

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2015

CORAM

THE HON'BLE MR. SANJAY KISHAN KAUL, CHIEF JUSTICE
and

THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

Writ Appeal No. 1034 of 2015

M. Murugesan

... Appellant

Vs.

1. The Registrar of Co-op. Societies
No. 170 E.V.R. Periyar High Road
Kilpauk, Chennai - 10

2. The Deputy Registrar of Co-op. Bank Ltd.
Omalur Circle, Omalur - 636 455
Salem District

3. The Chittur Primary Agriculture Co-op. Bank Ltd.
No. 5926 rep. by its Special Officer
Chittur Post - 636 455
Edapadi Taluk, Salem District

... Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 13.06.2014 made in W.P. No. 43036 of 2006.

W.P. No. 43036 of 2006 : Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders of recovery passed by the 3rd respondent proceedings No.Nil, dated 29.09.2006 and quash the same and consequently, forbear the respondents in interfering with the concluded settlement dated 11.10.1999 arrived at u/sec.12(3) of the Industrial Disputes Act, 1947.

For Appellant : Mr. R. Krishnamoorthy

For Respondents : Mr. L.P. Shanmugasundaram
Special Government Pleader (Co-op.)

JUDGMENT

PUSHPA SATHYANARAYANA, J.

The appellant, having unsuccessfully challenged the recovery proceedings dated 29.9.2006 passed by the third respondent Chittur Primary Agriculture Co-operative Bank Limited, has preferred the instant appeal.

2. Heard learned counsel Mr. R. Krishnamoorthy for the appellant and Mr. L.P. Shanmugasundram, Spl. GP (Co-op.), representing the Respondents and perused the records.

3. From materials available on record, it is seen that by virtue of the implementation of the settlement dated 11.10.1999 arrived at between the third respondent and its employees, under Section 12(3) of the Industrial Disputes Act, 1947, regarding the salary and other allowances, the revised pay scale of the appellant was fixed at Rs.8,025/- with effect from 01.7.1997 and the amount was also paid. However, by the impugned order dated 29.09.2006, the third respondent had ordered for recovery of certain amounts on the alleged ground of excess payment and wrong fixation revising the pay on the basis of G.O. Ms. No. 131 Co-operative Department dated 04.6.1999.

4. The learned single Judge, by order dated 13.06.2014, dismissed the writ petition. Aggrieved by the same, the petitioner has come up with this present Writ Appeal.

5. The Hon'ble Supreme Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments / allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay / allowance or on the basis of a particular interpretation of rule / order, which is subsequently found to be erroneous. It has also been held that if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.

6. In the instant case, undoubtedly, higher pay-scale commenced to be paid to the appellant erroneously in 1997 and the same was sought to be recovered in 2006, i.e., after a period of 9 years. This benefit flowed to him, consequent upon a mistake committed by the concerned competent authority, in determining the pay scale fixed to him and not because of any misrepresentation or fraud on his part and the appellant also had no knowledge that the amount that was being paid to him was more than what he was entitled to. It would not be out of place to mention here that the third respondent had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong fixation of pay scale, for which the appellant cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the third respondent Society. As such, the respondents cannot, by issuing the proceedings impugned, adjudicate over the settlements arrived at between the Society and its employees and unilaterally set at naught the settlements apparently fitting in with the provisions of the Act nor can they initiate proceedings for recovering the amount from the employees on the basis of the settlements. There is a total lack of jurisdiction and competency in law in this regard. This factor alone, in our view, should weigh with us, for the purpose of deciding case of this nature. There is no need for us to travel beyond this. In such circumstances, this Court feels that the recovery after several years of the implementation of the pay-scale would not be just and proper. We, therefore, hereby hold, recovery of excess payments discovered after nine years would be iniquitous and arbitrary, and as such, violative of Article 14 of the Constitution of India.

In the light of the above, the Writ Appeal stands allowed setting aside the order of the learned single Judge. The impugned order shall stand quashed. However, there will be no order as to costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar of Co-op. Societies
No. 170 E.V.R. Periyar High Road
Kilpauk, Chennai - 10
2. The Deputy Registrar of Co-op. Bank Ltd.
Omalur Circle
Omalur - 636 455
Salem District

+1cc to M/s.L.P.Shanmugasundaram, Advocate, S.R.No.55225
+1cc to Mr.K.Prem Kumar, Advocate, S.R.No.55057
+1cc to the Government Pleader, S.R.No.55117

W.A.No.1034 of 2015

KSJ(CO)
CA(26/10/2015)



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