

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 14.03.2019

CORAM

THE HONOURABLE Mr. JUSTICE D.KRISHNAKUMAR

W.P. No.5811 of 2014

N.Velusamy

.. Petitioner

Vs.

1.The Deputy Registrar of Co-operative Societies,
(Housing), Coimbatore Region,
Coimbatore - 641 018.

2.No.CBE-HSG-21, The Udumalpet Taluk Co-operative,
Housing Society Ltd., rep by its President,
141, Srinivasa Street, Sri Muthu Tower Upstairs,
Udumalpet-642 126

.. Respondents

PRAYER : Writ Petitions filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned orders passed by the first respondent in his proceedings Na.Ka.No.1713/2007/Ki.Sa dated 12.09.2013 alongwith the communication passed by the second respondent dated 22.10.2013 in so far it relates to the recovery of Rs.8,53,204/- from the terminal benefits and quash the same and consequently direct the respondents to settle the terminal benefits alongwith interest at the rate of 12% p.a. from the date of retirement on 30.09.2008 till its payment.

For Petitioner : Mr.K.Premkumar

For R1 : M/s.T.Girija, GA

For R2 : Mr.S.Gopinathan

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O R D E R

By consent of both parties, this Writ petition is taken up for final disposal.

2. According to the petitioner, he retired from service as Secretary on 30.09.2008 and he made a representation claiming retirement benefits payable at a sum of Rs.9,26,600/- towards Gratuity, Provident Fund, Surrender Leave Salary, etc., By proceedings dated 12.09.2013, the first respondent directed the

2nd respondent to disburse only a sum of Rs.45,756/- while ordering recovery of Rs.8,53,204/- being the amount due to the Society from and out of terminal benefits payable to the petitioner. Aggrieved by the same, the petitioner has come forward with the present Writ Petition challenging the recovery order passed by the 2nd respondent dated 12.09.2013.

3. The learned counsel for the petitioner would submit that the aforesaid impugned order was passed by the second respondent without providing any opportunity to the petitioner. The petitioner was permitted to retire as early as on 13.09.2008 and therefore, the amount to a tune of Rs.8,53,204/- towards recovery from and out of the terminal benefits of the petitioner is illegal, arbitrary, unlawful and the violation of the principles of natural justice.

4. The learned Government Advocate appearing for the first respondent would submit that the petitioner has not come forward with clear facts nor disclosed the correct facts in the writ petition. He reiterated the averments contained in paragraph No.3 of the counter affidavit, wherein, it is stated that the first respondent issued proceedings dated 28.5.2012 regarding recoveries to be made from the terminal benefits based on the Audit Objections and prior to these proceedings, 2nd respondent issued a notice dated 28.1.2011 to the petitioner regarding recoveries to be made based on Audit report, however, despite notice served, the petitioner did not choose to file any reply or explanation to the said notice. Therefore, the contention of the petitioner that the impugned proceedings were issued without giving prior opportunity is untenable. Hence, the learned Government Advocate sought for dismissal of the writ petition.

5. Heard, Mr.K.Premkumar, the learned counsel for the petitioner and Ms.T.Girija, the learned Government Advocate for the first respondent and Mr.S.Gopinathan, learned counsel for the second respondent and perused the materials placed on record.

6. On a perusal of paragraph no.3 of the counter affidavit, it is disclosed that the 2nd respondent has granted sufficient opportunity by serving notice to the petitioner on 28.01.2011, mentioning about the particulars of the recoveries to be made based on the audit report and subsequently, on 28.05.2012 the first respondent issued proceedings by giving all the details about the recoveries to be made from and out of terminal benefits of the petitioner based on the audit objections, but the petitioner has not chosen, to submit any explanation or reply.

7. As rightly submitted by the learned Government Advocate, the above said facts have not been averred in the Writ Petition nor disclosed before this Court. Further, even the

impugned proceedings were issued by the first respondent ordering recoveries to be made from the terminal benefits of the petitioner based on the Audit objection, the petitioner had not availed such opportunity to submit his explanation, therefore, the petitioner is not entitled to any relief in this writ petition.

8. In view of the above foregoings, this Court is of the view that the petitioner has not made out a prima facie case for grant of the relief as sought for in this Writ Petition. Accordingly, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Deputy Registrar of Co-operative Societies,
(Housing), Coimbatore Region,
Coimbatore - 641 018.

+1cc to Mr.K.Premkumar, Advocate, S.R.No.24043

+1cc to the Government Pleader, S.R.No.25100

W.P. No.5811 of 2014

PA (CO)

RRS (18/06/2019)

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