



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HON'BLE MR.JUSTICE C.T. SELVAM

W.A. (MD) No.338 of 2016

and

C.M.P. (MD) No.1931 of 2016

1. The Director of handloom and Textiles,
Kuralagam 2nd Floor,
Chennai - 600 108,
2. The Assistant Director of Handlooms and Textiles,
No.10, Palam Station Road,
Sellur, Madurai - 625 002,
Madurai District.
3. The Handloom Officer / Liquidator,
Madurai District Central Co-opertive Bank,
North Veli Street,
Madurai - 625 001. ... Appellants

Vs.

M.Mathivanan ... Respondent

PRAYER: The Writ Appeal is filed under Clause 15 of the Letters Patent, against the order dated 02.12.2015 made in W.P.(MD) No.21434 of 2015.

Prayer in WP(MD). 21434/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the impugned order in Na.Ka. 3447/2015/A, dated 26.10.2015 on the file of the respondent No. 2 and quash the same as illegal and consequently to direct the respondent no.2 to provide the amount of Rs. 2, 57,982.79/- (Rupees Two Lakhs and Fifty Seven Thousand and Nine Hundred and Eighty Two Rupees only) recovered from the gratuity amount of the petitioner within the time stipulated by this Honble Court.

For Appellants : Mr.A.K.Bhaskarapandian
Special Government Pleader

**JUDGMENT**

(Order of this Court was made by S.MANIKUMAR, J.)

Challenge in this appeal is to an order made in W.P.(MD) No.21434 of 2015, dated 02.12.2015, by which, a Learned Single Judge of this Court has set aside the order in R.C.No.3447/2015/A, dated 26.10.2015 of the Assistant Director of Handlooms and Textiles, Sellur, Madurai District / respondent No.2 therein, and consequently remitted the matter to him, for fresh consideration and orders to be passed in the light of the order, dated 07.09.2006, passed by learned Principal District Judge, Madurai in CMA Nos.24, 25, 76, 77 and 107 of 2004, within a period of eight weeks from the date of receipt of a copy of the order made in the Writ Petition.

2. Materials on record discloses that the respondent was working as a Handloom Inspector / Secretary, M.H.21, Annai Bhagavathi Weavers Co-operative Society from 1996 to 2001 in Madurai Circle and for certain irregularities, surcharge proceedings have been initiated against him, under Section 87 of Tamil Nadu Co-operative Societies Act, 1983. On the conclusion of the surcharge proceedings, final an order in Tha/Na/7/2003/G, dated 29.06.2004 has been passed by the Assistant Director of Handloom and Textiles, Sellur, Madurai District, the 2nd appellant herein.

3. Being aggrieved by the same, the respondent has approached the Co-operative Tribunal / learned Principal District Judge, Madurai and filed CMA No.77 of 2004. Similar appeals have been filed by others. After adjudication of the appeals, vide a common Judgment in CMA Nos.24, 25, 76, 77 and 107 of 2004, the Co-operative Tribunal / learned Principal District Judge, Madurai, has set aside the surcharge proceedings initiated by the Assistant Director of Handlooms and Textiles, Sellur, Madurai, / the 2nd appellant herein.

4. While the matter stood thus, the respondent was due to retire on 31.01.2012. A sum of Rs.2,57,982.79 was sought to be recovered from gratuity including his surcharge fine amount with interest. This attempt on the part of the appellants was on the ground that the common order made by the Co-operative Tribunal / learned Principal District Judge, Madurai in CMA Nos.24, 25, 76, 77 and 107 of 2004, dated 07.09.2006, did not attain finality. As the above said amount was withheld, respondent has submitted a representation, dated 15.04.2015, requesting the Assistant Director of Handlooms and Textiles, Sellur, Madurai, / the 2nd appellant herein, to disburse the said amount. As no action was taken on the said representation, dated 15.04.2015, the respondent has filed W.P.(MD)No.8997 of 2013, for a Writ of Mandamus, directing the appellants herein, to pay a sum of Rs.2,57,982.79/-,



recovered from his gratuity amount. Vide order, dated 05.06.2015, in W.P.(MD)No.8997 of 2013, Writ Court, has directed to consider the representation of the respondent, dated 15.04.2015, and pass orders in accordance with law, within a period of one month from the date of receipt of a copy of the order. After considering the representation, vide proceedings in R.C.No.3447/2015/A, dated 26.10.2015, the Assistant Director of Handlooms and Textiles, Sellur, Madurai, / the 2nd appellant herein, has rejected the representation of the petitioner dated 15.04.2015.

5 In the second round of litigation in W.P.(MD)No.21434 of 2015, the respondent has sought for a Writ of Certiorari, to quash the order in R.C.No.3447/2015/A, dated 26.10.2015 and consequently prayed for a direction to the Assistant Director of Handlooms and Textiles, Sellur, Madurai, / the 2nd appellant herein, to return Rs.2,57,982.79/- recovered from his gratuity. On the facts and circumstances of the case and after hearing learned Additional Government Pleader appearing on behalf of the appellants, the Writ Court set aside the order of the Assistant Director of Handlooms and Textiles, Sellur, Madurai, / the 2nd appellant herein, dated 26.10.2015 and remanded back the matter to consider afresh and pass orders, in the light of the order, dated 07.09.2006, passed by the Principal District Judge, Madurai in CMA Nos.24, 25, 76, 77 and 107 of 2004, dated 07.09.2006, within a period of eight weeks.

6. Assailing the correctness of the above said order Mr.A.K.Bhaskarapandian, learned Special Government Pleader submitted that before retirement, the respondent himself has given a letter, dated 25.01.2012, to the Assistant Director of Handlooms and Textiles, Sellur, Madurai, / the 2nd appellant herein, to withhold a sum of Rs.4,09,037.55 from his gratuity benefits, towards payment of surcharge proceedings initiated by MH21 Annai Bhagawathi Weavers Handloom Society and MH56 Thiruvilli Thiyagi Gurusamy Weavers Handloom Society and therefore, it is not open to the writ petitioner to seek for a Mandamus from this Court to pay a sum of Rs.4,09,037.44 withheld on account of surcharge proceedings. It is also his submission that when the respondent has suppressed the factum of giving a letter, dated 25.01.2012, to the above said authority, he is not entitled to any relief from this Court, under Article 226 of the Constitution of India and for the reasons stated supra prayed that the direction issued in W.P.(MD)No.21434 of 2014, dated 02.12.2015, requires to be interfered with.

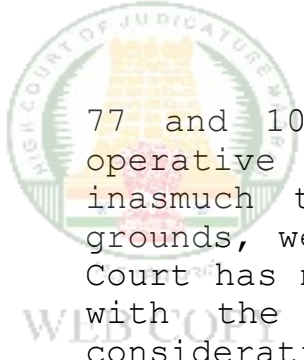
7. Material on record discloses that pursuant to the surcharge proceedings initiated against the respondent, an order <https://hccases.hccm.gov.in/cases/>, under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, directing recovery, vide order in Tha/Na/7/2003/G, dated 29.06.2004.



8. Being aggrieved, the respondent and others, against whom orders under Section 87 have been passed, have filed CMA Nos.24, 25, 76, 77 and 107 of 2004, dated 07.09.2006, before the Co-operative Tribunal / learned Principal District Judge, Madurai. After adjudication, the Co-operative Tribunal has found that the surcharge proceedings initiated against the appellants therein was barred by limitation and hence, the order passed by the Assistant Director of Handlooms and Textiles, Sellur, Madurai, / the 2nd appellant herein, is liable to be set aside. Accordingly, the Co-operative Tribunal / learned Principal District Judge, Madurai, vide common order in CMA Nos.24, 25, 76, 77 and 107 of 2004, dated 07.09.2006, has set aside the surcharge proceedings. The effect of setting aside the surcharge proceedings is that no recovery can be made. The respondent was due to retire on 31.01.2012. Needless to state that payment of retiral and other benefits have to be settled, after a person retires.

9. When a sum of Rs.4,09,037.44 has been withheld by the Assistant Director of Handlooms and Textiles, Sellur, Madurai, / the 2nd appellant herein, towards the surcharge amount determined earlier and sought to be recovered from two Societies viz., MH21 Annai Bhagawathi Weavers Handloom Society and MH56 Thiruvilli Thiyagi Gurusamy Weavers Handloom Society, respondent seemed to have given a letter, dated 25.01.2012, agreeing to recover the above said amount from his gratuity. Accepting the said letter, the Director of Handlooms and Textiles, Chennai, appellant No.1, has passed an order in R.C.No.40344/2011/E3, dated 31.01.2012, permitting the respondent to retire from service on 31.01.2012 and also directed disbursement of retiral benefits, withholding a sum of Rs.4,09,037.44. The said order has been passed, on the ground that the respondent himself had given consent for withholding the amount towards surcharge proceedings. Thereafter, the respondent seemed to have made a representation, dated 15.04.2015, to the Assistant Director of Handlooms and Textiles, Sellur, Madurai District / the 2nd appellant herein, to return the amount of Rs.2,57,982.79 recovered from his gratuity and this Court has directed the representation to be considered and thereafter, the impugned order in Rc.No.3447/2015/A, dated 26.10.2015 has been passed.

10. The main contention of learned Special Government Pleader for the appellants is that there is a suppression of the letter, dated 25.01.2012 given by the respondent, to the Assistant Director of Handlooms and Textiles, Sellur, Madurai District / the 2nd appellant herein, for consenting recovery of the said sum. Though the Learned Single Judge in W.P.(MD)No.21434 of 2015, dated 02.12.2015, has remanded the matter to the Assistant Director of Handlooms and Textiles, Sellur, Madurai District / respondent No.2 therein, for fresh consideration in the light of the orders passed in the common Judgment in CMA Nos.24, 25, 76,



77 and 107 of 2004, , dated 07.09.2006, on the file of Co-operative Tribunal / learned Principal District Judge, Madurai, inasmuch the said direction itself is assailed, on the above grounds, we deem it fit to go into merits of the case. When Writ Court has merely directed to consider as stated supra, now dealing with the submissions, we have to explain as to how such consideration should be made. First of all, when the Co-operative Tribunal / learned Principal District Judge, Madurai vide a common order in CMA Nos.24, 25, 76, 77 and 107 of 2004, dated 07.09.2006, has set aside the surcharge proceedings, on the ground of limitation, the appellants have no right to withhold the amount due and payable to the respondent, under the guise of surcharge proceedings. Since the retirement benefits have been withheld on the grounds that proceedings were not finalized , the respondent probably thought it fit to submit a letter, dated 25.01.2012, to the Assistant Director of Handlooms and Textiles, Sellur , Madurai, / the 2nd appellant herein, to disburse the balance amount. On the above letter, the Director of Handlooms and Textiles, Chennai, has passed an order, to disburse the balance amount after withhold the amount towards surcharge proceedings.

11. As observed earlier, when the Co-operative Tribunal / Principal District Judge, Madurai, has set aside the entire surcharge proceedings, in the eye of law, there is nothing against the respondent and the appellants ought not to have withheld the amount due and payable to the respondent, on the premise that proceedings have not reached its finality. On the contention that the respondent has suppressed the factum of giving a letter, dated 25.01.2012, and therefore, it is not open to him to seek for return of the amount, we are of the view that the said letter is not a material fact by which, the respondent has attempted to gain undue advantage, contrary to the decision of the Co-operative Tribunal / learned Principal District Judge, Madurai. Even assuming that the respondent has suppressed in giving a letter, dated 25.01.2012, that would not clothe the appellants to retain the amount determined in surcharge proceedings, which has been set aside by the Co-operative Tribunal / learned Principal District Judge, Madurai. By withholding the amount, the appellants have only acted contrary to the common order of the Co-operative Tribunal.

12. The Writ Court has only set aside the order made in R.C.No.3447/2015/A, dated 26.10.2015, passed by the Assistant Director of Handlooms and Textiles, Sellur, Madurai District / respondent No.2 therein, in directing to consider the matter afresh and to pass orders in the light of the orders made in CMA Nos.24, 25, 76, 77 and 107 of 2004, dated 07.09.2006, on the file of the Co-operative Tribunal / Principal District Judge, Madurai. We have explained as to how the Assistant Director of Handlooms and Textiles, Sellur , Madurai, / the 2nd appellant herein, has to consider the case of the respondent.



13, In the result, the Writ Appeal is dismissed. The Assistant Director of Handlooms and Textiles, Sellur, Madurai, / the 2nd appellant herein, is directed to consider the case of the respondent, as explained supra and pass appropriate orders. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar

mpk

To

1. The Director of handloom and Textiles,
Kuralagam 2nd Floor,
Chennai - 600 108,
2. The Assistant Director of Handlooms and Textiles,
No.10, Palam Station Road,
Sellur, Madurai - 625 002,
Madurai District.
3. The Handloom Officer / Liquidator,
Madurai District Central Co-opertive Bank,
North Veli Street,
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CN/SKS-RR/7.03.2016/6P-5C

W.A. (MD) No.338 of 2016
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