

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2924 of 2009

G.Muthukrishnan

.. Petitioner

Vs.

1.The Deputy Registrar of
Co-operative Societies (Housing)
Cuddalore, Cuddalore District.

2.The Special Officer
Gingee Co-operative Housing Society
Gingee-604 202.
Villupuram District.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the judgment and decree dated 17.04.2009 made in Co-op.C.M.A.No.21 of 1995 on the file of the Co-operative Tribunal (Principal District Court), Villupuram, confirming the surcharge order dated 07.02.2005 in Na.Ka.No.3670 of 2004 Sa. pa, passed by the Deputy Registrar of Co-operative Society (Housing), Cuddalore.

For Petitioner : M/S.P.Kavitha Balakrishnan

For R1 : No appearance

For R2 : No appearance

ORDER

The Civil Revision Petition is filed against the judgment and decree dated 17.04.2009 made in Co-op.C.M.A.No.21 of 1995 on the file of the Co-operative Tribunal (Principal District Court), Villupuram, confirming the surcharge order dated 07.02.2005 in Na.Ka.No.3670 of 2004 Sa. pa, passed by the Deputy Registrar of Co-operative Society (Housing), Cuddalore.

2. The petitioner was working as a Secretary in Gingee Co-operative Housing Societies, Villupuram District. An Inspection and investigation of affairs of the said Society was ordered. After inspection and investigation, it was found that various excess payments were made to the petitioner and caused loss to the society by the employees. Even though various excess payments were made, only two items of loss are the issues to be decided in the Civil Revision Petition.

3. As far as first item is concerned, on superannuation, the petitioner was paid a sum of Rs.1,39,020/- as gratuity. In the report filed after inspection and investigation, it is stated that the petitioner is entitled to only for a sum of Rs.1,27,313/- as gratuity as per the bye-laws. A sum of Rs.11,707/- was paid in excess to the petitioner. As far as second item is concerned, the petitioner is entitled to encashment of leave for 129 days, whereas he was paid a sum of Rs.49,624/- for 240 days. Based on the report, proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, was initiated.

4. The petitioner submitted his explanation for both the items.

(i) The petitioner contended that he was paid gratuity amount after properly taking into consideration the salary received by him at the time of his superannuation. The petitioner was paid gratuity as per the bye-laws of the Society and it is not correct to state that a sum of Rs.11,707/- was paid in excess to the petitioner.

(ii) As far as encashment of leave is concerned, the petitioner surrendered 240 days and amount paid to him is correct. It is not correct to state that eligible leave which the petitioner can surrender

is only 129 days and after proper calculation, petitioner was paid Rs.59,409/- and there was no excess payment of Rs.35,510/-.

5. The first respondent considering the explanation of the petitioner and report filed under Section 82 of the Tamil Nadu Co-operative Societies Act and all the materials available on record, rejected the contention of the petitioner holding that the petitioner is eligible to receive a sum of Rs.23,899/-, whereas he was paid a sum of Rs.59,409/- and a sum of Rs.35,510/- has been paid in excess and directed the petitioner to pay a sum of Rs.46,301/- for both the items together with interest at 18% per annum being the excess amount paid under the caption for encashment of leave.

6. Against the said order dated 07.02.2005 made in Na.Ka.No.3670 of 2004 Sa. pa, petitioner filed Co-op.C.M.A.No.21 of 1995 on the file of the Co-operative Tribunal (Principal District Court), Villupuram.

7. The Co-operative Tribunal considering the materials available on record, dismissed the appeal by judgment and decree dated 17.04.2009.

8. Against the said judgment and decree dated 17.04.2009 made in Co-op.C.M.A.No.21 of 1995, the present Civil Revision Petition is filed by the petitioner.

9. Heard the learned counsel for the petitioner and perused the materials available on record. There is no representation on behalf of the second respondent. Though notice was served on the first respondent and his name is printed in the cause list, there is no representation on his behalf either in person or through counsel.

10. First item of excess payment claimed by the Society is the excess amount paid to the petitioner towards gratuity of his superannuation. According to the petitioner, his last drawn salary at the time of superannuation was taken into account and after proper calculation, the gratuity was paid. The Society did not take into account the salary received by him at the time of superannuation for calculation of gratuity amount payable to him. The second respondent has not placed any material to show that last drawn salary of the petitioner only was taken into consideration while calculating the gratuity amount payable to the petitioner. The second respondent has not filed any document to show that the last

drawn salary of the petitioner at the time of superannuation or the salary based on which the gratuity was calculated to allege excess payment. In view of the same, the contention of the petitioner that the amount paid to him is not in excess and is correct amount as per his last drawn salary, is acceptable.

11. For the above reason, order of the first respondent and judgment of the Co-operative Tribunal holding that the petitioner is liable to pay a sum of Rs.10,791/- together with interest at 18% per annum, is liable to be set aside and it is hereby set aside.

12. As far as encashment of leave salary is concerned, the Society after verifying the records had calculated the amount and the petitioner was entitled to surrender only 129 days of leave and not 240 days of leave, as claimed by the petitioner. The petitioner has not substantiated that he is entitled to surrender leave of 240 days which was available in his credit. The first respondent considering the contentions of the petitioner and second respondent, held that the petitioner has to pay a sum of Rs.35,510/- together with interest at 18% per annum and there is no infirmity or irregularity in the impugned order passed by the first

respondent in regard to quantum. The interest awarded at the rate of 18% per annum is on the higher side and the same is reduced to 9% per annum.

13. In the result, the Civil Revision Petition is partly allowed. The petitioner is directed to pay Rs.35,510/- together with interest at 9% per annum to the second respondent, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

26.02.2018

Index:Yes/No

kj

To

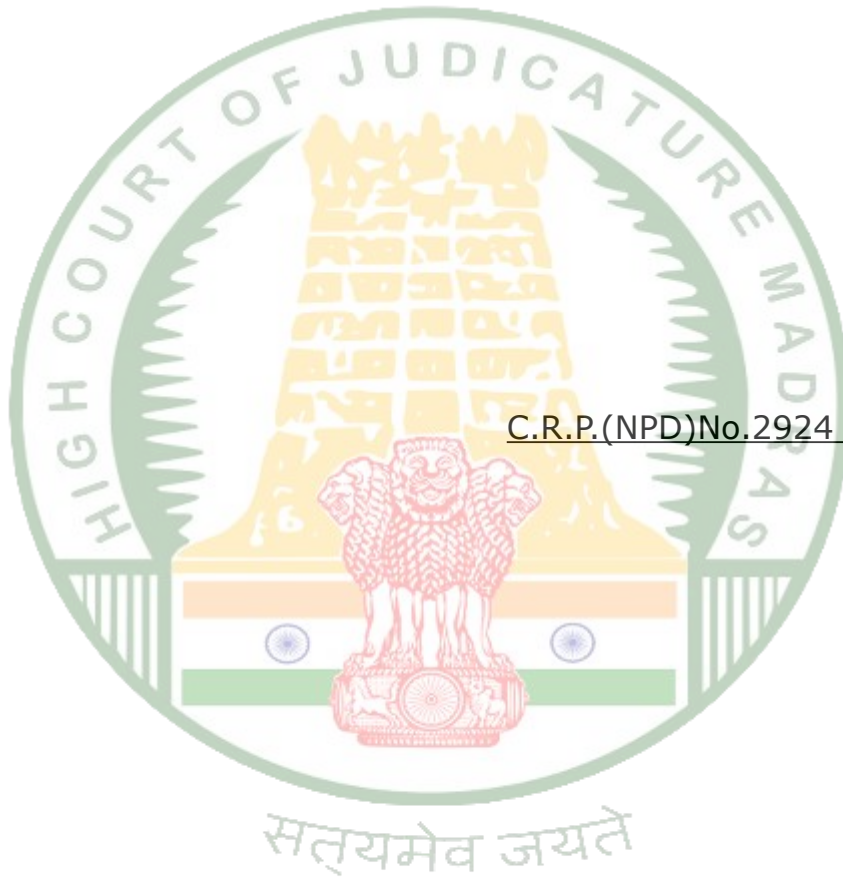
1.The Deputy Registrar of
Co-operative Societies (Housing)
Cuddalore, Cuddalore District.

2.The Principal District Court, Villupuram.

WEB COPY

V.M.VELUMANI,J.

kj



C.R.P.(NPD)No.2924 of 2009

WEB COPY 26.02.2018