



W.P.(MD).No.8930 of 2016

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.8930 of 2016

S.Sankaralingam

... Petitioner

Vs.

1.The Registrar,
Co-operative Societies,
No.170, E.V.R.Periyar High Road,
Keelpauk,
Chennai.

2.The Joint Registrar Co-operative Society,
Kanyakumari Region,
Nagercoil,
Kanyakumari District.

3.Agatheeswaram Primary Co-operative,
Agricultural and Rural Development Bank,
KN67, Nagercoil,
Kanyakumari District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the record relating to the impugned order in Na.Ka. No. 524/2015 PaTho dated 22.02.2016 passed by the respondents and consequently direct the respondents to disburse the amount of Rs.2,29,586/- along with interest which was deducted from the petitioner's gratuity and quash the same.



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For Petitioner : Mr.K.Gokul

For R-1 and R-2 : Mr.S.Shanmugavel,
Additional Government Pleader.

For R-3 : No Appearance

ORDER

This Writ Petition is filed challenging the impugned order dated 22.02.2016 with a consequential relief to disburse Rs.2,29,586/- along with interest which was deducted from the petitioner's gratuity.

2. The petitioner was appointed as Supervisor in the third respondent bank on 08.03.1974. Thereafter, promoted as Secretary and retired from service on attaining superannuation on 30.04.2011, whereby has rendered 37 years of service. While disbursing the terminal benefits, the respondents deducted Rs. 2,29,586/- from the petitioner's gratuity stating that from 2004-2009, was in excess payment.

3. The salary of the employees of the third respondent Society is governed by 12(3) settlement. The settlement was entered between Management and the Union vide Na.Ka.No.286 of 1999 dated 24.03.1999, which is valid until 2004. In the meanwhile, the Government had issued



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G.O.Ms.No.186 dated 16.08.2000, directed the Society to revise and refix the salary of all employees. The contention of the petitioner is that the said Government Order was implemented in the year 2009 and accordingly, the scale of pay was also refixed in the year 2009. However, while disbursing the benefits, the respondents have taken a stand that from 2004 to 2009, the petitioner was paid salary based on 12(3) settlement, which is against the said G.O. But the said G.O. was implemented in the year 2009 and thereafter the salary was refixed. Any Government Order can be given effect from the date of issuance of the G.O. Therefore, the salary paid from 2004 to 2009 cannot be calculated based on the said G.O.Ms.No.186. Hence, the petitioner approached the respondents to repay the same. However, through the impugned order, the respondents have rejected the claim of the petitioner, hence the present writ petition.

4. The respondents have filed counter affidavit stating that the main object of the Society is to give long term loans to its members for Agriculture and other allied activities. The Society was running in huge loss and it was not possible to finance its members for long term agricultural purposes from 2004 onwards. As per the Statutory Final Audit Report of the Society, the Society sustained huge loss which is stated as under:



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S.No.	Year of Audit	Cumulative Loss
1.	2010-2011	Rs.187.68 Lakhs
2.	2011-2012	Rs.199.21 Lakhs
3.	2012-2013	Rs.198.14 Lakhs

The Society entered into 12(3) settlement on 24.03.1999 and re-fixed the pay and other allowances of its employees with effect from 01.07.1997 and for a period of 5 years that is from 01.07.1997 to 30.06.2002. During this period, the Government issued G.O.Ms.No.186, Cooperation Food and Consumer Protection Department dated 16.08.2000. The said Government Order directs the respondents to fix the pay and other allowances as per the regulations fixed in the said Government Order. The second respondent convened a meeting with all five Primary Cooperative Agriculture and Rural Development Bank and discussed the poor financial positions of the Societies, the non-eligibility of the Societies to issue long term agriculture loans from 2004 onwards, the 5 year period of 12(3) settlement is ended etc., and the employees agreed to re-fix their pay and other allowances, as per G.O.Ms.No.186, dated 16.08.2000 with effect from 01.10.2004 and based on the acceptance to deduct the excess salary paid during the period from 2004 to 2009 from the salary of the employees, the respondents have deducted the same. The petitioner was Secretary (in-charge),



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who was also present, accepted the same and pay as per G.O.Ms.No.186, which was implemented. But as per the oral request of the petitioner to deduct the excess payment, which was deducted from his terminal benefits that too from the Earn Leave, Surrender Leave and Employees Provident Fund on 30.04.2011. No deduction was made from the gratuity. Moreover, the petitioner was never promoted as Secretary, he was working as Supervisor and was given Secretary “In-charge” position only. The 12(3) settlement, dated 24.03.1999 is valid from 01.07.1997 to 30.06.2002. Subsequent to the date of 12(3) settlement dated 24.03.1999, the G.O.Ms.No.186, Cooperation, Food and Consumer Protection Department dated 16.08.2000 was issued. Therefore, the date should be revised as per G.O.Ms.No.186. Hence, the respondents claim that the order passed is as per G.O.Ms.No.186 and it is legally sustainable and prayed to dismiss the Writ Petition.

5. Heard Mr.K.Gokul, learned counsel appearing for the petitioner and Mr.S.Shanmugavel, learned Additional Government Pleader appearing for the respondents 1 and 2.



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6. The third respondent is the Primary Co-operative Agricultural and Rural Development Bank, which means a society having its area of operation confined to a Taluk and the principal object of which is to provide for short term or long term credit for agricultural and rural development activities. The said Bank is a society, wherein the society is empowered to fix salary to its employees by entering into 12(3) settlement.

7. In the impugned order it has been specifically stated that “the petitioner’s salary was refixed from 03.03.2009 based on the G.O.Ms.No.186 dated 16.08.2000”. The relevant portion of the impugned order is extracted hereunder:

அகஸ்திஸ்வரம் கூட்டுறவு தொடக்க வேளாண்மை மற்றும் ஊரக வளர்ச்சி வங்கியில் 08.03.1974 முதல் மேற்பார்வையாளராக தாங்கள் பணியாற்றி வந்துள்ளீர்கள். 30.4.2011 பிற்பகல் பணியில் இருந்து ஓய்வு பெற்றுள்ளீர். தாங்கள் பணியில் இருந்து போது 24.3.1999 முதல் 12(3) ஒப்பந்தம் செய்யப்பட்டு, ஒப்பந்த அடிப்படையில் ஊதியம் வழங்கப்பட்டுள்ளது. பின்னர் அரசாணை எண்.186ன்படி தாங்களுக்கு ஊதியம் நிர்ணயம் செய்யப்பட்டு 3.3.2009 முதல் ஊதியம் வழங்கப்பட்டுள்ளது. 30.4.2011ல் ஓய்வு பெற்ற பொழுது தாங்களுக்கு ஓய்வூதிய பணப் பலன்கள் கூட்டுறவுச் சங்கங்களின் பதிவாளர் அவர்களின் கடிதம் ந.க.87938/2008 ARDB.2 நாள்.27.5.2010ன்படியும் அரசாணை எண்.186ன்படி 1.7.1997 முதல் 30.4.2011 முடிய கணக்கிடப்பட்டு ஓய்வு ஊதியத் தொகை மற்றும் இதர பணப் பலன்கள்



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வழங்கப்பட்டுள்ளது. 2011 – 2012 ம் ஆண்டு தணிக்கை அறிக்கையின்படி தங்களிடமிருந்து மிடித்தம் செய்த தொகை ரூ.229586 / – (Suspense Repayable)ல் வைக்கப்பட்டுள்ளது. பின்னர் கூட்டுறவுச் சங்கங்களின் பதிவாளர் அவர்களின் ஆணைப்படி மிடித்தம் செய்யப்பட்ட தொகை அனாமத்து கணக்கில் வைக்கப்பட்டுள்ளது.

உயர்நீதிமன்ற தீர்ப்பு எண். WP.9342/2005 நூள். 23.8.2007 ல் வழங்கப்பட்ட தீர்ப்பு தொடக்க வேளாண்மை கூட்டுறவு கடன் சங்கங்களுக்கு பொருந்தும், ஆனால் அத்தீர்ப்பு கூட்டுறவு தொடக்க வேளாண்மை மற்றும் ஊரக வளர்ச்சி வங்கிகளுக்கு பொருந்தாது. எனவே தாங்கள் கோருவது போல் மிடித்தம் செய்த தொகை வழங்க இயலாது.

It is informed to the petitioner that judgment in W.P.9342/2005 dt.23.8.2007 is not applicable to the Primary Cooperative Agricultural and Rural Development Bank Employees. Hence the prayer of the petitioner could not be complied.

8. However in the counter the respondents have stated that the refixation was carried out from 01.10.2004 onwards. Even the contention of the petitioner is that the respondents have implemented the G.O.Ms.No.186 from 2009 onwards but while fixing the salary to the petitioner, the respondents have refixed from 2004 onwards. When the impugned order stated that the refixation is from 03.03.2009, then there will not be any excess payment at all and hence the deduction is illegal. Therefore, this Court is of the considered opinion, if the G.O.Ms.No.186 is implement from 03.03.2009 onwards as stated in the



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impugned order, then the respondents are entitled to recover the excess payment from 03.03.2009 onwards and not from 2004 onwards. Consequently the deduction of Rs.2,29,586/- from gratuity is illegal and not sustainable in law.

9. It is seen that the Government Order was implemented from 2009 onwards and the petitioner's salary was revised from 2009 onwards as per G.O.Ms.No.186. The Government Order was issued in the year 2000. The third respondent failed to implement the said Government Order from 2004 to 2009, but the third respondent claims that the excess payment was made from 2004 to 2009. The third respondent having paid the salary from 2004 to 2009 based on 12(3) settlement, cannot allowj to recover the amount after retirement or on the verge of retirement. Therefore, the recovery is not in accordance to law.

10. If the Primary Co-operative Agricultural and Rural Development Bank is short term credit society, then it is covered under the provisions of Section 136 of Cooperative Societies Act. Under Section 136A to 136-D the Primary Cooperative Society are independent Units and the Government cannot interfere in any manner. The said issue was dealt with in W.P.(MD)No.13900 of 2014 and this Court has held that the Primary Co-operative Society are



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independent Units and the Government cannot interfere. Therefore, the said Government Order is not applicable to the petitioner and the Society, only the 12(3) settlement is applicable.

11. Once 12(3) settlement is entered between the parties, if any party is aggrieved by the 12(3) settlement, due to intervening G.O.Ms.No.186 then the proper course of remedy available to the third respondent is to challenge the 12(3) settlement before the Labour Court and set aside the 12(3) settlement. The third respondent cannot unilaterally nullify the agreement entered under 12(3) settlement.

12. The respondents submitted that the petitioner is having alternative remedy to prefer a revision petition before the Joint Registrar. Since the Joint Registrar is not the appropriate authority to decide the validity of 12(3) settlement and the Joint Registrar is also not having any power to state Government Order is illegal, therefore the petitioner cannot be directed to approach the Joint Registrar under Revisional jurisdiction. Therefore, the claim of the respondents is rejected on the plea of alternative remedy as well.



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13. Since the respondents have paid from 2004 to 2009, the respondents cannot recover it on the verge of retirement of the petitioner. Hence, the impugned order is quashed. The 3rd respondent is directed to repay the same within a period of twelve (12) weeks from the date of receipt of a copy of this order. It is made clear that the petitioner is not entitled to any interest for the belated payment.

14. In view of the above, this Writ Petition is allowed. There shall be no order as to costs.

20.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr



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To

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