

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 13059 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, Rep. by its Secretary,
No.95/36, Narimurugappa
Mudali Street, Pichanur,
Gudiyatham 632 601
Vellore District.

.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the concerned records from the first respondent, quash the order of the first respondent dated 25.04.2012 in Dispute No.877/2011-2012 directing the petitioner to pay a sum of Rs.39,753.50 along with interest at the rate of 13½ % as illegal, arbitrary and without jurisdiction and pass such other orders.

For Petitioner : M/s. Balan Haridas

For Respondents : Mr. T.Girija
Government Advocate for R1
Mr. P.S. Sivashanmugasundaram
Special Government Pleader for R2

O R D E R

This Writ Petition has been filed seeking to quash the order passed by the first respondent dated 25.04.2012 in Dispute No.877/2011-2012 and to direct the petitioner to pay a sum of Rs.39,753.50 along with interest at the rate of 13½ %.

2. The learned counsel for the petitioner submitted that the petitioner was employed in the 2nd respondent Society, as a clerk. At the time of superannuation, on 30.06.2003, the petitioner's terminal benefits were not settled. Hence, he made a representation to the 2nd respondent and all the concerned, to settle the terminal benefits of the petitioner. On 14.12.2011, the 2nd respondent issued a final demand notice to the petitioner, directing him to pay a sum of Rs.39,753.50 for the loss sustained by the society. Thereafter, based on the dispute filed by the 2nd respondent, summons were issued by the first respondent, directing the petitioner to appear for the enquiry. The petitioner appeared before the 1st respondent, attended the proceedings and submitted his representation, on 25.04.2012. Without considering the explanation of the petitioner, the first respondent passed an award on 25.04.2012. Challenging the said order, the petitioner has preferred the present writ petition.

3. According to the learned counsel for the petitioner the aforesaid claim made by the first respondent is barred by limitation. He further brought to the notice of this Court that the award has been issued by the first respondent in a printed form, mechanically and without determining the issues. Therefore, the impugned order is liable to be quashed.

4. The learned Government Advocate appearing for the 1st respondent would submit that the present impugned order has been passed under the relevant provisions of the Act. The learned counsel appearing for the 2nd respondent also reiterated that there is no separate order, passed by the first respondent.

5. As per Rule 107 of the Tamil Nadu Co-operative Societies Rules, 1988 in sub rule 8(a), the decision, award or order should be reduced in writing and shall also contain an order as to costs. As rightly pointed out by the learned counsel for the petitioner, on perusal of the impugned order dated 25.04.2012, it is clear that the said order has been passed by the first respondent mechanically and in the printed form, without assigning any reason. The first respondent has acted as Quasi-Judicial authority and the proceedings under the Tamil Nadu Co-operative Societies Act, 1983 are akin to the Civil Procedure Code. The first respondent has to determine the issue and the same should be reduced by reasoned order, without determining the point involved in the issue, passed cryptic and non-speaking order is liable to be quashed. Therefore, the contention of the learned Special Government Pleader that this writ petition has been filed without exhausting alternative remedy is rejected. In the light of the decisions rendered

by this Court and the Hon'ble Supreme Court, the Writ Petition is maintainable. The Division Bench of this Court, in the case of M/s. HIL Limited vs. The Assistant Commissioner, Madhavaram Assessment Circle & 2 Ors., in W.A. No. 258 of 2016, wherein paragraph 17 and 19, has held as follows :

" 17. It has been clear from the aforesaid judgments of the Honourable Supreme Court that some exceptions to the Rule of alternative remedy i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of principles of natural justice, the High Court will not entertain a petition under 226 of the Constitution of India, if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field.

The aforesaid judgment would squarely apply to the facts of this case, since the respondents have not acted, in accordance with the provisions of the Act and the principles of law laid by the Hon'ble Supreme Court as well as this Court. Therefore, the impugned order is liable to be quashed.

6. In the result, the impugned order issued by the first respondent dated 25.04.2012 in Dispute No.877/2011-2012 is quashed and the matter is remanded to the first respondent, to be considered afresh and pass orders on merits and in accordance with law, after providing opportunity to the parties concerned, as expeditiously as possible.

7. Accordingly, the Writ Petition is allowed, with the above directions. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

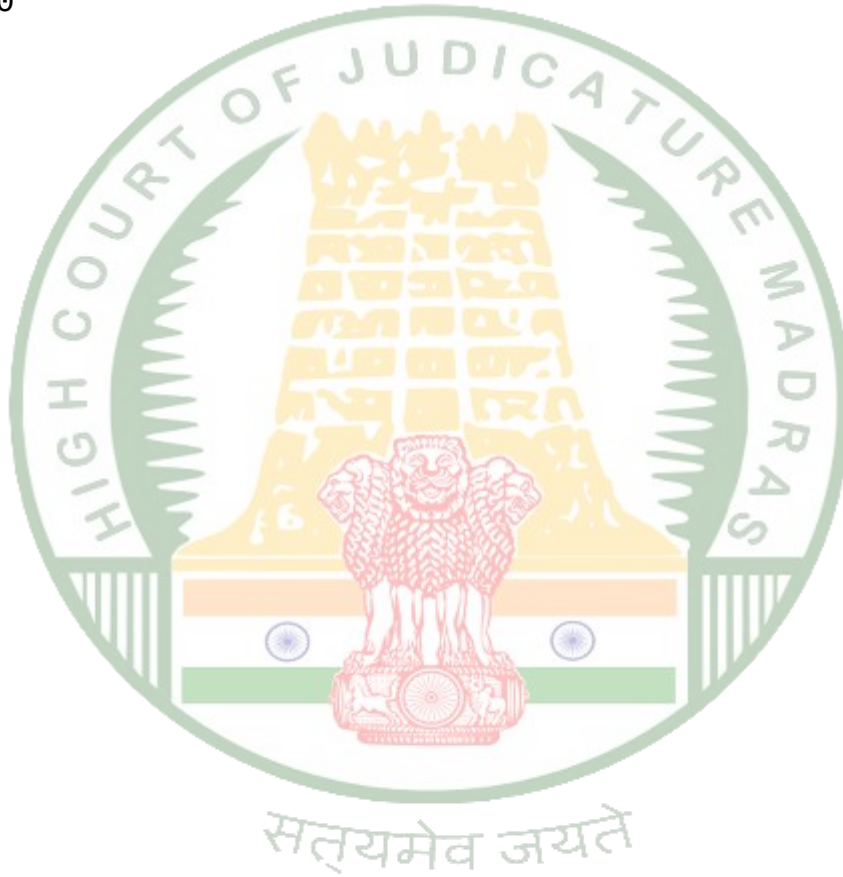
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Sub Assistant Registrar

1 cc to Balan HARidas,k Advocagte, Sr. 57252
1 cc to Government Pleader, Sr. 56892

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