



WP(MD) No.10942 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 05.03.2024

CORAM

THE HON'BLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P(MD)No.10942 of 2020
and W.M.P.(MD)No.9609 of 2020

S.Stanislaus

... Petitioner

Vs.

1.The Registrar of Cooperative Societies,
N.V.Natarajanmaaligai,
170, Periyar EVR High Road,
Kilpauk, Chennai 600 010.

2.The Additional Registrar / Managing Director,
Tamilnadu Cooperative Union,
N.V. NatarajanMaaligai,
170, Periyar EVR High Road,
Kilpauk, Chennai 600 010.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent Managing Director in Na.Ka.No.5445/2017/A1 dated 16.10.2017 quash the same and further Direct the 2nd respondent to release the petitioner forthwith the Earn Leave surrender for remaining, period of 46 days, revised Gratuity as per the last drawn pay of Rs.45,290/- and to revise the salary on par with his Junior in the post of Director.



WP(MD) No.10942 of 2020

For Petitioner : Mr.K.Ragatheesh Kumar
For Respondents : Mr.Na.Ga.Natraj,
Government Advocate.

ORDER

The petitioner herein, who retired from service as Director of the respondent No.2 Union, raised a claim to permit him to encash the earned leave for 240 days, by placing reliance on the settlement made under Section 12(3) of the Industrial Disputes Act, 1947, dated 30.05.2012. The said settlement was given effect to with effect from 01.10.2010. The terms of relevant clause from the settlement dealing with encashment of earned leave reads as under:

“Earned Leave

It is agreed that the accumulation of Earned leave to the employees of Tamil Nadu Cooperative union is increased to 240 days. The employees shall surrender a maximum of 240 days from their Earned Leave account for encashment at the time of retirement of superannuation.”



2. Claiming the said benefit, the petitioner approached the respondent

No.2 on an earlier occasion and complaining in action on the part of the respondent No.2, the petitioner approached this Court by filing W.P. (MD)No.15344 of 2017. This Court, by order dated 16.08.2017, permitted the petitioner to submit a fresh representation and directed the respondent No.2 to consider the same and pass appropriate orders. Accordingly, the respondent No.2, having considered the claim of the petitioner for encashment of earned leave for 240 days, passed the impugned order.

3. There is no dispute about the settlement dated 30.05.2012 made under Section 12(3) of the Industrial Disputes Act, 1947. However, the said settlement was interpreted by the respondent No.2 by stating that the same was given effect to with effect from 01.10.2010 and the monetary benefits were also granted only with effect from 01.10.2010 and therefore, the petitioner is entitled to count 180 days of earned leave up to 30.09.2010 and the remaining 60 days out of 240 days is required to be earned by the petitioner after 01.10.2010 and then only, he is entitled for surrender of 240 days of earned leave. The same stand is also taken by the respondent No.2 in the counter affidavit filed before this Court.



4. In the considered view of this Court, such interpretation of the 12(3) settlement dealing with earned leave is absurd. The purpose of enhancing upper limit for the earned leave that can be surrendered to 240 days is to enable the employees to count and surrender 240 days of earned leave that is earned by the petitioner during his entire service. The question of counting the earned leave that is earned by the petitioner after 01.10.2010 alone for the purpose of enhanced 60 days does not arise.

5. If that be the case, the relevant clause as extracted above would have spelt out the same. That is not the intent of settlement. If the petitioner has accumulated 240 days earned leave during his entire service, he cannot be denied the benefit of the above said settlement. Hence, the stand of the respondent No.2 in counting only 14 days earned leave earned by the petitioner after 01.10.2010 by ignoring the earned leave that was already earned by the petitioner over and above 180 days prior to 01.10.2010 is totally arbitrary and illegal.

6. The contention of learned Government Advocate that the Writ Petition is not maintainable as the respondent No.2 is not a State within the



WP(MD) No.10942 of 2020

meaning under Article 12 of the Constitution of India and also on the ground that the petitioner has got effective alternate remedy of a revision under Section 153 of the Tamil Nadu Cooperative Societies Act is concerned, this Court does not find any force in the said submission as the claim of the petitioner is based upon a statutory agreement entered into under Section 12(3) of Industrial Disputes Act, 1947 and as the petitioner has got every right to enforce a statutory agreement which is binding between the petitioner and the respondent No.2. Hence, the reliance placed by the learned Government Advocate on a decision of learned single Judge of this Court in ***W.P.No.22881 of 2021, dated 08.02.2024*** and a decision of the Full Bench of this Court in ***K.Marappan Vs. Deputy Registrar of Co-operative Societies, Namakkal Circe, Namakkal*** reported in ***(2006) 4 CTC 689*** have no application to the facts of the case on hand.

7. Insofar as the claim of the petitioner for stepping up of the pay on par with his eligible junior Murugesan in the cadre of respondent No.2 Union is concerned, the said issue was not raised by the petitioner while he was in service or immediately thereafter. Further, even when the petitioner approached this Court by filing W.P.(MD)No.15344 of 2017, dated



16.08.2017, the said issue was not raised. But, for the first time such an issue was raised by the petitioner, while submitting a representation pursuant to the order passed by this Court in W.P.(MD)No.15344 of 2017. By the said order, this Court only permitted the petitioner to make a representation concerning the encashment of earned leave. But for the reasons best known, the petitioner has chosen to raise the issue of claiming parity in pay on par with his junior. Hence, as the petitioner has retired from service as early as on 28.02.2011 and he has not raised any dispute till 2017, this Court is of the considered view that such a belated claim of the petitioner cannot be entertained at this length of time.

8. So far as the claim of the petitioner for payment of gratuity pursuant to the settlement under Section 12(3) of the Industrial Disputes Act, 1947 with effect from 01.10.2010 is concerned, it is not in dispute that the petitioner was extended the benefit of revised pay scales and he was also paid the arrears of salary by applying the settlement dated 30.05.2012. If that be the case, the pay of the petitioner must have been revised and enhanced pursuant to the said settlement. Hence, the petitioner also may be entitled for revision of the gratuity that was paid and for payment of



WP(MD) No.10942 of 2020

differential amount of gratuity. However, this is a matter that can be agitated before the appropriate authority under the Payment of Gratuity Act, 1972. Hence, this Court is not inclined to go into this aspect while leaving it open to the petitioner to approach the authority concerned under the Payment of Gratuity Act by making a claim for differential amount of gratuity that is being claimed by the petitioner.

9. Accordingly, this Writ Petition is disposed of directing the respondent No.2, to permit the petitioner to encash the earned leave upto the maximum of 240 days and pay the balance amount in respect of the remaining period of earned leave available to his credit by duly adjusting the amount that was already paid, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

05.03.2024

NCC : Yes/No
Index : Yes/No

vsm

7/8



WEB COPY



WP(MD) No.10942 of 2020

MUMMINENI SUDHEER KUMAR, J.

vsm

To

- 1.The Registrar of Cooperative Societies,
N.V.Natarajanmaaligai,
170, Periyar EVR High Road,
Kilpauk, Chennai 600 010.
- 2.The Additional Registrar / Managing Director,
Tamilnadu Cooperative Union,
N.V. NatarajanMaaligai,
170, Periyar EVR High Road,
Kilpauk, Chennai 600 010.

W.P(MD)No.10942 of 2020

05.03.2024