

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.39639 of 2016

&

WMP.NO.33914 of 2016

D.Lokaiah

... Petitioner

vs.

1. The President,
C.2517, Chinnavarikkam Primary Agricultural
Co-operative Credit Society,
Chinnavarikkam Village & Post,
Ambur Taluk,
Vellore District.
2. The Secretary,
C.2517, Chinnavarikkam Primary Agricultural
Co-operative Credit Society,
Chinnavarikkam Village & Post,
Ambur Taluk,
Vellore District.
3. The Joint Registrar of Co-operative Societies,
Vellore Zone,
Vellore District.

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of certiorarified mandamus, calling for the records on the file of the 3rd respondent in Na.Ka.No.7790/2016 dated 04.10.2016 and quash the same and further direct the respondents 1 and 2 to settle all the withheld retirement benefits with 18% interest to the petitioner.

For Petitioner : Mrs.Bhavani Subburayan
for Mr.K.V.Sajeev Kumar

For R1 & R2 : Mr.L.P.Shanmugasundaram,
Special Government Pleader

For R3 : Ms.T.Girija,
Government Advocate

O R D E R

The petitioner has come up with this Writ Petition seeking to quash the order dated 04.10.2016 passed by the 3rd respondent vide proceedings in Na.Ka.No.7790/2016 and for a further direction to respondents 1 and 2 to settle all the withheld retirement benefits with 18% interest to him.

2. According to the petitioner, he joined the 1st respondent Organisation in the year 1986 as Salesman and was relieved from the post as Salesman on attaining the age of superannuation on 31.05.2015. During the tenure as a Salesman from 1986 till 2015, the petitioner has not suffered any disciplinary proceedings nor involved in any activities against the interest of the Society. While so, when he attained the age of superannuation on 31.05.2015, he was issued with a charge notification that he committed a loss of Rs.1,09,788/- for the period 1997 to 1999 being the excess salary paid to him.

3. It is the case of the petitioner that based on the settlement arrived at between the Government and the Societies, there was a hike in the salary for the employees of the Societies that were registered under the Registrar of Co-operative Societies. According to the petitioner, he ought to have been permitted to retire with honour, but a charge was levelled against him just days before the age of superannuation asking him to return Rs.1,09,788/- being the salary excess paid by the 1st and 2nd respondents. Without heeding to the request of the petitioner, the 2nd respondent withheld Rs.1,09,788/- and paid his terminal benefits and only thereafter, he allowed the petitioner to retire. The petitioner made several representations to the respondents asking them to release the amount withheld. Finding no response, he approached the 3rd respondent under Section 153 by way of a review as contemplated under the Co-operative Societies Act. The 3rd respondent, by an order dated 04.10.2016, rejected the Review Petition filed by the petitioner on the ground that he has filed Review belatedly on 28.09.2016. Challenging the said order of the 3rd respondent, having no other alternative, the petitioner is before this Court.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. When the matter is taken up for consideration, learned counsel for the petitioner, relying on a decision of the Hon'ble Supreme Court in the case of State of Punjab and others vs. Rafiq Masih (2015 (4) SCC 334) submitted that the respondents are not entitled to recover the amount from the petitioner, when it has already been paid to him. She further submitted that the petitioner approached the 3rd respondent under Section 153 of the

Tamil Nadu Co-operative Societies Act, 1983 by way of a review and the review petition was dismissed on the ground that it has been filed belatedly.

6. Further, relying on a decision of this Court in the case of N.P.Palanisamy vs. State of Tamil Nadu reported in 2012 (4) CTC 257, learned counsel for the petitioner submitted that the revision filed beyond the period of ninety days can be entertained. Relevant portion of the judgment rendered in N.P.Palanisamy's case is extracted hereunder:

"33. Next, the learned counsel would submit that assuming that what is contained in Section 153(1) of the Act is only directory, even then, such revision should be filed within a reasonable time. There can be no controversy over this legal proposition. In the case on hand, according to the learned counsel, the Revision was filed after two years of the impugned order and therefore, at least on facts, it should be held that the revisional authority was right in rejecting the Revision. I cannot have any second opinion that a Revision is to be filed within a reasonable time. What is reasonable depends upon the facts and circumstances of each case and the same cannot be put in any strait-jacket formula.

34. In this case, according to the petitioner, on a wrong advice given, he approached the Labour Officer for conciliation. The matter was pending before the Labour Officer for quite a long time. At last, the conciliation failed. It was thereafter only, he was advised to file Revision. Though the Revision was filed nearly after two years of the passing of the impugned order, there are justifiable reasons to accept the explanation by the petitioner for the said delay. Therefore, going by the facts and circumstances of the case, I am of the view that it cannot be said that the Revision has not been filed within the reasonable time. Thus, factually also, the respondent has got no case."

7. Keeping in mind the submissions made by the learned counsel on either side, it is seen that the petitioner's Review petition has been dismissed mainly on the ground that it was filed belatedly. But, as per the judgment rendered by this Court in N.P.Palanisamy's case cited supra, a Revision Petition cannot be rejected on the ground of delay. Therefore, I am of the view that the impugned order passed by the 3rd respondent has to be set aside.

8. Accordingly, the impugned order dated 04.10.2016 passed by the 3rd respondent is set aside and the matter is remitted to the 3rd respondent for fresh consideration. On receipt of papers, the 3rd respondent is directed to entertain the Review Petition filed by the petitioner and pass appropriate orders on merits and in accordance with law within a period of eight weeks. It is made clear that the petitioner is at liberty to make all the submissions before the 3rd respondent.

The Writ Petition is allowed with the above direction. No costs. Consequently, connected W.M.P.No.33914 of 2016 is closed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To:

1. The President,
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3. The Joint Registrar of Co-operative Societies,
Vellore Zone,
Vellore District.

+1 cc to M/s.L.P.Shanmugasundaram,advocate,sr.67380
+1 cc tgo M/s.K.V.Sajeew KUMar,advocate,sr.67394
+1 cc to Govt.Pleader,sr.68076.

cp(co)
krd 26/12

W.P.No.39639 of 2016