



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.06.2016

Coram

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. (MD) No.17685 of 2014

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:Petitioner

vs.

1.The Joint Registrar,
Co-operative Society,
Sivagangai Region.

2.The Deputy Registrar,
Co-operative Society,
Karaikudi,
Sivagangai District.

3.The Sub Registrar / Field Officer,
Co-operative Society,
Karaikudi.

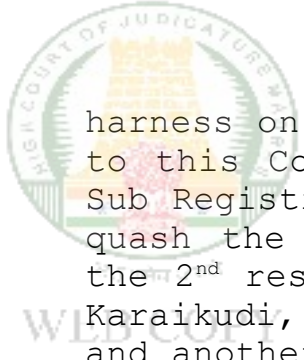
4.The President,
N.N.536, Thiruppakkottai,
Primary Agricultural Co-operative
Credit Society,
48, Maanthoopu Street (Extn)
Devakottai - 630 302,
Sivagangai District

:Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, to call for the records related to the 3rd respondent's summon dated 17.01.2014, the consequential proceedings of the 2nd respondent vide Na.Ka.No.440/2014 Sa.Pu. dated 27.03.2014 insofar as the enquiry is concerned and consequential order passed by the 4th respondent dated 08.05.2014 and to quash the same and direct the respondents herein to disburse all the terminal benefits due to the petitioner with 12% interest from the date of the death of the petitioner's husband.

For Petitioner :Mr.M.Muthulaskhmi
For Respondents :Mr.R.Ananda Raj
(R1 to R3) Govt. Advocate
For Respondent-4 :Mr.C.G.Pethanraj

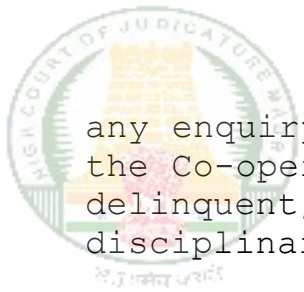
O R D E R



harness on 02.08.2013 due to sudden massive heart attack, has come to this Court challenging the impugned proceedings issued by the Sub Registrar / Field Officer, Co-operative Society, Karaikudi, to quash the same and also the consequential proceedings passed by the 2nd respondent / the Deputy Registrar, Co-operative Societies, Karaikudi, dated 27.03.2014 insofar as the enquiry is concerned and another consequential order passed by the 4th respondent, dated 08.05.2014 with a further direction to the respondents to disburse all the terminal benefits due to the petitioner with 12% interest from the date of death of the petitioner's husband.

2.The learned counsel appearing for the petitioner would submit that after the petitioner's husband, who was employed as Secretary in the 4th respondent Society died on 02.08.2013 due to sudden massive heart attack. The 3rd respondent / the Sub Registrar / Filed Officer, Co-operative Society, Karaikudi, has issued an enquiry notice on 17.01.2014, under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 to the petitioner stating that her husband allegedly misappropriated and wrongly disbursed the funds of the 4th respondent Society in the matter of Draught Relief Funds to the poor farmers and thereby directed to attend the enquiry on 22.01.2014 failing which, criminal action should be initiated against her, as a legal heir of the deceased husband.

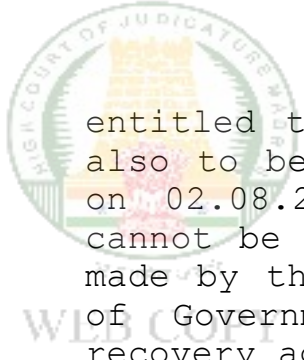
3. On receipt of the said notice, the petitioner has approached the respondents. She was informed that her husband had misappropriated the funds of the Society to the tune of Rs.2,75,297/- while working during the year 2010 - 2013, as per the proceedings issued by the 4th respondent, dated 07.04.2014. Latter on, the very same 4th respondent in his another proceedings, dated 08.05.2014, had increased the said amount from Rs.2,75,297/- to Rs.2,79,445/- including the interest. In view of the above it was also informed to the petitioner that the pensionary benefit could not be released. In the meanwhile, the petitioner applied under RTI Act to find out the terminal benefits of her deceased husband. A reply was given to the petitioner by the first respondent on 08.05.2014 stating that the terminal benefits of the deceased husband is Rs.4,62,719/-. In these circumstances, issuing notice under Section 81 of the Tamil Nadu Co-operative Societies Act inviting the petitioner to take part in the said enquiry is absolutely unwarranted for the reason that till the last breath of her husband, she was only a home maker now, after her husband's death, she has become a daily coolie labourer, as she has not even able to follow any proceedings on behalf of her deceased husband. After his death the impugned notice has been issued under Section 81, asking the petitioner to come forward for enquiry is wholly unfair and unjustified. In any event, as her husband passed away on 02.08.2013, the respondents cannot initiate



any enquiry including the enquiry contemplated under Section 81 of the Co-operative Societies Act for the reason that on the death of delinquent, the entire proceedings either criminal proceedings or disciplinary proceedings shall be abated.

4. A detailed counter affidavit has been filed by the 4th respondent. It has been the counter claim of the 4th respondent Society that being a Co-operative Institution registered under the Provisions of the Tamil Nadu Co-operative Societies Act and the Rules framed thereunder, it has got its own Special Bye-laws and the service conditions of the employees therein to govern its employee. The main object of the 4th respondent Society is to issue agricultural loan and jewel loan. Since the petitioner has come to this Court challenging the impugned proceedings issued by the 3rd respondent calling upon her to participate in the enquiry contemplated under Section 81 of the Act, no Writ will lie in the light of the ruling of the larger bench judgment of this Court in (K.Marappan Vs. The Deputy Registrar of Co-operative Societies, Namakkal Circle, Namakkal-636 001 and another) reported in (2006 (4) CTC 689). Therefore, the Writ Petition is liable to be dismissed.

5. Adding further he would submit that the 2nd respondent has ordered for an enquiry under Section 81 of the said Act, pursuant thereto the 3rd respondent / enquiry officer conducted enquiry and finally submitted a report. In the said report, the enquiry officer had concluded that the petitioner's husband has created falls and bogus records and misappropriated the amount of Rs.2,75,297/-. Since he has got some personal gain and also committed loss to the Government, the surcharge proceedings initiated by the second respondent against the petitioner cannot be stalled. Adding further it is contended that as per the Service Condition of the employees of the 4th respondent Society, the petitioner's husband is eligible for Earned Leave Salary to a tune of Rs.1,99,464/- and E.P.F amount of Rs.1,35,070/- (Management contribution as well as Employees contribution) and Gratuity amount of Rs.1,28,185/- and total amount of Rs.4,62,719/-. After finding that the aforesaid amount is pending with the 4th respondent, the impugned show-cause has been issued calling upon the petitioner to give explanation as to why the said amount payable to the Society should not be recovered from her husband retiral benefits. When the matter was discussed in the Board of Meeting, the Board of Directors also passed a Resolution on 08.05.2014 to recover the loss amount of Rs.2,75,297/- from his Earned Leave Salary and Employees Provident Fund Contribution and after the aforementioned deduction. The resolution also made it clear that the balance amount can be disbursed to the petitioner. However, since the 4th respondent is not having any source of service records, the balance amount also could not be disbursed to the petitioner. These explanation clearly admits the case of the petitioner that the petitioner husband who died on 02.08.2013 is



entitled to get the retiral benefit of Rs.4,62,719/-. It is also to be bourn in mind that when the petitioner's husband died on 02.08.2013 any proceedings initiated against a dead person cannot be proceeded legally. Therefore, accepting the contention made by the learned counsel for the petitioner that on the death of Government employee any enquiry proceedings contemplating recovery against the said dead person shall be deemed to have been abated, the impugned notice shall be liable to be set aside.

6. In view of the above, the writ petition stands allowed and the impugned notice issued against the petitioner on 08.05.2014. is admittedly after the death of the petitioner's husband hence, the same is quashed. Needless to mention that the amount of retiral benefits of the petitioner's husband Rs.4,62,719/- shall be disbursed to her within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

- 1.The Joint Registrar, Co-operative Society,
Sivagangai Region.
- 2.The Deputy Registrar, Co-operative Society,
Karaikudi, Sivagangai District.
- 3.The Sub Registrar / Field Officer, Co-operative Society,
Karaikudi.
- 4.The President,
N.N.536, Thiruppakkottai,
Primary Agricultural Co-operative Credit Society,
48, Maanthoopu Street (Extn) Devakottai - 630 302,
Sivagangai District.

+1cc to M/s.R.Saravanan, Advocate in SR.29321

W.P. (MD) No.17685 of 2014
09.06.2016

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