IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (NPD) Nos. 3009, 3010, 3013, 3024, 3026, 3030, 3035, 3036, 3037, 3015, 3019, 3022, 3023, 3027, 3032, 3038, 3039 and 3041 of 2019
and
C.M.P. Nos. 19420, 19422, 19429, 19462, 19465, 19468, 19501, 19502, 19504, 19434, 19441, 19459, 19460, 19466, 19471, 19512, 19515, and 19517 of 2019

C.R.P. (NPD) No. 3009 of 2019:

K. Umachandran .. Petitioner

-Vs-

1. The Deputy Registrar of Co-operative Societies (Credit)
   Kuralagam,
   Chennai - 600 108.

2. The President,
   The Transport Corporation Employees Co-operative
   Thrift and Credit Societies No. X-367,
   Teynampettai,
   Chennai - 600 018. ... Respondents

Prayer : Petition filed under Article 227 of the Constitution of India to set aside the judgment and fair order of the Chief Judge, Court of Small Causes Chennai dated 22.03.2019 made in C.M.A. No. 2 of 2018 confirming the Surcharge Proceedings in Na.Ka.No. 2007-2016 Sa.Pa dated 02.08.2017 passed by the Deputy Registrar of Co-operative Societies (Credit) Chennai.

For Petitioners in all C.R.Ps : Mr. S. Senthilnathan

For Respondents in all C.R.Ps : Mr. L.P. Shanmugasundaram
Special Government Pleader
(Co-operative)

COMMON ORDER

These Civil Revision Petitions have been filed against the order passed by the Co-operative Tribunal i.e., Court of Small Causes, Chennai, by order dated 22.03.2019 in C.M.A. Nos. 2, 36, 37, 40, 42, 43, 45, 47, 48, 4, 10, 11, 19, 22, 25, 27, 33, 35 of 2018.

2. These Civil Revision Petitioners are the employees of the second respondent / society and they have been working under various capacities.

3. In respect of the salary they received from in a particular point of time, it is the case of the second respondent / society that, though they have not been entitled to receive such enhanced salary, they received enhanced salary, thereby, excess payment of enhanced

salary have been paid to the revision petitioners / employers, hence such amount has to be recovered.

4. In this context, Surcharge Proceedings under Section 87 of the Tamil Nadu Co-Operative Societies Act, 1983 was initiated and ultimately, the authority concerned under the Surcharge Proceedings, passed an order on 02.08.2017, whereby totally 42 employees including the revision petitioners herein have to pay back the excess payment paid to them in one lump sum, of course with the interest of 14% per annum from the date of alleged loss sustained by the society till the date of repayment.

5. In the Surcharge Proceedings, the aforesaid sum or due to be paid by the revision petitioners and other employees was quantified as Rs.79,22,551/-.

6. Aggrieved over the said Surcharge Proceedings, each of the employees filed separate Civil Miscellaneous Appeals before the Tribunal. Those Civil Miscellaneous Appeals were heard together and

by a common judgment dated 22.03.2019, the Tribunal has rejected all the Civil Miscellaneous Appeals i.e., appeals filed by the employees against the Surcharge Proceedings. As against the said common order passed by the Tribunal in respect of Civil Miscellaneous Appeals, 18 of such employees out of the total 42, have preferred these batch of Civil Revision Petitions.

7. I have heard Mr. S. Senthilnathan, learned counsel appearing for the revision petitioners in all this batch of cases and Mr. L.P. Shanmugasundaram, learned Special Government Pleader appearing for the respondents.

8. The learned counsel appearing for the revision petitioners would submit that, the revision petitioners / employees, though received some excess pay, which, according to the Surcharge Proceedings, these revision petitioners ought not to have been paid, and accordingly, in the Surcharge Proceedings, the said excess pay paid to these employees was quantified and directed to be recovered, of course with interest. The stand of the revision petitioners / employees even before the Tribunal

was that, they are ready and willing to repay the said excess amount they received as excess salary or payment, however, with some easy installments, taking into account, all these revision petitioners are only employees of the second respondent / society.

9. The learned counsel would also point out in this regard that, the said aspect, even though having been considered and the Tribunal having also expressed that, these employees not intentionally drawn any excess amount on their own and for the said issue, the initiation of the Surcharge Proceedings was not necessitated, however, not inclined to set aside the order passed in the Surcharge Proceedings on the only ground that, if such Surcharge Proceedings is set aside, from these employees the Society may not be in a position, to recover the excess amount. Only on that ground, the Tribunal refused to interfere with the Surcharge Proceedings and thereby, dismissed the batch of appeals filed by these employees. Therefore, the learned counsel appearing for the revision petitioners would submit that, insofar as these employees / revision petitioners are concerned, they continue to maintain the stand taken before the Tribunal, when they

are ready and willing to repay the excess amount they received in this regard, before this Court, in order to show their intendment and bonafide, each of the revision petitioners / employees have come forward to file an undertaking affidavit to that effect, accordingly individual undertaking affidavits have also been filed by all the revision petitioners. Therefore taking note of the same, suitable orders can be passed by allowing these revision petitioners / employees to repay the excess amount payable to the second respondent / society on installment basis depending upon or taking into account, the remaining service period of all these employees / revision petitioners.

10. Insofar as the said suggestion or plea made on behalf of the revision petitioners, Mr. L.P. Shanmugasundaram, learned Special Government Pleader appearing for the respondents would submit that, no doubt, the Tribunal has given such finding to state that, even though the employees have come forward to repay the excess amount they received, the Tribunal since has specifically held that, on that ground, the Surcharge Proceedings cannot be set aside as that would prejudice the interest of the society on recovering the excess amount from the employees.

11. The learned Special Government Pleader would also contend that, insofar as the interest component directed in the Surcharge Proceedings is concerned, whatever order passed in the Surcharge Proceedings having been confirmed by the Tribunal, the same shall be recoverable as the decree is executable. While executing the decree, the society would be entitled not only to recover the principle i.e., excess amount paid to the employees but also entitled for interest which has also been quantified by the Surcharge Proceedings.

12. However Mr. L.P. Shanmugasundaram, learned Special Government Pleader after getting instructions from Mr. D. Peter Jeevanantham, S/o. A. Duraisamy, Deputy Registrar of Co-operative Societies (Credit), Chennai- 108, who appeared before this Court during the hearing, has submitted that, since all these revision petitioners are the employees of the second respondent / society and it is also a fact that, they come forward to repay the excess salary paid to them and in view of the same, since entire excess amount paid to these employees which was considered to be the loss to the society since could be repaid

or to be recovered, the request of the revision petitioners to pay back the same to the society may be taken into account and accordingly suitable orders can be passed by this Court.

13. I have considered the said rival submissions made by both sides and also have perused the materials placed before this Court.

14. It is an admitted fact that, all these revision petitioners are the employees of the second respondent / society, where they have been permanently working. While so, at particular point of time, they were started paying excess salary and whether the said excess salary paid to them was inconsonance with the law or not was the subject matter in the Surcharge Proceedings, where ultimately the authority concerned passed an order in Surcharge Proceedings on 02.08.2017, whereby an amount of Rs. 79,22,551/- was found and quantified to be excess amount paid to all these employees including the revision petitioners and therefore the Society is entitled to recover back from such employees, of course with interest of 14% per annum.

15. Though the said Surcharge Proceedings was assailed by all these employees before the Tribunal, by filing separate appeals, all those appeals by the common impugned order, were rejected by the Tribunal.

16. However in the said impugned rejection order, the Tribunal have made the following observations, as to why the Tribunal has not come forward to set aside the Surcharge Proceedings. The relevant portion of the said order made by the Tribunal is extracted hereunder for easy reference:

> " *The appellants had the benefit of money drawn in excess. Under such circumstances though the initiation of surcharge proceedings is not warranted, setting aside the order may vitiate recovery proceedings against the employees who has received their pay in excess. It will enrich the mischief mongers who deliberately got the pay enhanced by misguiding the special officers by giving undertaking. Under such circumstances, this Court is not inclined to allow these appeals and finds the same liable to be dismissed."*

17. Therefore it becomes clear that, the Tribunal found that the order of initiation of Surcharge Proceedings was not warranted. However, the Tribunal refused to set aside the Surcharge Proceedings on the ground that, if such Surcharge Proceedings is set aside, even though the employees have come forward voluntarily to pay back the excess amount, then it will be a great difficulty or task to recover the excess amount and it will prejudice the interest of the second respondent / society. Therefore, only on that ground, the Tribunal has refused to set aside the Surcharge Proceedings, thereby dismissed the appeals filed by the employees.

18. Before this Court also, each of the employees who filed the revisions in this batch have come forward to file separate undertaking affidavits and in order to appreciate the same, the relevant portion of the undertaking affidavits filed by the employees i.e. the affidavit filed by the revision petitioner / employee in C.R.P. No. 3023 of 2019 is extracted hereunder:

" Therefore this Hon'ble Court may be pleased to receive

the undertaking affidavit that I have no objection for recovery of excess payment made in my favour by the respondent if recovered from my salary in easy monthly installments by setting aside the Surcharge Proceedings dated 02.08.2017 and without prejudice to the outcome of the conciliation proceedings initiated by Assistant Commissioner of Labour, Chennai - 600 006 dated 09.04.2019 made in letter No. C3/039323/2018."

19. Since the said undertakings have been heavily relied upon by the learned counsel appearing for the revision petitioners by stating that, the stand has not been taken only before this Court, as it was taken before the Tribunal itself and based on which, the Tribunal in fact made a reference that, the very initiation of Surcharge Proceedings is unwarranted, however they refused to set aside the Surcharge Proceedings, thereby a very voluntary offer made by all these employees / revision petitioners to pay back the excess amount also is defeated. Therefore, in order to settle the issue amicably as the employees have come forward to pay back the excess amount, this Court can show its indulgence without prejudice to the interest of both the society as well as the employees.

20. The said submission made by the learned counsel appearing for the revision petitioners / employees has got some force in the given circumstances. The excess payment by way of salary to the employees could have been made only by the society. It is not the case against the employees that, there had been a misappropriation of money. Whether the said amount paid excessively was knowingly paid or unknowingly paid cannot be attributed to the employees only. Moreover, it was found that, for the excess payment in this regard Surcharge Proceedings was issued where the employees honestly come forward to make offer to pay back. When that being so, it cannot be justifiable, in the opinion of this Court, to compel them to pay the interest at the rate of 14% per annum. In fact, these circumstances has been visualized by the Tribunal and it went to the extent of making a reference in the impugned order itself that the very initiation of Surcharge Proceedings is not warranted in view of the attitude on the part of the employees who have come forward to pay back the excess amount, however the Tribunal for aforesaid reasons was refused to set aside the order passed by the Surcharge Authorities.

21. In the circumstances, this Court feels that, merely because the Surcharge Proceedings is modified enabling the second respondent / society to recover back the entire due payable to them by the employees, that would not vitiate the Surcharge Proceedings nor it would disentitle the Society from recovering the amount. If at all the employees / revision petitioners accepted the excess amount paid to them, it is not at their instance and the amount recoverable from the employees by the second respondent / society is not out of any unjust enrichment, for which the reasons cannot be attributed only against the employees.

22. In such view of the matter, this Court feels that, though the Society is entitled to recover back the entire principle i.e., recovery of excess money paid to each of the employees, this Court also feels that, it cannot be justified on the part of the Society to expect the interest at the rate of 14% as has been allowed in the Surcharge Proceedings.

23. Accordingly, taking into account, the totality of the circumstances and also after having considered the factual matrix and the offer having been made by the revision petitioners / employees who made a similar offer to pay back the entire excess amount before the Tribunal itself, this Court is of the view that a quietus can be given to the issue, of course in the interest of both sides, hence it is inclined to dispose of all the Civil Revision Petitions with the following directions:

> " (i) That the revision petitioners / employees shall pay back the excess amount paid to them, i.e., the amount quantified by the second respondent / Society as has been mentioned at pg. Nos. 37 to 41 of the Surcharge Proceedings dated 02.08.2017 by way of installments.
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> (ii) The installments shall be calculated, taking into account, the remaining service period of each of the employees / revision petitioners before this Court by the respondents. Accordingly depending upon the remaining service period, the due payable by each of the employees would differ from employee to employee.
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> (iii) The said exercise shall be undertaken by the respondents within a period of thirty days from the date of receipt of a copy of this order and preferably they shall

start recovering the due payable by each of the revision petitioners / employees from January 2020 salary till the entire payment is made."

24. It is made clear that, the employees are liable to pay only the principle i.e., excess payment quantified in the Surcharge Proceedings and not the interest of 14% as allowed in the Surcharge Proceedings.

25. This order shall not stand in the way to agitate the issue in respect of any service benefits of the revision petitioners / employees in future in the manner known to law.

26. With these orders, the impugned Surcharge Proceedings made in Na.Ka.No. 2007/2016 Sa.Pa-1 of the first respondent dated 02.08.2017 as confirmed by the Tribunal in the impugned order in C.M.A. Nos. 2, 36, 37, 40, 42, 43, 45, 47, 48, 4, 10, 11, 19, 22, 25, 27, 33, 35 of 2018 is hereby modified to the aforesaid extent.

27. It is further made clear that, this order is confined only to

the present revision petitioners / employees and shall not be made applicable to other employees who are also covered under the same Surcharge Proceedings, as admittedly they have not, sofar, chosen to challenge or assail the order passed by the Tribunal.

28. Accordingly, all these Civil Revision Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

25.11.2019

Index: Yes / No

Speaking order / Non speaking order

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To

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   Chennai.

2. The Deputy Registrar of Co-operative Societies (Credit)
   Chennai.

3. The President,
   The Transport Corporation Employees Co-operative
   Thrift and Credit Societies No. X-367,
   Teynampettai,
   Chennai - 600 018.

R. SURESH KUMAR, J.
vji

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