

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.25030 of 2014

R.Krishnan

..Petitioner

Vs.

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

2.Management
Pudurnadu Malaivazh Makkal Perumpalanokku
Co-operative Society,
Pudurnadu Post,
Tirupathur Taluk, Vellore District.

..Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, after calling for the concerned records from the first respondent, quash the order of the first respondent bearing Na.Ka.9549/13 A2 Revision Petition No.18/13 A2 dated 06.05.2014 and consequently direct the 2nd respondent to pay Rs.1,26,356.83 to the petitioner being recovered from the Gratuity dues of the petitioner along with interest at the rate of 10% per annum from the date when it become payable.

For Petitioner :Mr.Balan Haridas

For Respondents :Mrs.T.Girija – R1

Mr.Bala Ramesh - R2

* * * * *

ORDER

The petitioner has come forward with this Writ Petition, challenging the order of the first respondent bearing Na.Ka.9549/13 A2 Revision Petition No.18/13 A2 dated 06.05.2014 and consequently direct the second respondent to pay Rs.1,26,356.83, to him being recovered from the Gratuity dues of him along with interest.

3.The learned counsel for the writ petitioner made a submission that the writ petitioner was allowed to retire from service on 30.06.2011 and though the terminal and retiral benefits due to him have been settled partly, till date an amount of Rs.1,26,356.83, has not been settled, on the ground that there was an Audit Objection in that regard.

4.Admittedly, the writ petitioner was allowed to retire from service on attaining the age of superannuation on 30.06.2011 and the audit objection was relating to the year 2008-09. It is pertinent to note that no action contemplated under the provisions of the Tamil Nadu Co-operative Societies Act has been initiated against the writ petitioner so far. Now, after a lapse about ten years from the Audit

objections, the respondents now cannot initiate any action, in view of the fact that the writ petitioner was allowed to retire and further no recovery can be imposed on the retired employee, after a lapse of ten years. It is also pertinent to note that in the Revision Order it has been stated that the amount due to the writ petitioner has not been settled on account of the Audit objection. However, no reason has been assigned for keeping the Audit objection pending for the past about ten years.

5. Under these circumstances, the recovery from the pensionary benefits without initiating any appropriate proceedings either under the provisions of the Tamil Nadu Co-Operative Societies Act or Rules or under the bylaws, cannot be sustained. In support of the said contention, the learned counsel also produced before this Court the Judgment of the Hon'ble Supreme Court in **STATE OF PUNJAB AND ORS v. RAFIQ MASIH (WHITE WASHER) & ORS [(2015) 4 SCC 334]**, wherein it has been held that even in the case of erroneous excess payment, no recovery can be effected in respect of the retired employees. For better appreciation, the relevant paragraphs of the Judgment is extracted herein below:

“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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from 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.

19. We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.”

6. In view of the legal principles settled by the Hon'ble Supreme Court, cited supra, the order impugned in this Writ Petition deserve to be quashed.

7. Since no action has been taken by the responsible officer in respect of the Audit objection for about ten years and there was omission on the part of the authorities concerned in that regard, this Court is of the opinion that the Joint Registrar of Co-Operative Societies, Vellore Zone, has to initiate appropriate action against all the officials who are responsible for not initiating action based on the Audit objection of the year 2008-2009, for the recovery of the loss amount to the Society. In this regard, the first respondent is directed to initiate appropriate actions including disciplinary actions against the officials who are responsible for not initiating any action against the employee in respect of the Audit objection of the year 2008-2009. In respect of recovery from the petitioner, now after a lapse of seven years from the date of retirement, it is impermissible, in view of the legal principles settled by the Hon'ble Supreme Court in **STATE OF PUNJAB AND ORS v. RAFIQ MASIH (WHITE WASHER) & ORS**, cited supra.

8. Under these circumstances, the order impugned in this Writ Petition issued by the first respondent in his proceedings dated 06.05.2014, is quashed and the respondents are directed to settle the

due amount of Rs.1,26,356.83, to the writ petitioner, within a period of twelve weeks from the date of receipt of a copy of this order.

The Writ Petition stands allowed on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

30.10.2017

Index: Yes/No
Internet: Yes/No
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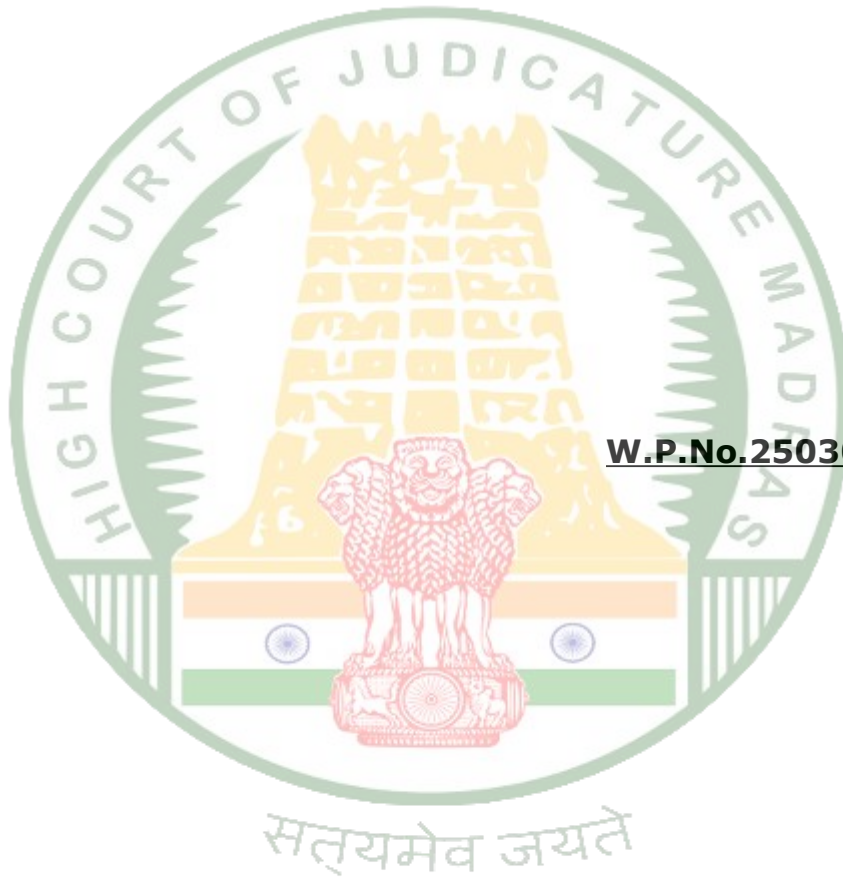
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S.M.SUBRAMANIAM, J.,

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