

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.09.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.13058 of 2012
and
M.P.No.1 of 2012

L.A.Janarthanam

... Petitioner

- Vs -

1.Co-operative Sub-Registrar / Field Officer,
Gudiyatham,
Vellore District.

2.Gudiyatham Co-operative Primary
Agriculture and Rural Development
Bank Limited No.C 2176

Represented by its Secretary
No.95/36, Narimurugappa Mudali Street,
Pichanur, Gudiyatham 632 601,
Vellore District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the concerned records from the 1st respondent, quash the order of the 1st Respondent dated 25.4.2012 in Dispute No.878/2011-12 directing the Petitioner to pay a sum of Rs.13,600/- along with interest at the rate of 13.5% as illegal, arbitrary and without jurisdiction.

For Petitioner : Mr.Balan Haridas

For R1 : Ms.T.Girija
(Government Advocate)

For R2 : Mr.P.S.Sivashanmugasundaram

O R D E R

The petitioner was working as Clerk in the 2nd respondent Society. The petitioner was superannuated on 30.06.2003. But, however the terminal benefits were withheld by the Department. In spite of several representations made to the 2nd respondent, they have not passed any orders. The petitioner sent legal

notice to the 2nd respondent settle his terminal benefits. Thereafter, the 2nd respondent has issued notice to the petitioner to appear before them for the enquiry. The petitioner approached this Court questioning the issuance of notice asking him to attend enquiry and for a consequential prayer to direct the 2nd respondent to settle his dues. This Court by order dated 16.02.2004 in W.P.No.30222 of 2003 set aside the notice dated 20.10.2003 and directed the 2nd respondent to disburse the petitioner's terminal benefits along with the interest at the rate of 12% per annum. The said terminal benefits has been settled and the petitioner was also filed application claiming Gratuity before the Assistant Commissioner of Labour under the Payment of Gratuity Act, 1972 and the same is pending.

2. At this stage, due to audit objection, the 2nd respondent has falsely claimed that the petitioner has to pay Rs.13,500/- to the 2nd respondent Bank. Therefore, the matter has been referred under Section 90 (1) of the Tamil Nadu Co-operative Societies Act. The petitioner has objected for the claim and raised several objections before the 2nd respondent. The 1st Respondent has passed impugned order dated 25.04.2012 in Dispute No.878/2011-12.

3. Challenging the said order dated 25.04.2012, the present writ petition is filed before this Court on the ground that the said award is barred by limitation.

4. According to the petitioner also submitted that the said impugned order passed by the 1st respondent is cryptic and non-speaking order and therefore, it is liable to be quashed.

5. The learned Special Government Pleader would submit that as per the Government Order, the Government has fixed the norms for legal fees payable to the panel advocate. The petitioner has violated the Government Order and therefore, the surcharge order has been passed against the petitioner. In the circumstances, the writ petition is not maintainable and the same is liable to be dismissed.

6. The 1st respondent has passed the impugned order in the printed form, there is no discussion or adjudication in the order as contemplated under Section 90 of the Act. On this ground, the impugned order cannot be sustained. The said order is mechanical and stereo typed and no discussion and adjudication in the order. Secondly, the subject matter of the surcharge proceedings, has passed for the loss sustained to the society for the period 01.04.1997 to 30.09.1998. Subsequent to the period, the Government has passed the order G.O.Ms.No.188, Co-op-Food and Consumer Welfare Department dated 15.09.1998. Therefore, there is no substance to pass impugned order against

the petitioner. Hence the impugned order is liable to be quashed.

7. It is needless to say that the concerned society can approach the Co-operative Audit Department for getting necessary ratification.

8. In view of the above, there is no violation on the part of the petitioner for payment of the said legal fees to the counsel appearing for the society. Therefore, this Court has no hesitation to quash the award passed by the 1st respondent and accordingly, writ petition stands allowed. No order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssn

To

1.The Co-operative Sub-Registrar / Field Officer,
Gudiyatham,
Vellore District.

2.The Secretary,
Gudiyatham Co-operative Primary
Agriculture and Rural Development
Bank Limited No.C 2176,
No.95/36, Narimurugappa Mudali Street,
Pichanur,
Gudiyatham 632 601,
Vellore District.

+1cc to Mr.Balan Haridas, Advocate, S.R.No.64444
+1cc to the Government Pleader, S.R.No.64977

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and
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NM(CO)
CA(17/11/2017)