IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.320 of 2016

S.Mangammal ...Petitioner

-Vs-

1.The Joint Registrar of Co-operative Societies,
Vellore Zone, Vellore.

2.The Management,
Vellore District Consumer Co-operative
Wholesale Stores Ltd.,
Rep. by its Joint Registrar/Managing Director,
Old No.14, New No.32, Officer's Line,
Vellore - 632 001. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the concerned records from the 1st respondent, quash the order of the 1st respondent dated 12.12.2015 bearing Na.Ka.No.7662/15 A2, Revision Petition No.19/2015 insofar as declining to direct the 2nd respondent to refund Rs.50,181.60 recovered from the Gratuity payable to the petitioner and imposing the stoppage of increment for 3 months as illegal, arbitrary and contrary to law and consequently direct the 2nd respondent to refund Rs.50,181.60 to the petitioner along with interest at the rate of 10% per annum.

For Petitioner	: Mr.Balan Haridas
For R1	: Mr.T.Chezhian, Additional Government Pleader
For R2	: Mr.P.K.Shivakumar for Mr.M.S.Palanisamy

ORDER

The petitioner, while serving as a Sales Woman, had retired from her services on 31.05.2006. Prior to her retirement, the second respondent Society had initiated proceedings for certain charges and through an order dated 15.05.2006, there was an order of reduction in the basic pay. As against the same, the petitioner had preferred a revision under Section 153 of the Tamil Nadu Co-operative Societies Act, which ultimately resulted in a punishment of stoppage of two increments without cumulative effect, through the order of the first respondent dated 17.05.2013 and by a subsequent order dated 20.11.2014, a sum of Rs.50,181.60 was imposed as penalty, in which, the petitioner had already paid a sum of Rs.10,000/- on 22.12.2005 itself.

2. The learned counsel for the petitioner submitted that in the absence of any provision under the Tamil Nadu Co-operative Societies Act for proceeding with the enquiry against a retired employee, as well as for recovery, the impugned order cannot be sustained.

3. Per contra, the learned counsel for the second respondent submitted that the charge against the petitioner is very serious in nature, which has caused a huge loss to the Society and therefore, the same requires to be recovered only from the petitioner herein.

4. The learned Additional Government Pleader appearing for the first respondent had reiterated the same stand taken by the learned counsel for the second respondent.

5. The powers of the Co-operative Society to proceed with a departmental enquiry against a retired employee and the consequential recovery has been dealt with by the Hon'ble Full Bench of this Court in the case of ***S.Andiyannan Vs. The Joint Registrar, Co-operative Societies, Madurai Region and another*** reported in ***2015 (3) L.W. 513,*** whereby it was

held that in the absence of any bye-laws of the Society or any provision under the Tamil Nadu Co-operative Societies Act, no departmental enquiry can be proceeded with against a retired employee. The relevant portion of the order reads as follows:-

> *"29. The first legal question referred to this Bench is whether the disciplinary proceedings initiated against an employee of a co-operative society governed by the Tamil Nadu Co-operative Societies Act can be continued even after the retirement of the said employee. The decisions relied on by both the learned counsel have categorically make it clear that the legal position is that the authority could continue the departmental enquiry against retired employee, only subject to applicable statutory Rules or bye-law, which govern the terms and conditions of his service of the employee. Hence, the relevant Rules governing the service conditions of the employee is the determining factor as to whether and in what manner a domestic enquiry can be continued against an employee, who retired after reaching the age of superannuation. Hence, had there been any enquiry initiated while the delinquent employee was in service, it could be continued even after his retirement, subject to the service Rules or bye-law of the co-operative society.*

If the service Rules relating to the employee permits for continuation, there would be no bar in continuing the departmental proceeding, that was initiated while he was in service, even after his retirement. It is also categorically held by the Hon'ble Supreme Court in the latest decisions, that in such circumstances, even if the guilt is proved, there is no possibility of imposing punishment of dismissal or removal from service, as the same is not legally sustainable."

6. The aforesaid extract is self-explanatory. When there is admittedly no enabling provision under the Act or the Bye-laws of the Society empowering them to proceed with an enquiry against a retired employee or for recovery of any alleged loss, the action taken, after the petitioner's retirement, cannot be sustained.

7. Though the petitioner herein would be entitled for refund of the recovered gratuity amount that has been recovered after 31.05.2006, i.e. from the date of her retirement, the sum of Rs.10,000/-, which was paid by the petitioner voluntarily on 22.12.2005 while she was in service, may not be refunded to her. Furthermore, since the entire action initiated by the second

respondent after the petitioner's retirement is illegal, she would be entitled for refund of the recovered gratuity amount, together with interest, under the provisions of the Payment of Gratuity Act.

8. In the light of the above findings, the impugned order dated 12.12.2015 is quashed. Consequently, there shall be a direction to the second respondent herein to pass appropriate orders, refunding the entire amount that has been recovered from the petitioner herein, after her date of retirement, i.e. 31.05.2006, except the sum of Rs.10,000/- that was recovered on 22.12.2005, together with interest at the rate of 10% per annum from the date of recovery. Such orders shall be passed by the second respondent within a period of four weeks from the date of receipt of a copy of this order.

9. Accordingly, the writ petition stands allowed. No costs.

19.12.2022

Index:Yes
Internet:Yes
Speaking order
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To

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Vellore District Consumer Co-operative
Wholesale Stores Ltd.,
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M.S.RAMESH,J.

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