

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.13 of 2018
and
W.M.P.No.9 of 2018

R.Chinnadurai

... Petitioner

Vs

1.The Joint Registrar of Co-operative Societies,
Cuddalore Region, Cuddalore,
Cuddalore District.

2.The Deputy Registrar of Co-operative Societies,
Cuddalore Circle, Cuddalore,
Cuddalore District.

3.The President,
Nadukuppam Primary Agricultural
Co-operative Credit Society,
Nadukuppam Village & Post,
Panruti Taluk, Cuddalore District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to disburse the petitioner's entire terminal benefits like Gratuity, Provident Fund and Earned Leave Salary under Sections 78 and 79 of the Tamil Nadu Co-operative Societies Act, 1983 to the petitioner, within a stipulated time fixed by this Court.

For Petitioner : Mr.C.Prakasam

For Respondents: Mrs.T.Giriya,

Government Advocate for R1 and R2

Mr.L.P.Shanmugasundaram,
Special Government Pleader for R3

O R D E R

This Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the respondents to disburse the petitioner's entire terminal benefits like Gratuity, Provident Fund and Earned Leave Salary as per Sections 78 and 79 of the Tamil Nadu Co-operative Societies Act, 1983 to him, within a stipulated time fixed by this Court.

2. Learned Counsel for the petitioner submitted that the petitioner was appointed as Secretary in the 3rd respondent Society on 01.02.1982 and after completion of his service, he was allowed to retire from service w.e.f. 30.06.2002. But ironically, even after the lapse of 15 years from the date of his superannuation, the respondents 1 and 2 have not come forward to settle his retiral benefits. When repeated enquires were made, he was informed that in view of one audit objection raised, which is pending for consideration, his service benefits could not be disbursed.

3. The learned Counsel for the petitioner further submitted that in the meanwhile, the 1st respondent, considering the repeated reminders sent from the petitioner's side, issued one communication on 19.12.2007 asking the 2nd respondent, namely, the Deputy Registrar of Co-operative Societies, Cuddalore Circle, to look into the matter by getting proper reply from the 3rd respondent herein, namely, the President, Nadukuppam Primary Agricultural Co-operative Credit Society, Panruti Taluk, Cuddalore District. In spite of the steps taken by the 1st respondent followed by the 2nd respondent through the 3rd respondent, the petitioner has not at all received any part of his retiral benefits. Therefore, he has finally approached this Court with the present Writ Petition.

3. A detailed Counter Affidavit and an Additional Counter Affidavit have been filed by the 3rd respondent.

4. Heard the learned Government Advocate appearing for the respondents 1 and 2.

5. The learned Special Government Pleader appearing for the 3rd respondent Society, reiterating the stand taken in the counter affidavit submitted that while the petitioner was serving as a President in the 3rd respondent Society, he indulged in misappropriation of funds of the society and caused a loss to the tune of Rs.14,703/- for which criminal proceedings were initiated in C.C.No.323 of 1992 and C.C.No.324/1992. Finally, he was convicted by the learned Judicial Magistrate, Cuddalore. However, in the Criminal Appeals in CrI.A.Nos.67 and 68 of 2010 preferred by the petitioner against the said conviction and sentence of the trial Court, before the learned District and Sessions Judge, Cuddalore, the appellate court, taking into account the plight and prolonged ordeal of trial faced by the petitioner, directed the petitioner to repay the amount involved in the commission of the offence to the 3rd respondent society and accordingly, directed the petitioner herein to repay the amount of Rs.14,703/- and Rs.298/- to the 3rd respondent Society on or before 05.01.2012 upon which the conviction of the trial court will be confirmed and the sentence alone will be modified.

6. The learned Special Government Pleader appearing for the 3rd respondent further submitted that as per the direction given by the appellate court, the petitioner has paid back the amount of Rs.14,703/- on 02.01.2012 to the 3rd respondent Society

in CrI.A.No.67/2010 and paid Rs.298/- on 02.01.2012 to the 3rd respondent Society in CrI.A.No.68/2010, his sentences have been modified and thereupon, he was released under Section 4(1) of Probation of Offenders Act on his executing a bond for Rs.10,000/- with two sureties each for a like sum to the satisfaction of the trial court for a period of one year for keeping peace and good conduct and he was also placed on the supervision under the control of the Probationary Officer for a period of one year. Under such circumstances, the learned Special Government Pleader prays for dismissal of the Writ Petition.

7. It is a very peculiar case when the criminal cases were pending and subsequently, the trial court has also convicted the petitioner and sentenced him to undergo Simple Imprisonment for two years and to pay a fine of Rs.2,000/-, in default, to undergo Simple Imprisonment for six months under Section 408 of IPC and also to undergo Simple Imprisonment for 2 years under Section 477(A) of IPC, it is not known how the respondents have permitted the petitioner to retire from service by passing a relevant order dated 29.06.2002. A perusal of the relieving order also shows that he was permitted to retire from service and no reference has been made whether he has been detained or his relieving order is subject to the result of the pending criminal cases. Therefore, in my considered opinion, the respondents are perfectly right in not disbursing the retiral benefits. In any event, since the petitioner was relieved from service and there is no such provision to retain him in service, it has to be seen whether any direction as sought for by the petitioner to be issued to the respondents to release the service and retiral benefits of the petitioner, within a stipulated period.

8. In this regard, an objection has been taken by the 3rd respondent in his counter affidavit stating that audit objection indicated that there was a loss caused to the 3rd respondent Society to the tune of Rs.14,703/- and in view of the above said audit objection, a direction to disburse the aforesaid amount need not be given.

9. However, although there was an audit objection raised, it is not known how the 3rd respondent Society has kept quite all along without initiating any departmental proceedings or Subs charge Proceedings under Sections 81 and 87 of the Co-operative Societies Act. But, this Court by taking note of the conviction and sentence passed by the learned Judicial Magistrate No.I, Panrutti in C.C.Nos.323/1992 and 324/1992 on 17.5.2010, thereby convicting the petitioner for the offences under Sections 408 and 477-A and 471 of IPC has not inclined to give any direction to disburse the amount. The reason is while he was serving as Secretary in the Nadukuppan Primary Agricultural Co-operative Credit Society Limited, he was empowered to issue cash and sale receipts and also to issue other commodities to the members on

behalf of the said bank and to maintain the registers and also to sanction loan amount after obtaining the signatures of the borrowers. But the petitioner was found guilty for having committed criminal breach and misappropriation in issuing fertilizers and pesticides worth Rs.14,703/- for which he was convicted by the criminal court to undergo Simple Imprisonment for two years with a fine of Rs.2,000/-, in default, to undergo further simple imprisonment for 6 months under Section 408 of IPC. The said amount also has been paid by the petitioner as per the direction issued by the learned District and Sessions Judge, Cuddalore in C.A.Nos.67/2010 and 68/2010 on 22.12.2011. Therefore, this Court is not inclined to entertain the present Writ Petition.

10. In the result, the Writ Petition fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

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To

- 1.The Joint Registrar of Co-operative Societies,
Cuddalore Region, Cuddalore,
Cuddalore District.
- 2.The Deputy Registrar of Co-operative Societies,
Cuddalore Circle, Cuddalore,
Cuddalore District.
- 3.The President,
Nadukuppam Primary Agricultural
Co-operative Credit Society,
Nadukuppam Village & Post,
Panruti Taluk, Cuddalore District.

+1cc to Mr.C.Prakasam, Advocate SR.No.10454
+1cc to Mr.L.P.Shanmugasundaram, Advocate SR.No.10723
+1cc to Government Pleader SR.No.11033

W.P.No.13 of 2018

LRS (CO)
GN(26/02/2018)