



W.P.(MD).No.19668 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 17.10.2023

ORDER PRONOUNCED ON : 01 .11.2023

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.P.(MD).No.19668 of 2023

Rmah Shahnawaz

....Petitioner

Vs

1.The Principal Secretary of Government
Animal Husbandry, Dairying and Fishes Department
St.George Fort, Secretary
Chennai 600 009

2.The Commissioner
Milk Production and Diary Development Department
Madhavaram Milk Colony
Chennai 600 051

3.The Managing Director
Tamil Nadu Co-operative Milk Production Federation Ltd.,
Aavinillam
Nandanam
Chennai 600 035

4.The General Manager
Tirunelveli District Co-operative Milk Producer Union Ltd.,
Reddiarpatti Road
Perumalpuram Post
Tirunelveli – 7

...Respondents



W.P(MD).No.19668 of 2023

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents 1 to 3 to direct the respondent No.4 to disburse the pensionary benefits and all other terminal benefits with interest by considering the representation dated 28.03.2023 within the time period stipulated by this Court.

For Petitioner : Mr.S.Meenakshi Sundaram
Senior Counsel
For M/s.RT.Arivukumar

For R1 : Mr.J.Ashok
Additional Government Pleader

For R2 to R4 : Mr.J.Devasenar
Standing Counsel

ORDER

The present writ petition has been filed by an employee of the fourth respondent Co-operative Milk Producers Union seeking a mandamus to disburse the pensionary benefits and all other terminal benefits with interest considering his representation dated 28.03.2023.

2.While the petitioner was employed as Manager (Engineering), he was issued with two separate charge memos dated 15.09.2021 and 09.02.2022. The petitioner had submitted his detailed explanation. While the disciplinary proceedings were pending, the petitioner attained superannuation on 31.01.2023. The fourth respondent herein passed an order dated 31.01.2023 permitted the petitioner to retire without prejudice to the disciplinary action



W.P(MD).No.19668 of 2023

and audit objection that were pending against him.

WEB COPY

3. According to the learned Senior Counsel appearing for the writ petitioner, in one of the disciplinary proceedings arising out of the charge memo dated 15.09.2021, the petitioner was exonerated by an order dated 06.03.2023. As far as the other charge memo dated 09.02.2022 is concerned, a co-delinquent in the said charge memo has accepted the entire liability and he has also paid part of the amount.

4. The learned Senior Counsel had further contended that the disciplinary proceedings that were initiated prior to attainment of superannuation cannot be continued in view of the fact that the Service Rules or Bye-laws do not permit the same. He had further contended that based on the audit objection, so far no proceedings have been initiated under Section 87 of Tamil Nadu Co-operative Societies Act. In view of retirement, such proceedings cannot be initiated.

5. The learned Senior Counsel relied upon a Full Bench decision of our High Court reported in **2015 (4) CTC 1 (S.Andiyannan Vs. The Joint Registrar, Co-operative Societies, Madurai Region, Madurai and another)** and the judgement of the Hon'ble Supreme Court reported in **(1999) 3 SCC 666 (Bhagirathi Jena Vs. Board of Directors, O.S.F.C and others)** to impress upon the Court that when there is no specific provision under Tamil Nadu Co-operative Societies Act or the connected Rules, the terminal



W.P(MD).No.19668 of 2023

benefits can never be retained by the authorities. Even the disciplinary proceedings cannot be continued. Hence, he prayed for issuing a mandamus to disburse the terminal benefits.

6.Per contra, the learned counsel for the respondents herein had relied upon the Special Bye-laws which deals with the employees (Conduct, Discipline & Appeal) Rules. In the said Rule, he relied upon Clause-14 wherein the Society is empowered to retain the retirement benefits till the charges are disposed of.

7.The learned counsel had relied upon the judgment of the Hon'ble Supreme Court reported in **(2008) 2 SCC 41 (Utter Pradesh State Sugar Corporation Ltd., and others Vs. Kamal Swaroop Tondon)** to contend that when there is a financial loss to the Society due to negligence or carelessness attributable to an employee, the same can be recovered even after retirement.

8.I have given anxious consideration to the submissions made on either side and perused the material records.

9.The petitioner has been permitted to retire by an order dated 31.01.2023. A perusal of the order indicates that the said permission has been granted without prejudice to the disciplinary action and the audit objection pending against the writ petitioner. The order further reveals that the terminal benefits payable to the individual were ordered to be withheld till the finalisation of disciplinary action and the audit objection. Without



W.P(MD).No.19668 of 2023

challenging the said order, the present writ petition has been filed seeking a mandamus to disburse the terminal benefits. After retirement, the petitioner has been exonerated in one of the disciplinary proceedings arising out of a charge memo dated 15.09.2021. However, the disciplinary proceedings arising out of charge memo dated 09.02.2022 is still pending.

10.It is also an admitted fact that the audit objection as against the writ petitioner also pending. The petitioner has not chosen to challenge the continuation of the disciplinary proceedings or the proposed initiation of surcharge proceedings as against him based upon the audit objection. The learned Senior Counsel appearing for the writ petitioner had relied upon a Full Bench Judgement of our High Court reported in **2015 (4) CTC 1 (S.Andiyannan Vs. The Joint Registrar, Co-operative Societies, Madurai Region, Madurai and another)** wherein it has been held that the disciplinary proceedings cannot be continued in the absence of relevant Service Rules.

11.In the present case, the continuation of disciplinary proceedings have not been put to challenge. Therefore, this judgment would not be of any help to the writ petitioner.

12.Clause 14 of the Discipline and Appeal Rules applicable to the writ petitioner is extracted as follows:

“14.Retirement when enquiry is pending:

For persons against whom grave charges are pending,



W.P(MD).No.19668 of 2023

retirement benefits will be settled after the charges are disposed of.

In cases where an individual continues to be under suspension due to pendency of disciplinary proceedings after attaining the age of superannuation, he/she shall continue to draw the subsistence allowance subject to a minimum pension he is entitled to receive, if he /she is allowed to retire normally.”

13. Therefore, it is clear that the Service Rules provide for retention of retirement benefits till the charges are disposed of. When there is a specific provision in the Special Bye-laws of the Society with regard to retention of retirement benefits, the petitioner cannot rely upon the judgments which have been rendered in cases where there are no specific Bye-laws.

14. In view of the fact that the the petitioner has not chosen to challenge the order dated 31.01.2023 and there is a Clause in the Special Bye-laws relating to retention of retirement benefits pending enquiry, the present writ petition for a mandamus to disburse retirement benefit is not legally sustainable. The writ petition stands dismissed. No costs.

01.11.2023

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
msa



W.P(MD).No.19668 of 2023

To

WEB COPY

1.The Principal Secretary of Government
Animal Husbandry, Dairying and Fishes Department
St.George Fort, Secretary
Chennai 600 009

2.The Commissioner
Milk Production and Diary Development Department
Madhavaram Milk Colony
Chennai 600 051

3.The Managing Director
Tamil Nadu Co-operative Milk Production Federation Ltd.,
Aavinillam
Nandanam
Chennai 600 035



WEB COPY



W.P(MD).No.19668 of 2023

R.VIJAYAKUMAR, J.

msa

Pre-delivery order made in

W.P.(MD).No.19668 of 2023

01.11.2023