs.

1.The Deputy Registrar of Co-operative
Societies (Housing),
Madurai,
Madurai District.

2.The Administrator,
A.2591, Madura Coats and Public Services Employees
Co-operative Housing Society,
No.76/218, Theni Main Road,
P.P.Savadi,
Madurai – 10.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to settle the petitioner's gratuity of Rs.18,59,000/-, Provident Funds of Rs.1,14,000/-, earned salary of Rs.7,45,000/- with interest forthwith based on the representation dated 06.06.2023.

For Petitioner : Mr.S.Kumar

For Respondents : Mr.M.Prakash
Additional Government Pleader



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ORDER

The prayer of the Writ Petition is as follows:-

The present Writ Petition has been filed for issuance of a Writ of Mandamus, directing the respondents to settle the petitioner's gratuity of Rs.18,59,000/-, Provident Funds of Rs.1,14,000/- and earned salary of Rs. 7,45,000/- with interest forthwith based on the representation, dated 06.06.2023.

2.Heard Mr.S.Kumar, learned counsel appearing for the petitioner and Mr.M.Prakash, learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

3.The petitioner was appointed as a Clerk in the second respondent Society through sponsorship from Employment Exchange on 21.04.1988. Subsequently, he was promoted as Secretary on 12.02.1990. In view of the pendency of the criminal cases relating to his service on the date of superannuation on 31.05.2023, he was



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relieved from the post citing the pendency of the criminal cases. No disciplinary proceeding has been initiated as against him. However, the criminal cases culminated in the filing of charge sheet in C.C.No.70 of 2006 and C.C.No.13 of 2011 on the file of the learned Judicial Magistrate No.III at Madurai. The petitioner has also obtained an order from this Court in CrI.O.P(MD)No.22372 of 2023 to complete the trial of the aforesaid cases within a period of six months on 26.04.2023. Despite the petitioner being relieved from service with effect from 31.05.2023, so far the respondents have not settled the petitioner's gratuity, provident fund, earned leave salary and other terminal benefits. Hence, the petitioner made a representation, dated 06.06.2023 requesting the respondents to settle his terminal benefits. However, the same was not considered. Hence, this Writ Petition came to be filed.

4.The learned Additional Government Pleader appearing for the respondents vehemently submitted that two criminal cases, which culminated in filing the final report before the learned Judicial Magistrate No.III at Madurai, are proceeding as against many other staffs including the petitioner. As a result of which, the petitioner was only relieved from service on 31.05.2023 and hence, it cannot be



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construed as if he has been allowed to retire from service and the terminal benefits were not settled to him. Until and unless the criminal cases which are pending before the learned Judicial Magistrate No.III at Madurai, concludes, the petitioner is not entitled to receive his terminal benefits and hence, he pressed for dismissal of the Writ Petition.

5.However, the learned counsel appearing for the petitioner relied upon several orders passed by this Court and the Honourable Division Bench of this Court in W.A.No.3133 of 2019, dated 09.09.2019 [The Joint Registrar of Co-operative Societies and others Vs. M.Elumalai], in a similar case has passed a favourable order to the petitioner therein and the relevant portion of which is extracted as follows:-

"5. In the case on hand, retirement benefits have been denied, on the ground that Section 81 proceedings have been initiated against the respondent. Enquiry ordered in Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, has not fructified into any proceedings, under Sections 87 of the Act, viz., surcharge proceedings. Even in the case



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of initiation of surcharge proceedings, a Hon'ble Full Bench of this Court in S.Andiyannan's case, has held that departmental proceedings cannot be continued, after retirement of any employee. When disciplinary proceedings cannot be continued after retirement, no punishment, much less recovery or withholding of retirement benefits, can be ordered."

6.This Court is of the considered view that Crime No.14 of 2004 and Crime No.1 of 2008 were registered as against one Latha and four others for misappropriation of Society funds and after investigation, charge sheets were also filed in C.C.No.70 of 2006 and C.C.No.13 of 2011 before the learned Judicial Magistrate No.III at Madurai and the petitioner was shown as a prosecution witness in the charge sheet. However, thereafter at the instance of the accused Latha, a petition under Section 319 of Cr.P.C was filed before the trial Court for implicating the petitioner as one of the accused, which was considered and allowed by the trial Court. As a result of which, the petitioner was implicated as an accused in both cases on 27.01.2017, when the petitioner was in service. Only after a period of five years, on 31.05.2023, the petitioner attained the age of superannuation. Despite the petitioner having been in service for a period of atleast five years,



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even after being implicated as one of the accused in the criminal cases, the respondent Society neither suspended him nor proceeded with any disciplinary action as against him. Having relieved him from service, subject to the result of the criminal cases pending, now the respondents cannot submit that the petitioner is not entitled for terminal benefits, in view of the order passed by the Hon'ble Division Bench of this Court in the above case as discussed supra. Hence, this Court is of the considered view that when the disciplinary proceeding has not been initiated during his time of service and now after relieving him from service, disciplinary proceedings cannot be initiated or continued as against the petitioner and hence, there cannot be any punishment and as a result of which, his terminal benefits cannot be withheld. Hence, this Court directs the respondents to consider the representation of the petitioner dated 06.06.2023 and pass appropriate orders so as to settle the terminal benefits within a period of twelve weeks from the date of receipt of a copy of this order.



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7. Accordingly, this Writ Petition is allowed. There shall be no order as to costs.

18.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

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L.VICTORIA GOWRI, J.

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