



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2020

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P. (MD) No.4975 of 2013 and
M.P.No.1 of 2013

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R.Kulasekaran

:Petitioner

Vs

1. The Deputy Registrar of Co-operative Societies,
Lalgudi Circle,
Lalgudi Taluk,
Trichy District.

2. The Special Officer,
Dalmiapuram Employees Co-operative Bank,
Dalmiapuram,
Lalgudi Taluk,
Trichy District.

:Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records pertaining to the impugned order dated 12.07.2012 in CMA CS No.18 of 2009, on the file of the District Judge, Tiruchirappalli against the order passed in surcharge proceedings dated 09.01.2009 in Na.Ka.No.670/97/ Sa Pa on the file of the Deputy Registrar of Co-operative Societies and quash the same.

For Petitioner : Mr.S.M.S. Johnny Basha

For Respondents : For R1 - Mr.S.Dhayalan

Government Advocate

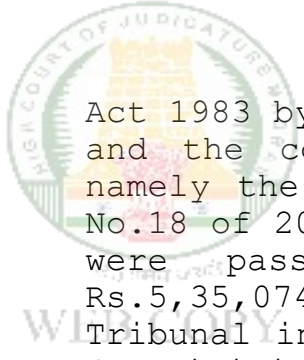
For R2 - Mr.J.Gunaseelan Muthaiah

AGP

ORDER

This Writ Petition is filed by the petitioner to call for the records pertaining to the impugned order dated 12.07.2012 in CMA CS No.18 of 2009, on the file of the District Judge, Tiruchirappalli against the order passed in surcharge proceedings dated 09.01.2009 in Na.Ka.No.670/97/Sa Pa on the file of the Deputy Registrar of Co-operative Societies and quash the same.

2. The case of the petitioner is that he is a former special officer of Dalmiapuram Employees Co-operative Bank Limited, Lalgudi, Trichy. The wages of Co-operative Society employees are paid as per settlement entered in terms of section 12(3) of Industrial Dispute Act 1947. The said practice is followed in all the societies. The present Writ petition is filed challenging the surcharge proceedings order issued under Section 87 of Tamil Nadu Co-operative Societies



Act 1983 by the first respondent in its proceedings dated 09.01.2009 and the consequential order passed by the Co-operative Tribunal namely the Principal District Judge, Tiruchirappalli in C.M.A (CS) No.18 of 2009 dated 12.07.2012. In the surcharge proceedings, orders were passed against the petitioner for the recovery of Rs.5,35,074.75/- with 18% interest. The statutory appeal before the Tribunal in C.M.A.(CS) No.18 of 2009 was also dismissed. The reason for initiation of surcharge proceedings is that the petitioner entered into a 12(3) settlement under the Industrial Dispute Act, for payment of D.A in terms of All India Consumer Price Index and thereby caused loss to the society. Admittedly entering into a 12(3) settlement under the Industrial Dispute Act for payment of D.A does not amount to a wilful negligence causing loss to a society. In fact, 12(3) settlement is made pursuant to an application by the employees before the labour officers. The petitioner being a special officer implemented the same. The payment of D.A. in terms of consumer price index is the uniform procedure followed in all the institutions including government bodies.

3. The learned counsel for the petitioner submitted that the identical issue namely initiation of surcharge for entering into 12 (3) Settlement was set aside by this Court in a detailed order dated 05.01.2017 made in W.P.(MD) No.2612 of 2008, wherein, it was clearly stated that arriving at 12(3) settlement under the Industrial Dispute Act cannot be a ground for initiation of surcharge proceedings. The Division Bench of this Court in the judgment reported in 2002-3-LW Page 185 had categorically held that unless there is an intention to cause loss to the assets of the society, the surcharge proceedings are not sustainable one. Hence, the learned counsel for the petitioner prayed to set aside the impugned orders.

4. On the other hand, the learned counsel for the respondent would state that while the earlier settlement was in force, the petitioner had entered into the subsequent settlement by which, he caused loss to the society and therefore initiation of surcharge proceedings need not be interfered with.

5. Heard both sides and perused the documents.

6. On a perusal of the judgment relied upon by the petitioner in 2002 3 LW 185, it is necessary to extract the relevant portion and the same is as follows:-

11. We respectfully agree with the view taken by the two learned judges as well as the view of the Division Bench in Jagannathan v. The Deputy Registrar (1999 (2) LW.333. No other pronouncement of this Court had been brought to our notice taking a contrary view.



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12. In the present case, it has to be pointed out that no finding has been recorded by the first respondent or by the third respondent to establish that the deficiency had been caused wilfully or deliberately or with a view to cause loss to the assets of the society. Nowhere a finding has been rendered either by the first respondent or by the third respondent in their proceedings that the petitioner is guilty of wilful negligence or wantonness, nor it has been recorded that omission or commission on the part of the petitioner is deliberate, reckless or callous or loss has been caused deliberately to the assets of the society.

13. In the absence of such a finding, as has been consistently held by this Court, that the petitioner is guilty of wilful or deliberate negligence or there is intention to cause loss to the assets of the society, it follows that the impugned surcharge proceedings in so far as the petitioner is concerned are liable to be quashed.

7. A perusal of the records shows that, as per the above judgment, authorities had not found any findings to the effect that there was wilful negligence on the part of the petitioner in connection with the 12(3) settlement and therefore this Court is of view that there is no wilful negligence or intention on the side of the petitioner to cause loss to the society and therefore no such surcharge proceedings can be initiated. Further, the learned counsel relied upon the order of this Court in WP(MD) No.2612 of 2008, wherein it was clearly held that as follows:-

"8. In the instant case, the gravamen of the charges was that by entering into 12(3) settlement, the petitioners had caused loss to the Co-operative Stores. As per the statutory provisions of the Act, in the considered opinion of this Court, it cannot be found fault with. As per the decision of this Court in Jina Chandran, S. and others v. The Registrar of Co-operative Societies and others, reported in 2000 Writ L.R.97, the lawful settlement arrived between the Society and its employees under the Industrial Disputes Act is not liable to be unilaterally set aside by this Registrar of Co-operative Societies and they cannot initiate proceedings under Section 153 of the Act and initiate recovery proceedings under Section 81 of the Act."

8. Admittedly, in the present case, the petitioner entered into Section 12(3) settlement for payment of D.A. in terms of All



India consumer Price Index and in fact, 12(3) settlement was made pursuant to the application by the employees before the Labour Officers. The petitioner being a Special Officer implemented the same. The payment of D.A. in terms of the Consumer Price Index is the uniform procedure followed in all the institutions including the Government bodies which is also not disputed and as rightly stated, arriving at a 12(3) settlement under the Industrial Disputes Act cannot be a ground for initiation of surcharge proceedings which has been settled in the above decision.

9. The above case is squarely applicable to the present case on hand. For all the foregoing reasons, the impugned order dated 12.07.2012 in CMA CS No.18 of 2009, on the file of the District Judge, Tiruchirappalli against the order passed in surcharge proceedings dated 09.01.2009 in Na.Ka.No.670/97/ Sa Pa on the file of the Deputy Registrar of Co-operative Societies are hereby set aside. Accordingly, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

vrn
To

1. The Deputy Registrar of Co-operative Societies
Lalgudi Circle
Lalgudi Taluk
Trichy District
2. The Special Officer
Dalmiapuram Employees Co-operative Bank
Dalmiapuram
Lalgudi Taluk
Trichy District

+1 CC to SPL GP (SR-434[F] dated 07/01/2020)

+1 CC to Mr.S.M.S.JOHNNY BASHA, Advocate (SR-697[F] dated 08/01/2020)

W.P. (MD) No.4975 of 2013 and
M.P.No.1 of 2013
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VB(20.02.2020) 4P 5C