R. Sampathkumar Vs. The Commissioner, Milk Production and Dairy Development Department Aavin Illam, Madhavaram Milk Colony, Chennai and Others

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Court : Chennai

Decided On : Oct-04-2016

Judge : R. Subbiah

Appeal No. : Writ Petition No. 29851 of 2015

Appellant : R. Sampathkumar

Respondent : The Commissioner, Milk Production and Dairy Development Department Aavin Illam, Madhavaram Milk Colony, Chennai and Others

Judgement :

(Prayer: Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of certiorarified mandamus, to call for the entire records with the proceedings of the second respondent in Ref No.32095/Pers.estt.1/2006 dated 22.05.2015 and quash the same and consequently, direct the second respondent to release all the terminal benefits including the gratuity, encashment of leave salary and other statutory benefits like revised scale of pay, annual increments, Selection Grade pay etc., due to the petitioner along with interest within a stipulated time fixed by this Court.)

1. The petitioner has come up with the present writ petition for issuing a Writ of Certiorarified mandamus calling for the entire records relating to the proceedings of the second respondent in Ref No.32095/Pers.estt.1/ 2006 dated 22.05.2015, quash the same and consequently, direct the second respondent to release all the terminal benefits including gratuity, encashment of leave salary and other statutory benefits like revised scale of pay, annual increments, Selection Grade pay etc., due to the petitioner along with interest within a stipulated time.

2. It is the case of the petitioner that he was appointed as Extension Assistant Grade-I in the erstwhile Tamil Nadu Dairy Development Corporation Limited in 1974. Subsequently, he was promoted as Deputy Manager(Marketing) in 1997 and posted at Erode District Co-operative Milk Producers' Union and finally he was promoted as Assistant General Manager (Marketing) in the year 2000 and worked up to 04.02.2004 at Salem District Co-operative Milk Producers' Union. He retired from service on attainment of superannuation on 31.08.2007. The petitioner was not paid the terminal benefits including gratuity, encashment of leave salary and other statutory benefits like revised scale of pay, annual increments, selection grade pay etc., despite his repeated personal visits to the office of the respondents on number of occasions, however, the respondents did not respond, hence, the petitioner made a representation dated 21.03.2014 to the second respondent requesting him to disburse his terminal benefits. Even then, there was no positive response, hence, he approached this Court by way of writ petition in W.P.No.17758 of 2014 praying to direct the respondents to release retirement cum death benefits with all attendant benefits within a stipulated period as may be fixed by this Court. On 15.03.2015, this Court directed the second respondent to consider and dispose of the representation submitted by the petitioner dated 21.03.2014 on merits and as per law and in the light of the order permitting him to retire from service and such exercise shall be completed within a period of two months from the date of receipt of a copy of that order. Despite such direction, the petitioner has not received any response from the respondents. Thereafter, on 25.03.2015, he made a representation to the second respondent requesting to comply with the order of this Court in W.P.No.17758 of 2014, dated 05.03.2015. On receipt of such representation, the second respondent in his proceedings Ref.No.32095/Pers.estt.1/2006 dated 22.05.2015 passed an order stating that

audit objection are pending against him in Salem District Co-operative Milk Producers' Union. It is further stated that even in the order permitting the petitioner to retire from service on 31.08.2007, it was specifically informed that the terminal benefits payable to him will be withheld till the settlement of audit objection in Salem and Erode District Co-operative Milk Producers' Unions. The relevant portion of the said impugned order reads as follow:-

Further, in this office proceedings No.32095/PE/2006 dated 30.08.2007, the petitioner was permitted to retire from the service on 31.08.2007, wherein it was specifically informed that the terminal benefits payable to him consequent to retirement are ordered to be withheld till the settlement of audit objection in Salem and Erode District Co-operative Milk Producers' Unions.

As explained above, Thiru.R.Sampath Kumar, then AGM(Mkg) and Thiru.T.Parameswaran, Milk Marketing Officer(U/S) are jointly responsible for Rs.18,97,070.55 towards due to be recovered from the Milk Dealers in Salem DCMPU. The said amount is higher than the terminal benefits payable to the petitioner.

Therefore, the terminal benefits already ordered to be withheld and arrears payable consequent on the pay revision and fixation of pay in the Selection Grade Assistant General Manager(Mkg) will be settled only on settlement of audit objections pending in Salem DCMPU against Thiru.R.Sampathkumar, AGM (Mkg), retired on 31.08.2007.

Thereafter, the petitioner gave a detailed explanation dated 20.06.2015 with regard to the above said audit objection pending against him. Though 2-1/2 months has passed, there was no response from the second respondent, hence, he filed the present petition.

3. When the matter was taken up for consideration the learned counsel for the petitioner, invited the attention of this Court to the letter of the first respondent dated 23.08.2007 addressed to the second respondent. In the said letter, the first respondent directed the second respondent to take action against the Salesmen who are responsible for not collecting the due amount payable to the society. In

para No.2 of the said letter, the names of the Salesmen who are responsible has been indicated specifically stating that they are responsible for the non-collection of the due amount. It is further very specifically stated in the letter of the first respondent that the petitioner is in no way responsible or liable for non-collection of the amount mentioned therein. The relevant portion of the said order is as follows:-

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4. The learned counsel for the petitioner further submitted that the petitioner retired from service in the year 2007, however, till date, the respondents have not released the terminal benefits including gratuity, encashment of leave salary and other statutory benefits like revised scale of pay, annual increments and selection grade pay to the petitioner by citing alleged audit objection pending against him. In support of his contention, the learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court as well as the Judgment passed by this Court and submitted that the respondents are not justified in withholding the terminal benefits even after eight years of his retirement.

5. The learned counsel for the respondents vehemently opposed the prayer of the petitioner by filing counter and made detailed submission. According to the learned counsel for the respondents, the second respondent in his letter dated 17.08.2007 furnished the details of audit objections pending against several persons. It is specifically stated in the letter dated 17.08.2007 that the petitioner is jointly as well as individually responsible for the non-collection of the amount during his service in Salem and Erode District Cooperative Milk Producers' Union. He further submitted that a sum of Rs.50,03,200.70 was due to the department towards procurement of Milk sold through milk agencies in Salem District Cooperative Milk Producers Union. The learned counsel for the respondents further submitted that the second respondent therefore withheld the terminal benefits payable to the petitioner on the basis of audit objections pending against the petitioner. As huge amount were pending against the petitioner, the pay revision as on 01.01.2006 and pay fixation with effect from 02.04.2007 for the selection grade were not conferred on him and arrears were not paid to the petitioner. He further submitted

that the petitioner also jointly responsible for the amount of Rs.18,97,070.55 towards due pending by way of Milk sold through agencies. Therefore, he is not entitled for terminal benefits.

6. Considering the facts and circumstances of the case and also considering the submissions made on either side, in my considered view that as on date no charge was framed as against the petitioner and further no disciplinary proceedings were initiated against the petitioner during the course of his service. Therefore, the petitioner cannot be denied the payment of terminal benefits. Further, the petitioner retired from service in the year 2007 and for the past 10 years, no steps were taken to clear the audit objections or to pay the terminal benefits due to him. The respondents are not therefore justified in withholding the terminal benefits payable to the petitioner for about ten years. In this context, it would be appropriate to refer the Judgment of this Court in W.P.No.16094 of 2007 dated 19.10.2010 in D.A.Mohamed Khan Vs. The Commissioner of Mild Production and Diary Development and others, wherein it has held as follows:-

However, the second respondent has issued order dated 30.06.2006 withholding the terminal benefits payable to the petitioner till the audit objections pending against him in Tiruchi, Nilgiris and Dharmapuri District Cooperative Producers Unions Limited are settled. It is the case of the petitioner that there was no charge framed against him and no memo has been issued during his service and therefore the detainment of the terminal benefits on the said flimsy grounds is illegal.

7. In an identical situation, the learned Single Judge of this Court, in the decision mentioned above, quashed the impugned order with a direction to the second respondent therein, namely, The Managing Director, Tamil Nadu Cooperative Milk Producers Federation Limited, Madhavaram Milk Colony, Chennai, to pay the terminal benefits to the petitioner therein within a specific period. Hence, following the same, the proceeding of the second respondent in Ref No.32095/Pers.estt.1/2006 dated 22.05.2015 stands set aside with a direction to the second respondent to release all the terminal benefits including the gratuity, encashment of leave salary and other statutory benefits like revised scale of pay,

annual increment, selection grade pay etc., due to the petitioner along with interest at the rate of 9% per annum from the date of filing of writ petition till the payment and the said amount shall be paid within a period of eight weeks from the date of receipt of a copy of this order.

8. The Writ petition is ordered accordingly. No costs.