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W.P.No.2 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2023

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.2 of 2020

- 1.S.Vetrivel, M/66 (Died)
- 2.V.Ananthalakshmi, W/o.Late S.Vetrivel
- 3.V.Kamalanath, S/o.Late S.Vetrivel
- 4.V.Indumathi, D/o.Late S.Vetrivel
Residing at No.24-A/1026, T.R.V.Nagar,
R.C.Mahal Backside,
L.N.Puram, Panruti Post 607 106
Panruti Taluk
Cuddalore District

*(P2 to P4 substituted as LRs of deceased sole Petitioner
vide order dated 14.06.2022 made in W.M.P.No.21356 of 2021
in W.P.No.2 of 2020)*

... Petitioner

/Vs/

- 1.The Joint Registrar of Cooperative Societies/
Common Cadre Authority
Cuddalore Region, Cuddalore, Cuddalore District.
- 2.The Deputy Registrar of Co-operative Societies
Cuddalore Circle, Cuddalore, Cuddalore District,
- 3.The Administrator
E.2587, Muthandikuppam Primary
Agricultural Co-operative Credit Society



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Muthandikuppam Village
Perperiyankuppam Post 607 805
Panruti Taluk, Cuddalore District.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the Respondents to disburse the Petitioner's retirement benefits like Gratuity, Employees Provident Fund, Encashment of Earned Leave and Encashment of Unearned leave on Private affairs together with six months salary along with the subsistence allowance payable by the third Respondent to the Petitioner.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.G.Nanmaran
Special Government Pleader

ORDER

This Writ Petition has been filed for issuance of Writ of Mandamus, directing the Respondents to disburse the Petitioner's retirement benefits like Gratuity, Employees Provident Fund, Encashment of Earned Leave and Encashment of Unearned leave on Private affairs together with six months salary along with the subsistence allowance payable by the third Respondent to the Petitioner.



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2.The first Petitioner was appointed as the Secretary in the third Respondent Society on 01.09.1975. During his service, an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act has been initiated against the Petitioner, on the order of the second Respondent in year 2007, in respect of certain irregularities committed by the first Petitioner and another employee, in giving jewel loan. The second Respondent has also passed surcharge order on 02.04.2009 against the first Petitioner and another employee of the said society for recovery of Rs.5,57,050/-. After initiation of disciplinary proceedings, the first Petitioner was found guilty and he was terminated from service on 26.06.2009 and the Respondent has not disbursed any monetary benefits of the first Petitioner, so far.

3.It is submitted by the learned counsel for the Petitioners that even a criminal case has arisen, in view of the above allegations in C.C.No.46 of 2009 and it has been disposed and the first Petitioner has been kept under the supervision of Probation Officer.

4.Learned counsel for the Petitioners attracted the attention of this Court to the order passed by this Court in W.P.(MD).No.10329 of 2019 dated



18.02.2019, wherein it was held as follows:

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“3.The learned counsel submitted that this Court had, in a number of cases, directed the authorities to settle such benefits, even if an employee suffered a dismissal order and one such a case is WP(MD).Nos.979 and 980 of 2016, wherein this Court had, by order dated 19.01.2016, issued directions as stated above and such a submission is not seriously objected to, by the learned Government Advocate.

4.In view of the decision cited supra, this Court directs the respondents to disburse Gratuity, General Provident Fund, Special Provident Fund and Encashment of Earned and Unearned leave to Petitioner, which he is entitled to, within a period of eight weeks from the date of receipt of a copy of this order.”

5.Heard the learned counsel appearing on either sides and perused the available records.

6.It is learnt that no appeal has been preferred against the judgment passed in C.C.No.46 of 2009 dated 17.02.2014. The fact that the first Petitioner was placed under the supervision of the Probation Officer, as the guilt against the first Petitioner has been proved, but lenience has been shown in view of certain submissions made by the first Petitioner that he is the first time offender.



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Even though the first Petitioner might not be entitled to get gratuity, the first Petitioner is very much entitled to get other benefits like EPF, encashment of Earned Leave and Unearned Leave on private affairs.

7.It is also claimed by the Petitioners that the first Petitioner's salary for six months was withheld and the same should be paid to him. The salary due to the first Petitioner for the period for which, he worked cannot be withheld, for whatsoever reason. If the Petitioners could give details as to the non payment of salary to any of the period, during which he worked, the salary dues should be paid to him by the third Respondent. So far as the terminal benefits are concerned, the first Petitioner is entitled to Gratuity, EPF, leave encashment for both earned leave and unearned leave on private affairs, in accordance with his eligibility.

8.During the criminal proceedings it is submitted by the first Petitioner that the loss of Rs.5,57,050/- shall be appropriated from his EPF and gratuity amounts. If the first Petitioner is not eligible to get EPF, such an appropriation could not have been made. However, the third Respondent is at liberty to deduct the loss of revenue, if any.



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9. In view of the decision cited *supra*, the respondents are directed to disburse Gratuity, General Provident Fund, Special Provident Fund and Encashment of Earned and Unearned leave due to the first Petitioner, to the other Petitioners and salary dues, if any, within a period of eight weeks from the date of receipt of a copy of this order. However, the third Respondent is at liberty to deduct the loss of revenue, if any such undertaking has already been given during the criminal proceedings, from the terminal benefits of the first Petitioner, if any.

10. With the above direction, this Writ Petition is disposed of. No costs.

04.10.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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R.N.MANJULA, J.

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