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IN THE HIGH COURT OF JUDICATURE OF MADRAS

RESERVED ON : 18.04.2022
DELIVERED ON : 23.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.26327 of 2015
and M.P.Nos.1 & 2 of 2015

1.R.Jaganathan
2.C.Poongodi

... Petitioners

Vs

1.The Deputy Registrar of Co-operative
Societies,
Dharapuram Circle, Dharapuram,
Tiruppur District.

2.The Inspection Officer / Field Officer,
Vellakoil Primary Agricultural Co-operative, Credit
Society,
Vellakoil, Kangayam Taluk,
Tiruppur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the entire records relating to the impugned Inspection Report dated 24.09.2014 submitted by the 2nd respondent to the 1st respondent and quash the same.

For Petitioners : Mr.C.K.Chandrasekar

For Respondents : Mr.C.Selvaraj,
Additional Government Pleader.

ORDER

The first petitioner, while working as Assistant in the second respondent Society, was promoted as Senior Assistant in the year 1991. Likewise, the second petitioner, while working as Clerk, was promoted as Senior Assistant in the year 1994. The pay scales payable to the employees of the Society was revised, pursuant to a settlement dated 23.03.1994 entered under Section 12(3) of the Industrial Disputes Act, 1947. After about two years, the first respondent herein had ordered for an inspection of the second respondent Society under Section 82 of



'The Tamil Nadu Co-operative Societies Act, 1983' (hereinafter referred to as 'the Act'). Through the impugned Inspection Report dated 24.09.2014, it was alleged that the promotions given to both the petitioners herein were not authorised and that they had been receiving excess salaries. In this connection, it was stated that the first petitioner had caused a loss to the Society to the tune of Rs.6,02,035/- and the second petitioner to the tune of Rs.4,76,898/- by way of excess salaries. This Inspection Report is under challenge in the present writ petition.

2. Apparently, the loss owing to the payment of excess salaries to the petitioners, relates to certain acts / omissions done by the respondents in the years 1991 and 1994, when these petitioners were promoted. Such delayed claim of excess salary after about 23 years and 20 years cannot be recovered from the petitioners in view of the bar under Section 87 of the Act.

3. Section 87 of the Act empowers the Registrar to pass orders for recovery of the loss caused to the Society. However, the proviso to Section 87 places a limitation for such recovery at seven years from the date of such acts / omissions. While that being so, the present impugned Inspection Report, since relates to certain acts / omissions, which are more than 23 years and 20 years, cannot be enforced as against the petitioners herein. The limitation provided under Section 87 of the Act was dealt with by this Court in the case of K.Murugan Vs. Deputy Registrar of Co-Operative Societies, Erode Circle reported in 2011 (3) CTC 689, in the following manner.

"20. In S.V.K.Sahasramam Vs. Deputy Registrar of Co-op. Societies[(2008) 8 MLJ 231], a Hon'ble Division Bench of this Court considered the question whether the time limit, which is provided under Section 81(4) of the Act is mandatory or not and whether the word "shall" used in 81(4) of the Act has to be construed as mandatory or not. Though impugned proceedings in the present case is under Section 87, yet, the law laid down by the Hon'ble Division Bench could be applied to the present case, since, the proviso to Section 87 was also examined, wherein the Hon'ble Division Bench held as follows:-

"10.Before the learned Judge of the writ Court, the appellant relied on two learned single Bench judgments of this Court rendered in the case of T.V.Ekambaram v. Co-operative Tribunal-cum-District Judge, Madurai 2000 (2) CTC 659 and in the case of Gabriel v. Deputy Registrar (Housing), Cuddalore (2003) 2 MLJ 624:



"Provided further that the action commenced under this sub-section shall be completed within a period of six months from the date of such commencement or such further period or periods as the next higher authority may permit but such extended period or periods shall not exceed six months in the aggregate."

11. We are constrained to hold that even though no appeal has been taken to us from the said judgments, yet having regard to the well settled legal position which has been referred to hereinabove, the finding of the learned Judges in these two judgments that the period of six months in the second proviso to Section 87 of the said Act is mandatory is not a correct finding in law. We find that even though before the learned Judge of the writ Court those two judgments of the learned Judge of the writ Court those two judgments of the learned single Bench were cited, the learned Judge of the writ Court was not swayed by those two decisions and came to a correct finding, relying upon the well settled proposition laid down by the Supreme Court as pointed above hereinabove."

22. It is seen that the first proviso to Section 87 of the Act states that, provided that no action shall be commenced under Sub-Section (1) of Section 87, after the expiry of seven years from the date of any act or omission referred to in the Sub-Section.



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The expression used in the first proviso is that no action shall be "commenced". The OXFORD Concise English dictionary defines the word "commenced" to mean to "begin". The other expression, which is commonly used in legal parlance is "institute" which also means to "begin" or "set in motion". Therefore, the larger question involved is whether a show cause notice issued much earlier to the actual Audit report under Section 80 or enquiry report under Section 81 could be considered as a starting point for computation period of seven years."

4. This apart, the Hon'ble Supreme Court in the case of State of Punjab and others Vs. Rafiq Masih (While Washer) dealt with the issue of recovery in cases where payments have been made mistakenly by the employer in excess of their entitlement and summarized a few suggestions whereby such recoveries would be impermissible in law. Among these situations, the following two situations have also been held as exceptions, which the employer cannot recover:

a) recovery from the employees, when the excess payment has been made for a period in excess of five years before the order of recovery in issue;

b) recovery in cases where an employee has wrongfully been required to discharge duties of a higher post and has been paid accordingly, even though he would have rightly been required to work against an inferior post.

5. The aforesaid two exceptions squarely applies to the facts in hand. When the excess payment made to the petitioners, which is alleged to have caused loss to the Society, was in excess of five years and when these petitioners were discharging the duties in the promotional posts, which promotion is alleged to have been wrongfully given and salaries have been paid accordingly, recovery of these alleged losses to the Society, is impermissible in law, as held by the Hon'ble Supreme Court in White washer case (supra)

6. In the light of the above discussion, I am of the view that the very Inspection conducted under Section 82 of the Act, was a futile exercise and therefore, the consequential Inspection Report, since cannot be enforced, is liable to be quashed.



7. For all the forgoing reasons, the impugned order dated 24.09.2014 is quashed. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vsm

To

1. The Deputy Registrar of Co-operative Societies,
Dharapuram Circle, Dharapuram,
Tiruppur District.
2. The Inspection Officer / Field Officer,
Vellakoil Primary Agricultural Co-operative, Credit
Society,
Vellakoil, Kangayam Taluk,
Tiruppur District.

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.39088

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KK(CO)
CT/07/07/2022