



W.P.(MD)No.16266 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.16266 of 2024

and

W.M.P.(MD).No.14137 of 2024

C.Kaliappan

... Petitioner

Vs.

1.The Registrar of Co-Operative Societies,
Office of the Registrar of Co-Operative Societies,
N.V.Natarajan Maaligai,
170, Periyar Evr High Road,
Kilpauk, Chennai.

2.The Joint Registrar of Co-Operative Societies,
Office of the Joint Registrar of Co-Operative Societies,
Dindigul Region, Dindigul.

3.The Joint Registrar of Co-Operative Societies,
Office of the Joint Registrar of Co-Operative Societies,
Thiruppur Region, Thiruppur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the first respondent to complete the disciplinary proceeding in pursuance of the Charge Memorandum Vide Na.Ka.No.721/2016/Sa.Pa dated 01.04.2016 and consequently directing the 1and 2nd respondents to allow the petitioner to retire from service and disburse



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the retirement benefit including the General Provident Fund, Special Provident Fund, Death cum Retirement Gratuity, Encashment of Earned Leave salary and unearned leave salary and all other monetary benefits payable to him with interest at the rate of 10% from the date of retirement till the date of realization within the time frame to be fixed by this Court.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.M.Senthil Ayyanar,
Government Advocate

ORDER

By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

2. Heard Mr.D.Shanmugaraja Sethupathi, learned counsel appearing for the petitioner and Mr.M.Senthil Ayyanar, learned Government Advocate appearing for the respondents.

3. This Writ Petition has been filed seeking to complete the proceedings pending against the petitioner pursuant to the charge memo Vide Na.Ka.No. 721/2016/Sa.Pa dated 01.04.2016 and consequently to direct the first and second respondents to allow the petitioner to retire from service and disburse the retirement benefits including the General Provident Fund, Special Provident



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Fund, Death cum Retirement Gratuity, Encashment of Earned Leave salary and unearned leave salary and all other monetary benefits payable to the petitioner with interest at the rate of 10% from the date of retirement till the date of realization within the time frame to be fixed by this Court.

4. Earlier, the petitioner has filed a Writ Petition before this Court in W.P. (MD).No.9824 of 2016 challenging the order of suspension and in the said Writ Petition, by order dated 16.02.2021, a direction has been given to the disciplinary authorities to conclude the disciplinary proceedings on the charge memo within a stipulated time limit. Now, the petitioner is aggrieved due to the order passed by the third respondent, wherein, it is stated that the charge against the petitioner cannot be completed in view of the pending criminal proceedings. It is further stated that only after the criminal proceedings is completed, the decision can be taken in the pending disciplinary proceedings and thereafter, depending upon the results, the petitioner's pension proposal shall be sent to the Government

5. Mr.M.Senthil Ayyanar, learned Government Advocate appearing for the respondents submitted that even though the petitioner is not a party to the criminal proceedings, he is also involved in a criminal case. The respondents



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cannot blow hot and cold by stating that the petitioner is not an accused in the criminal case and also stating that the enquiry cannot be concluded in view of the pending criminal case. Even if the criminal case is pending, the departmental does not require procedural proof beyond reasonable doubt but only preponderance of probabilities.

6. At this juncture, Mr.D.Shanmuga Rajasethupati, learned counsel appearing for the petitioner submitted that the respondents have to pay the Earned Leave, General Provident Fund and Special Provident Fund to the petitioner. He relied upon the judgment of this Court in the case of ***the Secretary to Government, Revenue Department, Secretariat, Chennai-600 009 and others Vs. K.Palaniyandi*** in ***W.A.(MD).No.105 of 2019***, dated ***31.07.2019*** and the relevant portions in the said judgment are extracted hereunder:

“14. In other words, it is to be noted that even a person who is dismissed from service, is also entitled to the encashment of leave salary. If that being case, we do not find any logic behind the contention of the appellant as if such amount can be paid only after the termination of the proceedings. In other words, there must be a specific reason with object for retention of the said sum, pending disciplinary proceedings. What the Government Servant is entitled to even at the worst seniority of dismissal of his service, cannot be denied to be paid on his request, merely because, his service is retained.



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15. There are two types of monetary benefits payable to a Government Servant on retirement. One type of such benefits, such as Earned Leave, Provident Fund and Special Provident Fund amount, is a benefit already accrued and got credited to the account of the employee, which he is entitled to receive automatically on attaining superannuation. Those amounts become his personal property. It makes no difference even if he is not permitted to retire and a departmental proceedings is initiated against him. In other words, those amounts are derived out of like his “savings” and therefore, the employer cannot stake any claim or impose any restriction as to when such amount could be paid to the employee even after attaining the age of superannuation. In other words, even as per rules, these amounts are payable either on the date of superannuation or on the date of termination of extension of service. Such payment is to be made even to a person dismissed from service. When such being the position, there cannot be any justification on the part of the employer to retain the said sum by citing the pendency of proceedings .”

7. Mr.M.Senthil Ayyanar, learned Government Advocate appearing for the respondents submitted that with regard to the General Provident fund, a sum of Rs.1,01814/- (Rupees One Lakh One Thousand One Hundred and Fourteen only) amount has been credited in the bank account of the petitioner.

8. In view of the above reasons, this Writ Petition is **disposed of** with a direction to the respondents to conclude the disciplinary proceedings against the petitioner within a period of eight weeks from the date of receipt of a copy of the order on merits and in accordance with law and the respondents are further



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directed to disburse the retirement benefits after deducting the amount already

given to the petitioner, if any. No costs. Consequently, the connected

miscellaneous petition is closed.

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NCC:yes/no

Index:yes/no

Internet:yes/no

TSG

To

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Office of the Joint Registrar of Co-Operative Societies,
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R.N.MANJULA, J.

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