

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. No. 1629 of 2016
and
W.M.P. No. 1380 of 2016**

M.Arumugam

... Petitioner

-vs-

1. The Director of Handlooms & Textiles,
II Floor, Kuralagam Buildings,
Chennai – 600 108.

2. The Kancheepuram Thiruvalluvar Silk,
Handloom Weavers' Co-operative Productions &
Sale Society Limited no.G.2054,
Rep. by its President,
No. 49, G-4/G-8, Pallikondathan Street,
(Mettu Street), Kancheepuram – 631 501.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the First Respondent bearing Na.Ka.No. 32322/2012/H1 dated 29.12.2015 and quash the same insofar as the First Respondent has dismissed the Petitioner's Revision Petition and consequently direct the Second Respondent to settle all terminal benefits with interest at 12% p.a from the date it became due and payable.

For Petitioner : Mr. K.M.Ramesh

For Respondents : Mr. V.Jeevagiridharan
Additional Government Pleader (for R1)

Mr. L.P.Shanmugasundaram (for R2)

ORDER

Heard Mr. K.M.Ramesh, Learned Counsel for the Petitioner, Mr. V.Jeevagiridharan, Learned Additional Government Pleader appearing for the First Respondent and Mr. L.P.Shanmugasundaram, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who was working as Clerk in the Co-operative Society of the Second Respondent, had retired from service on 30.07.2011 on attaining the age of superannuation, but his terminal benefits had not been paid. The Second Respondent by proceedings dated 30.03.2012 informed the Petitioner that the sum of Rs. 4,82,130.23 remained to be recovered from him and the balance amount of terminal benefits would be paid depending upon the financial condition of the Co-operative Society of the Second Respondent. The Petitioner had filed a Revision Petition dated 02.07.2012 against that order before the

First Respondent under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983, and this Court by order dated 22.09.2015 in W.P. No. 29821 of 2015 directed the same to be disposed within a period of four weeks. In furtherance to the said order, the First Respondent by Proceedings No. 32322/2012/H1 dated 29.12.2015 came to the conclusion that the Petitioner was entitled to the provident fund, gratuity and encashment of earned leave aggregating to Rs. 10,79,142.71, but the damages caused by the Petitioner aggregating to Rs. 2,93,930.27 and other dues of the Petitioner to the extent of Rs. 1,88,199.96 remained to be recovered from him and after adjusting the sum of Rs. 2,50,000.00 towards gratuity already been paid to the Petitioner, the balance amount of Rs. 3,47,012.48 was payable to him. The said order insofar as it relates to recovery has been challenged by the Petitioner in this Writ Petition.

3. Though it is not disputed that the sum of Rs. 1,88,199.96 towards other dues and the sum of Rs. 2,50,000.00 already paid towards gratuity would have to be deducted from the terminal benefits of the Petitioner, Learned Counsel for the Petitioner highlights that the sum of Rs. 2,93,930.27 towards the damages said to have been caused by the Petitioner could not be withheld in the absence of determination of such liability in the manner recognized by law.

4. There is substantial force in the said contention as it has not been established that any disciplinary proceedings for recovery of the said amount or surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, has been taken against the Petitioner for making him liable for the damages said to have been caused to the Second Respondent. As such, it is not possible to uphold the deduction of the sum of Rs. 2,93,930.27 towards the damages from the terminal benefits of the Petitioner in the impugned order which is set aside to that extent. In other words, the Second Respondent would have to pay a further sum of Rs. 2,93,930.27 in addition to the sum of Rs. 3,47,012.48 to the Petitioner towards his terminal benefits and file report of such compliance by 30.09.2022 before the Registrar (Judicial) of the Court.

5. Learned Counsel for the Petitioner made a fervent plea that the Second Respondent may initiate surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, against the Petitioner for recovery of the damages caused by him. As it would not be appropriate for this Court to express any view on the correctness or otherwise of the entitlement of such claim when specific pleadings have not been raised by the parties in that regard, it is clarified that if any such action is taken, it is left open to the respective parties to work out their rights in accordance with law.

6. In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

04.07.2022

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Index: Yes/No

Note: Issue order copy by 18.07.2022.

To

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P.D. AUDIKESAVALU, J.

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