IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2017

CORAM:

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.No.20808 of 2014
& MP.Nos.1 &2 of 2014

A.Manoharan ...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 seeking for issuance of a Certiorarified Mandamus, to call for the records on the file of the 3rd respondent in Na.Ka.No.6927/2013/A2, (Review No.10/2013), dated 15.04.2014 and quash the same and further direct the respondents to settle all the retirement benefits to the petitioner.

For Petitioner :M/s.Royan Law Associates

For Respondents :Mr.R.Bala Ramesh,AGP for R1&2
Mr.L.P.Shanmugasundaram, Sp.G.P. for R3

O R D E R

The petitioner has approached this Court seeking for the following relief:

> ''To issue a Certiorarified Mandamus, to call for the records on the file of the 3rd respondent in Na.Ka.No.6927/2013/A2, (Review No.10/2013), dated 15.04.2014 , quash the same and further direct the respondents to settle all the retirement benefits to the petitioner''.

2. The case of the petitioner is as follows:

The petitioner was employed in the respondent Society as Salesman from 02.01.1979 to 2013. He attained the age of superannuation and retired from service on 30.06.2013. On the eve of retirement, a charge memo was issued on 26.06.2013, charging the petitioner that he has caused a loss of Rs.1,09,788/- to the Society during the period from 01.07.1999 to 31.03.2005 since excess salary was paid to him by the Society. According to the petitioner, the so-called excess payment was never questioned nor brought to the knowledge of the petitioner and even assuming that there was an excess payment, it was not attributable to the petitioner. According to him, he rendered unblemished service thought out his career. In view of the so-called excess payment paid to the petitioner during the period from 01.07.1999 to 31.03.2005, on retirement of the petitioner, the retirement benefits had not been settled. In the above circumstances, the petitioner has filed a revision petition before the authority concerned invoking Section 153 of the Tamilnadu Co-operative Societies Act. In response to the review petition, an order was passed by the third respondent on 15.04.2014, directing recovery of the amount in question and to pay the remaining retirement benefits payable to the petitioner. The said order passed by the third respondent is under challenge in the present writ petition.

3. The learned counsel for the petitioner at the out set, would submit that the petitioner was no way responsible for any alleged excess payment made to him during the relevant period. In any event, the so-called excess payment made to him was relating to the period from 1999 to 2005, several years ago, before the petitioner attaining the age of superannuation in the year 2013. In the said circumstances, the impugned action seeking recovery of the amount without any notice to the petitioner at the appropriate time cannot be countenanced both in law or on facts. The learned counsel would also draw the attention of this Court to the decision of the Hon'ble Supreme Court of India reported in (2015) 4 SCC 334 (State of Punjab and Others Vs. Rafiq Masih (white Washer and Others). The Hon'ble

Supreme Court of India has clearly held in paragraph No.18 of the said judgment that recovery from the employees belonging to Class III & Class IV service (or Group C and Group D service) is impermissible in law. The Hon'ble Supreme Court has further held that recovery from the retired employees is also not permissible in law. It is further held that no recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

4. The learned counsel for the petitioner would submit that three contingencies as stated above would apply to the present case on hand and therefore, the order of recovery dated 15.04.2014 passed by the third respondent is per se illegal as per the law laid down by the Hon'ble Supreme Court.

5. Upon notice, Mr.R.Bala Ramesh, the learned Additional Government Pleader entered appearance for the first and second respondents and filed counter affidavit. According to the learned counsel for the respondents, the petitioner had caused loss to the Society by drawing an excess amount towards salary for the period in question and therefore, the Society has taken steps to recover the amount under Section 82 of the Tamil Nadu Co-operative Societies Act. Such action on the part of the respondents is perfectly in order, just and the same does not call for interference of this Court.

6. This Court after considering the rival submissions of the learned counsel and perusing the relevant materials and pleadings placed on record is of the view that the recovery which is sought to be made is in relation to the alleged excess payment made during the period 1999-2005 and such recovery was sought to be made in the event of retirement of the petitioner in June 2013. Therefore, the impugned action is per se unsustainable in law for more than one reason. Firstly, it is not the case that there was any misrepresentation on the part of the petitioner for receiving any excess payment from the Society. Secondly there was no timely action taken against the petitioner for the alleged excess payment during the period 1999 to 2005. Moreover, the said recovery, even in the face of any excess payment, is impermissible in law in view of the categorical position of law declared by the Hon'ble supreme Court of India as found in paragraph No.18 of the judgment as sought supra. Paragraph No.18 reads as follows:

> ''18.It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference,

summarize the following few situations, wherein, recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

7. The present case is squarely fall within the first three contingencies spelt out by the Hon'ble Supreme Court of India. In the said circumstances, the impugned order dated 15.04.2014 passed by the third respondent is unsustainable and therefore the same is set aside in so far as it withholds the excess payment to the tune of Rs.1,09,788/- is concerned. There shall be a consequential direction to the respondents to settle all the retirement benefits due to the petitioner as contemplated in the impugned order dated 15.04.2014. The retirement benefits which are otherwise payable to the petitioner shall be paid with interest as admissible till the date of actual payment. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

8. The writ petition is disposed of, with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dn

To:

1.The Joint Registrar of
Co-operative Society,
Vellore Zone,
Vellore District.

+1cc to Mr.K.V.Sanjeev Kumar, Advocate, S.R.No.68586
+1cc to Mr.R.Bala Ramesh, Advocate, S.R.No.68525
+1cc to the Government Pleader, S.R.No.69405

Order in
W.P.No.20808 of 2014

CB(30/10/2017)