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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No.61 of 2022
and
C.M.P.No.565 of 2022

1.The Registrar of Co-operative Societies (Housing),
Veppery,
Chennai- 600 007.

2.The Deputy Registrar of Cooperative
Societies (Housing),
Cuddalore.

...Appellants

-vs-

1.R.Paneerselvam

2.The Additional Registrar/Managing Director,
Tamil Nadu Co-operative Housing Federation,
Chennai-7.

3.SAHSG -84, Chidambaram Taluk
Co-operative Housing Society Ltd.,
No.186, Deen Building,
Mela Street, Chidambaram- 608 001.

...Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order dated 26.07.2021 passed in W.P.No.28012 of 2019 and allow the above Writ Appeal.

Prayer in W.P.No.28012 of 2019 : Petition under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents to pay the retirement benefits viz., Provident Fund of Rs.9,12,185/- Gratuity of Rs.9,24,473/- arrears of salary of Rs.7,51,948/- EPF of Rs.4,31,792/- and Security Deposit of Rs.863/- totally of Rs.30,21,261/- with 12% interest from the date of retirement to till payment to the petitioner in the light of the decision of this Court reported in 2015 (6) MLJ 684.



For Appellants : Mr.Haja Nazirudeen
Additional Advocate General
Asst. by Ms.S.Anitha (R1 and R2)
Spl.Govt.Pleader (Co-op.)

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For Respondents : Mr.M.S.Palaniswamy

J U D G M E N T

S.VAIDYANATHAN, J.
and
MOHAMMED SHAFFIQ, J.

This Writ Appeal has been directed against the order dated 26.07.2021 passed in W.P.No.28012 of 2019.

2. It is the case of the Writ Petitioner that he, who has served as Secretary in the 2nd Respondent Society herein, attained the age of Superannuation on 30.06.2018 and the Respondents have denied all the retirement benefits to the Writ Petitioner, which include Provident Fund, gratuity, arrears of salary, EPF, on the ground that the criminal proceedings based on the surcharge proceedings are pending. When the same was questioned in W.P.No.28012 of 2019, the learned Single Judge, vide order dated 26.07.2021, has disposed of the said Writ Petition, with a direction to the Respondents 2 & 3 to consider the representation of the Writ Petitioner dated 15.07.2019 based on the observation made in the Writ Petition and pass suitable orders, within a period of eight weeks from the date of receipt of a copy of the order. Aggrieved by the same, the Appellants, who were the Respondents 1 & 2 in the Writ Petition, are before this Court.

3. Learned Additional Advocate General appearing for the Appellants submitted that when excess salary has been disbursed to the employees at the time of entering into service, the same ought to be recovered and if they were allowed to retire by granting entire terminal benefits, it would be difficult to recover the same from them, like that of the Writ Petitioner. The learned Additional Advocate General further submitted that the proceedings under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983 (in short 'the Act') has been initiated and in terms of Section 87 of the Act, the time limit prescribed is seven years, within which the excess amount paid is expected to be recovered from the concerned person, as there cannot be any financial loss to the Society. He also submitted that the question of interpretation under Section 87 (1) of the Act is pending before the Full Bench of this Court and till the outcome



of the decision in the matter pending before the Full Bench, the Writ Petitioner is not entitled to any relief, as was granted by the learned Single Judge.

4. Learned counsel appearing for the First Respondent/Writ Petitioner brought to the attention of this Court the order issued to the Writ Petitioner dated 11.08.2018, wherein it was stated that the Writ Petitioner has been allowed to retire from service.

5. Heard both sides. Perused the records.

6. A narrow issue is involved in this case to the effect that the act of the Respondents / Appellants herein in withholding the amount in the garb of payment of excess amount towards salary is permissible or not? The Writ Petitioner had benefit of settlement available and revision of pay and attained the age of Superannuation and he was also permitted to retire from service, but, the terminal benefits like gratuity etc., and other benefits have not been settled, which made the Writ Petitioner approached this Court.

7. A Division Bench of this Court, while elaborating the object of Cooperative Societies in the case of L. Justine V. Haridass Vs. The Registrar of Co-operative Societies reported in 2002 W.L.R. 876, held as follows:

"4. The basis of cooperative movement is to enable the people to form different cooperative societies with different objects and activities for betterment of the economic conditions particularly of the under-privileged, by collective action. Financial viability is the essential factor for sustenance of the society, as otherwise, there is no purpose of constituting the societies. Cooperative societies are not akin to other kinds of societies or associations, which are registered under the Public Societies Registration Act or other enactments. The cooperative movement is a special feature having specific object of enabling a group of persons to combine and work for economic upliftment, which is a most important factor for the development of the state/country. There is enormous contribution made by the Government for the establishment and growth of the cooperative societies, be it the grant of money or counter guarantee for the payment of money raised by way of loans from the financial institutions like banks, including the Reserve Bank of India...."



8. It was brought to the notice of this Court that a direction has been issued by the Registrar of Co-operative Societies on 22.02.1995 in respect of revision of pay, allowances and other benefits due to the abnormal rise of price of various consumer articles and other commodities. However, subsequently in view of the various representation made by the employees of Taluk Co-operative Housing Societies on 30.03.1995 on account of pay anomalies, the aforesaid direction of the Registrar was kept in abeyance, which has not come into effect as on date. The Society concerned was also permitted to enter into settlement with the employees with regard to revision of wages and other benefits that may be applicable to the employees concerned.

9. It is pertinent to mention here that though the method of appointment, etc., has been prescribed under the Act, the service conditions of the employees of the Cooperative Societies are governed by Labour Legislation under the provisions of Industrial Disputes Act, 1947 and other enactments, applicable to the Society, depending upon the number of persons prescribed in the legislation. As the employees started demanding revision of wages, which made the Government to permit Cooperative Society to have an access to settlement between the Unions, so that revision of pay scales can be periodically extended. In the present case on hand, the Writ Petitioner had the benefit of revision of pay scale based on such settlement.

10. The learned Single Judge, after hearing the parties and after taking note of Sections 78 and 79 of the Act, had passed the aforesaid order.

11. In the present case on hand, admittedly, the Writ Petitioner has already attained the age of superannuation and the gratuity and Provident Fund amount cannot be deprived on the ground that there is an action contemplated to recover the amount under Sections 82 and 87 of the Act, especially when the issue with reference to Section 87 (1) of the Act is pending before the Full Bench. Even assuming that the same is applicable, nothing prevented the Society from recovering the amount after the decision rendered by the Larger bench. That apart, the retiral benefits like Provident Fund and gratuity is not a bounty and the same has got to be paid within a time prescribed under the enactment failing which the rate of interest would apply.

12. In view of the afore-stated position, we are not inclined to accept the contention of the learned Additional Advocate General that the present Appeal could be decided only after the issue under Section 87 (1) of the Act is decided by the Full Bench. This is not the case of misappropriation or



other serious charges, so as to deprive the terminal benefits of the Writ Petitioner. Hence, in our considered opinion, the order of the learned Single judge, directing the Appellants herein to settle the terminal benefits within eight weeks together with interest is perfectly valid and needs no interference by this Court.

13. In the result, this Writ Appeal is dismissed with a direction to the Appellants to disburse the Provident Fund and the the gratuity amount payable to the Writ Petitioner, together with interest at the rate of 10% per annum from the date of retirement, till the date of actual payment, within a period of four months from the date of receipt of a copy of this judgment. It is made clear that the issue with regard to the applicability of Section 87(1) is left open for the parties to agitate before the Larger Bench. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VII)

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Sub Assistant Registrar

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To

1.The Registrar of Co-operative Societies (Housing),
Veppery,
Chennai- 600 007.

2.The Deputy Registrar of Cooperative
Societies (Housing),
Cuddalore.

3.The Additional Registrar/Managing Director,
Tamil Nadu Co-operative Housing Federation,
Chennai-7.

+2ccs to Mr.S.Palaniswamy, Advocate SR. No. 15783

+1cc to Government Pleader SR. No.16281

+1cc to M/s.S.Kanmani Annamalai, Advocate SR. No. 15763

W.A.No. 61 of 2022

MT (CO)

PR (05/05/2022)