BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **01.03.2021**

CORAM:
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.4343 of 2016

R.Tamilarasi ... Petitioner

Vs.

1.The Managing Director,
Madurai District Central Co-operative Bank Ltd.,
Madurai District.

2.The Branch Manager,
Madurai District Central Co-operative Bank Ltd.,
Aandipatti Branch,
Theni District. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to refund the petitioner's husband's pension benefits recovery amount of Rs.75,175/- with interest to the petitioner on the basis of the petitioner's representation dated 08.02.2016 in accordance with law within the time stipulated by this Court.

For Petitioner :Mr.A.Rajaram
For Respondents :Mr.D.Shanmugaraja Sethupathi
Standing Counsel

O R D E R

This writ petition is filed seeking a writ of mandamus, to direct the respondents to refund the petitioner's husband's pension benefits recovery amount of Rs.75,175/- with interest to the petitioner on the basis of the petitioner's representation dated 08.02.2016 in accordance with law within the time stipulated by this Court.

2. The case of the petitioner is that the petitioner's husband, namely, J.Vijayakrishnan had worked in MDCC Bank Ltd., Aandipatti Branch as a Branch Manager and retired on 28.02.2011. After retirement, the first respondent had sent a memorandum in R.C.2/10.11.E.1 dated 08.04.2011 stating that during the period of the petitioner's husband's service, the dues for the loan amount had not repaid properly by the loan borrowers. Hence, the non repayable loan amount of Rs.75,715/- was recovered from the petitioner's husband's pensionary benefits. However, the said recovery order

passed without issuing any notice to the petitioner's husband, which is non-est in law. On the sole ground this writ petition is filed for the above said prayer.

3. The learned counsel for the petitioner would submit that the non-repayable loan amount is not mis-appropriated amount or default amount and in the capacity of Assistant Manager, the petitioner's husband advanced the loan to the eligible loan borrowers. If at all, the loan was not recovered, subsequent successor has to take action against the loan borrowers to recover the amount. Instead of that fixing the responsibility on the petitioner's husband, who was retired from service in the year 2011 is unsustainable one. However, the recovery order was passed after the retirement of the petitioner's husband, ie., when there was no employee- employer relationship between the bank and the petitioner's husband. Hence, he prays for allowing this writ petition.

4. Per contra, the learned Standing Counsel would submit that the respondent Bank is registered under the Tamil Nadu Co-operative Societies Act. Hence, as per the by-law of the Bank, even after the retirement, the amount can be recovered from the retired employee's pensionary benefits. However, in the present case, the petitioner was retired from service on 28.02.2011. The Local Fund Auditor was filed the internal inspection report on 26.03.2011, based on which the recovery order was passed. Without challenging the said order, the petitioner approached this Court with the above said prayer is not proper, hence, he prays for dismissal of this writ petition.

5. In the present case, it is not disputed that the petitioner's husband was worked as Assistant Manager in the respondent Bank and retired from service on 28.02.2011. It is alleged that due to the lack of follow-up action by the petitioner's husband, the loan amount was not recovered from the borrowers, hence, the respondent bank passed the recovery order. Perusal of the impugned recovery order, dated 08.04.2011 reveals that no details were furnished in the recovery proceedings, namely, when the petitioner advanced the loan to the borrowers; whether the time bound loan was advanced to the borrowers; and if any disciplinary proceedings imposed against the petitioner's husband. Moreover, after the retirement of any predecessor in any post, immediate successor has to take steps to recover the amount. In the present case there is no allegation regarding mis-appropriation. In the absence of the above details, the order of recovery passed by the respondent Bank is against the principles of natural justice.

6. Though the prayer in this writ petition is seeking for writ of mandamus, however, considering the fact that an error on the face of the record in the impugned order, I am inclined to quash the order impugned in this writ petition and accordingly, the impugned order dated 08.04.2011 is hereby quashed.

7. With the above observations, this writ petition stands disposed of. No Costs.

Sd/-

Assistant Registrar (RTI Act)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: *In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

TO:

1.The Managing Director,
Madurai District Central Co-operative Bank Ltd,
Madurai District.

2.The Branch Manager,
Madurai District Central Co-operative Bank Ltd,
Aandipatti Branch, Theni District.

+1 CC to M/s.A.RAJARAM, Advocate (SR-8098[F] dated 02/03/2021)
+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-8305[F] dated 02/03/2021)

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