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W.P.No.25087 of 2016q

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2022

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**THE HONOURABLE MR.JUSTICE M.S.RAMESH**

W.P.No.25087 of 2016  
and WMP Nos. 21481 and 21482 of 2016

R.Jaganathan

... Petitioner

Vs

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

2. The President,  
Vellakoil Primary Agricultural Cooperative Credit Society,  
Vellakoil, Kangayam Taluk,  
Tiruppur District

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the entire records relating to the impugned order passed by the 1<sup>st</sup> respondent in his proceedings Na.Ka.1043/2014/Ku.Sa dated 11.07.2016 and quash the same.

For petitioner ... Mr.C.K.Chandrasekra  
for Mr.A.Raja Perumal

For Respondents ... Mr.T.M.Rajangam  
Govt.Advocate  
For R.1  
Mr.L.P.Shanmugasundaram  
For R.2





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*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 Coop.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*



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*T.V.Ekambaram v. Cooperative Tribunal-cum-District Judge, Madurai 2000 (2) CTC 659 and in the case of Gabriel v. Deputy Registrar (Housing), Cuddalore (2003) 2 MLJ 624: 2003(3)CTC 23. In both these two judgments, the provisions of Section 87 of the said Act which relate to surcharge proceedings were examined and the learned Judges in both the aforesaid judgments construed the following proviso to Section 87:*

*"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."*

*Considering the said time limit of six months, the learned Judges came to the conclusion that the said period of six months is mandatory.*

*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*



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*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."*

*21. As noticed above, the Hon'ble Division Bench held that the finding in the Judgments referred to that the proviso to Section 87, is mandatory is not a correct finding. Therefore, a question would arise as to why such reasoning should not be extended to the first proviso to Section 87 of the Act. However, on facts of the present case, as it has been established that the action has been initiated well within the period of seven years.*



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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. 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. In the instant case, the impugned order is with regard to the recovery action taken based on the inspection report, which was the subject matter in W.P.No.26327 of 2015. Incidentally, while dealing with the Inspection Report dated 24.09.2014 in the aforesaid writ petition, this Court has quoted the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab and others Vs. Rafiq***



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**Masih (While Washer)**, wherein the Hon'ble Supreme Court had held that the employer has no power to recover any excess payment that has been made for a period in excess of five years before the order of recovery and which excess payment was due to the fault of the Department. The relevant portions of the order are extracted hereunder:-

*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*



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*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) ”*

5. In the light of the findings rendered by this Court in WP No.26327 of 2015 dated 23.06.2022 and following the judgment of the Hon'ble Supreme Court, the impugned order passed by the respondents, seeking for recovery, cannot be sustained.

6. Accordingly, the impugned order passed by the first respondent dated 11.07.2016 is hereby quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

**19.12.2022**

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Index: Yes/ No

Speaking Order/Non-speaking Order

SR

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To

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2. The President,  
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**M.S.RAMESH,J.,**

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