

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.09.2017
CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 15642 of 2009
and
M.P. No. 1 of 2009

The Special Officer,
Z.576, Thiruvidaikazhi Primary
Agricultural Co-operative Credit
Society Ltd.,
Tranqubar Taluk,
Nagapattinam District. Petitioner

Vs.

1. The District Judge,
Nagapattinam,
2. The Deputy Registrar of Co-operative
Societies, Mayiladuthurai Circle,
Deen Plaza, Town Bus Stand,
Mayiladuthurai Taluk & District.
3. L.Karthikeyan
4. C.R.Kunchithapatham Respondents

Prayer : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 1st respondent in pursuant to the Judgment in C.M.A.No.3 of 2006 dated 30.01.2009 and quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents : R1 - Tribunal

Mr.V.Selvaraj,
Additional Government Pleader
For R2

Mr.R.Sivakumar
For R3 & R4

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O R D E R

This Writ Petition has been filed to call for the records of the 1st respondent in pursuant to the Judgment in C.M.A.No.3 of 2006 dated 30.01.2009 and quash the same.

2. The learned counsel for the petitioner would submit that a Surcharge order dated 02.02.2005 was passed by the second respondent against the third and fourth respondents for the loss sustained to the society for payment of excess salary to the employees of the society, contrary to the 12(3) settlement and the circular issued by the Registrar. Against the above Surcharge order, the third and fourth respondents filed an appeal in CMA.No.3 of 2006 before the District Judge, Nagapattinam. The Appellate Tribunal without appreciating the case of the respondents, has erroneously come to the conclusion that the third and fourth respondents paid the arrears of salary to the employees as per the agreement entered between the employees and the employer under Section 12(3) settlement of the Industrial Disputes Act. Hence, there is no loss sustained by the society for payment of the said arrears of salary as per the agreement.

3. According to the learned counsel for the petitioner, challenging the aforesaid finding of the Tribunal, petitioner filed the present writ petition. According to the petitioner, the excess salary was paid to the employees of the society, contrary to the agreement. Therefore, the third and fourth respondents are liable to pay the said loss sustained to the society. The other contention of the petitioner is that the surcharge award was passed by the second respondent against all the employees of the society and Ex-Board of Directors. The third and fourth respondents alone filed an appeal before the Tribunal. The other employees and the Board of Directors had not preferred any appeal against the surcharge award passed by the second respondent. Since, the said surcharge order has become final, in view of allowing the appeal filed by the third and fourth respondents, the petitioner society could not take any action to recover the said amount against the other employees of the society. Therefore, the impugned order passed by the Tribunal is liable to be set aside.

4. The learned counsel for the third and fourth respondents would admit that quashing the entire surcharge order passed by the Tribunal is beyond its jurisdiction, since there were also other employees against whom the Surcharge order was passed. Insofar as the other contention of the third and fourth respondents, the Appellate Tribunal has considered the appeal on merits and allowed the said appeal. Therefore, the Writ Petition is liable to be dismissed.

5. Considering the rival submissions of the learned counsel for the petitioner as well as the third and fourth respondents, the first contention of the petitioner, the third and fourth respondents alone filed the appeal before the first respondent, challenging against the surcharge order passed by the second respondent. Except the third and fourth respondents, the other employees and the Board of Directors who had been implicated in the surcharge proceedings had not filed any appeal before the Tribunal. On this ground, the Tribunal ought not to have allowed the appeal and hence, setting aside the entire surcharge award passed against all employees by the second respondent, is beyond its jurisdiction. The Tribunal has confined the Judgment only against the third and fourth respondents. The second contention raised by the learned counsel for the petitioner, the surcharge award passed by the second respondent, of the excess salary amount paid to the employees of the society by the third and fourth respondents and other employees and Board of Directors of the society are contrary to bye-laws and rules. The Tribunal has misunderstood the facts in this case and came to wrong conclusion that there was no loss sustained to the society for the reason that the third and fourth respondents and Board of Directors had paid the arrears of salary as per the 12(3) agreement entered between the parties. The said fact has been disputed by the petitioner, the excess salary payable to the employees is contrary to the 12(3) settlement as well as the circular issued by the registrar.

6. It is seen from the Judgment the said disputed fact has not been considered by the Appellate Court whether the disputed amount paid to the employees of the society is contrary to the Circular issued by the Registrar of Co-operative Societies and 12(3) settlement. This fact has to be decided on the basis of the documentary evidences before the Tribunal. Therefore, in the absence of finding of this disputed fact, this question cannot be decided in the present Writ Petition. Therefore, in the interest of Justice, the Judgment of the Tribunal is liable to be set aside. Therefore, the order of the Tribunal is unsustainable and the same is remanded to Tribunal for fresh consideration after providing opportunity to the parties concerned. The parties concerned may also file additional documents, if any, before the Tribunal. Accordingly, the Writ Petition stands allowed. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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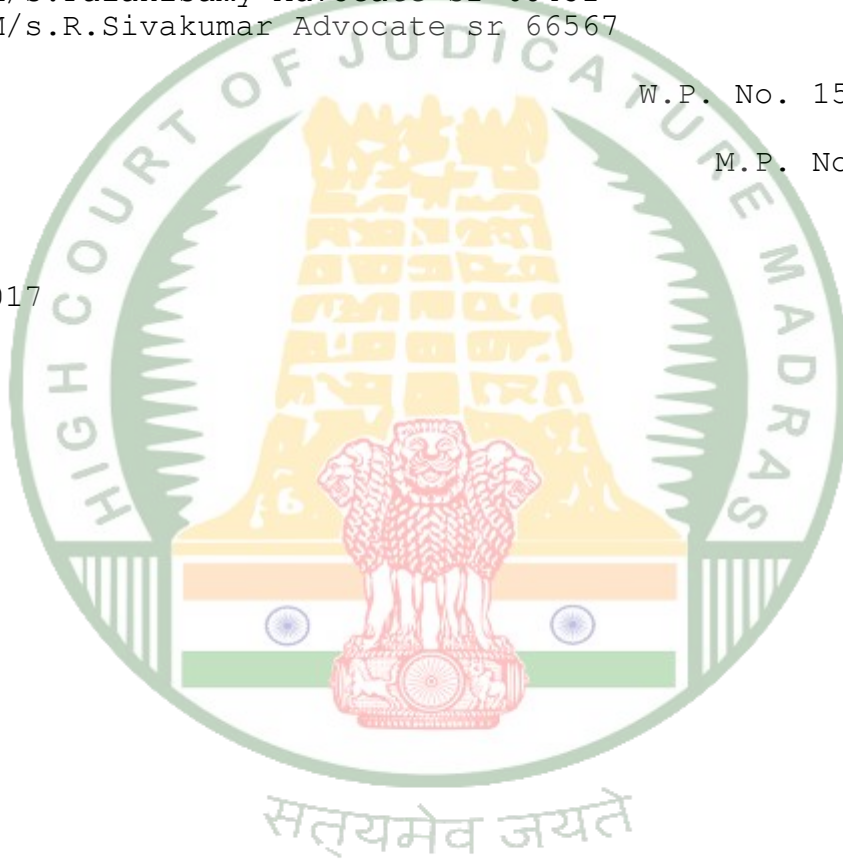
To

1. The District Judge,
Nagapattinam,
2. The Deputy Registrar of Co-operative
Societies, Mayiladuthurai Circle,
Deen Plaza, Town Bus Stand,
Mayiladuthurai Taluk & District.

+1 cc to M/s.Palanisamy Advocate sr 68451
+1 cc to M/s.R.Sivakumar Advocate sr 66567

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