



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD).No.9224 of 2010
and M.P. (MD).No.1 of 2010

K.Gunasekaran

.. Petitioner

Vs.

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

2.A.2922 BSNL Employees Go-operative
Thrift and Credit Society Ltd.,
Rep. by its Special Officer,
Thallakulam, Madurai.

.. Respondents

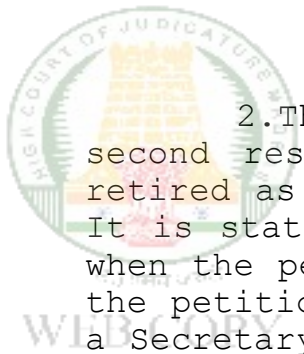
Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the 1st respondent passed in Na.Ka.No.1561/2010.Estt., dated 17.05.2010 and the orders of the 2nd respondent, dated 30.11.2009 and quash the same insofar as withholding the retirement benefits of the petitioner towards the amount paid as excess salary paid by the 2nd respondent society and consequently directing the respondents to pay the retirement benefits with 18% interest from 30.11.2009 till realization.

For Petitioner : Mr.Veerakathiravan Senior Counsel for
Mr.C.Jenanathan

For Respondents: Mr.D.Muruganandam for R1
Additional Government Pleader
Mr.R.Manoharan for R2

ORDER

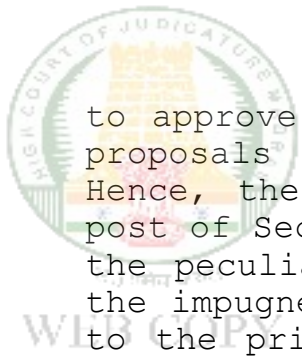
This writ petition has been filed for issuance of writ of Certiorarified Mandamus, to quash the impugned order passed by the 1st respondent in Na.Ka.No.1561/2010.Estt., dated 17.05.2010 and the orders of the 2nd respondent, dated 30.11.2009, insofar as withholding the retirement benefits of the petitioner towards the amount paid as excess salary paid by the 2nd respondent society and consequently directing the respondents to pay the retirement benefits with 18% interest from 30.11.2009 till realization.



2.The petitioner was originally appointed as a clerk in the second respondent society and completed 36 years of service and retired as a Secretary upon attaining Superannuation on 30.11.2009. It is stated that the second respondent society attained its glory when the petitioner was in the Administration as Secretary and that the petitioner was also given encomium for his excellent service as a Secretary by the predecessors in the respondent office. When the petitioner was working as an Assistant Secretary, the then Secretary by name A.Arunachalam died on 19.09.2001 and by a resolution of second respondent, dated 21.09.2001, the petitioner was posted as Secretary in-charge. Later the second respondent sent proposals to fill up the post of Secretary on regular basis to the first respondent, through the Deputy Registrar of Co-operative Society. The petitioner was found fully qualified and eligible for the promotion and hence the second respondent by resolution, dated 08.12.2003 resolved to promote the petitioner as Secretary and by order dated 08.12.2003 of Special Officer, the petitioner was promoted as Secretary of second respondent society and the petitioner continued to discharge his duties in the post till his retirement in 2009. The first respondent accepted that the petitioner was qualified. Though the second respondent submitted the proposal to ratify the promotion given to the petitioner. In spite of similar representations being given to the first respondent on several occasions, it is stated that the first respondent for reasons best known to him had not acted upon or not passed any order on the proposals submitted by the second respondent.

3.As stated by the petitioner, the petitioner retired on 30.11.2009 after attaining superannuation. The second respondent though found that the petitioner is entitled to draw a sum of Rs.5,04,629/- towards retirement benefits, by the impugned order, deducting a sum of Rs.4,06,609/-, he was paid only a sum of Rs.98,320/- towards his retirement benefits. It is to be seen that the amount deducted was stated to be the payment made in excess of salary to the petitioner. According to the respondent, his promotion to the post of Secretary was not approved and that therefore the petitioner was supposed to receive only the salary in the lower category. Though the petitioner preferred a revision before the first respondent under Section 153 of the Tamil Nadu Co-operative Societies Act, the revision petition also came to be dismissed by the first respondent. The petitioner earlier filed a writ petition before this Court in W.P.(MD).No.1413 of 2010 to consider and pass orders on his appeal and, this Court directed the first respondent to pass suitable orders on merits in the petitioner's revision petition, by an order dated 10.02.2010.

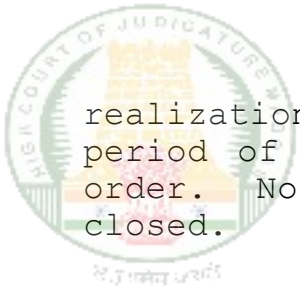
4.Thereafter, the first respondent dismissed the revision on the ground that there is no ground to interfere. The impugned order is challenged by the petitioner on the ground that it is illegal, unfair, unjust, arbitrary and liable to be dismissed. It is stated



to approve the promotion of the petitioner as Secretary. The said proposals were not considered and kept pending for no reason. Hence, the impugned order denying salary to the petitioner to the post of Secretary is stated to be unconstitutional, having regard to the peculiar circumstances. The petitioner further submitted that the impugned order of the second respondent is illegal and contrary to the principles of natural justice, inasmuch as the respondents never issued any notice before withholding any amount, which was actually deducted from the terminal benefits that are payable to the petitioner in the post of Secretary.

5.It is not in dispute that the petitioner was duly promoted as per the qualification prescribed in the rules. Neither, the first respondent nor the second respondent found that the petitioner is not qualified to the post of Secretary. The second respondent had in fact sought for approval on number of occasions. As admitted the approval was never rejected by the first respondent. The fact that the approval was pending for consideration before the first respondent is not in dispute. The first respondent has no reason to reject the proposal and the delay in process the application was not explained by the respondents. As seen from the records, it is stated that the petitioner was given encomium by the respondents for his excellent performance as Secretary of the Society in relation to his Administration. The second respondent Society is a profit earning society. It is stated in the counter affidavit that the second respondent has no authority to promote the petitioner without written orders of the first respondent. From the correspondence, it is seen that proposals were submitted long back and it is impossible to run the society without Secretary. In the said circumstances, the first respondent was expected to consider the proposal submitted for ratification and the first respondent who has no explanation for rejecting the proposal for ratification cannot contend that the promotion given to the petitioner is not proper. It is not stated that there were other objections to the promotion of petitioner as Secretary. The respondents have not produced before this Court any material to justify the contention that the petitioner is not qualified to the post of Secretary. The petitioner was in fact appointed as Secretary by the second respondent. It is stated that a formal ratification is mandatory. But the appointment is not vitiated for any other reason. The petitioner has served in the post of Secretary with effect from the date of promotion till his retirement of service on superannuation.

6.In such circumstances, the recovery or deduction without even issuing a show cause notice is unconstitutional and the petitioner is entitled to succeed. As a result, this writ petition is allowed and the order of first respondent, dated 17.10.2010, confirming the order of second respondent, dated 30.11.2009 is quashed. The second respondent is directed to pay the retirement benefits as per his entitlement in the post of Secretary with interest at the rate of 18% per annum from 30.11.2009 till



realization. The respondent shall disburse the amount within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

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To

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

2.The Special Officer,
A.2922 BSNL Employees Go-operative
Thrift and Credit Society Ltd.,
Thallakulam, Madurai.

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 93219

W.P. (MD) .No.9224 of 2010
18.10.2019

pm(CO)

TR(06.11.2019) 4P 4C