



Cont.Pet.No.1466 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Cont.Pet.No.1466 of 2021

R.Panneerselvam

...Petitioner

Vs.

1.Mr.A.D.Baskaran

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

2.Mr.K.Sundar

The Deputy Registrar of Co-operative Societies (Housing),
Cuddalore.

..Respondents

PRAYER : Petition filed under Section 11 of the Contempt of Courts Act, to
punish the respondents under Section 11 of the Contempt of Court's Act, 1971
for having violated the order in W.P.No.28012 of 2019 dated 26.07.2021.

For Petitioners : M/s.M.S.Palaiswamy

For Respondents : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader



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ORDER

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This petition is filed to punish the respondents for their willful disobedience of the order dated 26.07.2021 passed in W.P.No.28012 of 2019.

2.The contempt petitioner was appointed as a Clerk in Chidambaram Taluk Co-operative Housing Society Ltd., and promoted to the post of Secretary on 20.12.2011 and retired from service on 30.06.2018. The retirement benefits of the contempt petitioner was withheld and challenging the said action of the respondents, the petitioner filed W.P.No.28012 of 2019.

This Court passed an order on 26.07.2021 as follows:

9. It is seen that among the various representations made by the petitioner, a representation dated 15.07.2019, is said to be pending, before the respondents. Accordingly, the first and third respondents are called upon to consider the petitioner's representation dated 15.07.2019.

10. In the light of the above observations and findings made by this Court in the preceding paragraphs, pass a suitable



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order, within a period of eight weeks from the date of receipt of a copy of this order.

11. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

3. Since the directions issued by this Court to consider and pass final orders was not complied with, the petitioner filed a contempt petition. Meanwhile, the respondent Deputy Registrar of Co-operative Societies (Housing), Cuddalore passed orders in proceedings dated 21.09.2021, complying with the directions issued by this Court. As per the said order a sur-charge proceeding initiated under Section 87 of the Tamil Nadu Co-operative Societies Act is pending against the petitioner and the sur-charge proceeding was initiated to recover the financial loss occurred to the Co-operative Society, in which the petitioner was holding the post of Secretary. A Show Cause Notice was issued to the writ petitioner under Section 87(1) of the Act and the petitioner challenging the Show Cause Notice filed W.P.No.13342 of 2020 and an interim stay was granted by this Court and the said writ petition is pending.



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4.In this backdrop, the respondents filed W.A.No.61 of 2022 against the order passed in W.P.No.28012 of 2019, dated 26.07.2021. The Division Bench disposed of the writ appeal on 09.03.2022 as follows:

13. In the result, this Writ Appeal is dismissed with a direction to the Appellants to disburse the Provident Fund and 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.

5.As far as the sur-charge proceedings are concerned, the Division Bench granted liberty to the parties to agitate before the larger Bench, wherein, the issues are pending with reference to the actions initiated beyond seven years. With reference to the directions issued by the learned single Judge to



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consider the representation, the Writ Appeal was dismissed with a direction to the appellants to disburse the provident fund and gratuity amount payable to the petitioner along with interest at the rate of 10%. The respondents preferred Special Leave Petition (Civil) Diary No.25076/2022 and the Hon'ble Supreme Court of India dismissed the Special Leave Petition on 19.09.2022. However, the rate of interest awarded by the High Court was reduced from 10% to 7% per annum.

6.The learned counsel for the contempt petitioner mainly contended that the entire retirement benefits are not settled. Contrarily, the respondents have settled only the provident fund and gratuity amount and therefore, they have violated the orders of this Court.

7.The learned Additional Government Pleader appearing on behalf of the respondents objected the said contention by stating that even as per the Division Bench judgment, the respondents are directed to pay provident fund and gratuity amount and the said amount has already been settled and the



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petitioner also acknowledged the same and therefore, the respondents have not committed any contempt of Court.

8.The entire facts would reveal that different proceedings are causing an amount of prejudice to either of the parties to perform their obligations. The petitioner was working in a non-pensionable establishment and retired as a Secretary of the Co-operative Society which is not a state within the meaning of the Article 12 of the Constitution of India. As per the larger Bench judgment of this Court, before approaching the High Court, the employee of a Co-operative societies which is not state has to approach the revisional authority under Section 153 of the Tamil Nadu Co-operative Societies Act for adjudication of disputed issues. However, in the present case, this Court considered the fact that the petitioner sent a representation for settlement of pensionary benefits, issued a direction to consider the representation made by the petitioner on 15.07.2019 and pass orders, within a period of eight weeks from the date of receipt of a copy of this order. As per the said direction, the Deputy Registrar of Co-operative Societies (Housing), Cuddalore passed an



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order on 21.09.2021 stating that the contempt petitioner has received excess salary over and above the eligibility and to recover the financial loss occurred to the Co-operative Society, sur-charge proceedings were initiated and the Show Cause Notice issued under Section 87(1) of the Tamil Nadu Co-operative Societies Act was stayed by this Court in W.P.No.13342 of 2020.

9.In this backdrop, the respondents have preferred a Writ Appeal. The Division Bench directed the appellants in the Writ Appeal to disburse the provident fund and gratuity amount along with the interest at the rate of 10%, the Supreme Court reduced the interest as 7%. Despite the fact that the sur-charge proceedings is pending and in the event of final order in the sur-charge proceedings to recover the financial loss to the Society, the authorities competent withheld the terminal benefits. Whenever, an employee is liable to be prosecuted under the sur-charge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, the same must be concluded in all respects and in the event of settling everything, it may not be possible for the authorities to recover the financial loss ever after passing the final orders in



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the sur-charge proceedings. All these mitigating factors were not considered in view of different proceedings initiated both by the petitioner as well as by the respondents. In view of the fact that another writ petition challenging the Show Cause Notice is pending and an interim order was granted and in respect of the present contempt petition the writ petition was filed to consider the representation which was considered by the competent authorities, this Court is of an opinion that much confusion was created due to different proceedings and which resulted in an anomalous situation wherein, the department has to settle the amount even during the existence of sur-charge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act. No doubt, sur-charge proceedings are independent and even after final orders, the competent authorities are empowered to recover the financial loss even by attaching the property or otherwise. However, in the present case, the competent petitioner is an employee holding a responsible position as a Secretary. These facts are also to be considered.

10. In view of the facts and circumstances, this Court is of an opinion that the order dated 26.07.2021 passed in W.P.No.28012 of 2019 directing the



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respondents to pass orders on the representation submitted by the writ petitioner was complied with by the Deputy Registrar of Co-operative Societies (Housing), Cuddalore by issuing an order in proceedings dated 21.09.2021. As far as the Division Bench order dated 09.03.2022 in W.A.No.61 of 2022 is concerned, the matter went up to Supreme Court and the rate of interest rate was reduced to 7%. As per the Division Bench order, the respondents have settled the provident fund and gratuity amount payable to the contempt petitioner and paid a sum of Rs.23,34,547/-. The said amount had already been acknowledged by the contempt petitioner. This being the factum established, the petitioner is at liberty to claim the balance amount only after the disposal of the other proceedings pending with reference to the sur-charge proceedings initiated under Section 87 of the Tamil Nadu Co-operative Societies Act. For all these reasons, this Court do not find that the respondents have committed any contempt of Court warranting any further action.

11.In view of the statutory notice issued by this Court Mr.A.D.Baskaran, Registrar of Co-operative Societies (Housing), Vepery, Chennai and



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Mr.K.Baskar (Serving), Deputy Registrar of Co-operative Societies (Housing),
Cuddalore Region (FAC) are present before this Court.

12. Accordingly, this contempt petition is closed.

17.11.2022

Internet : Yes
Index : Yes
Speaking order
ssr



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To

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



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S.M.SUBRAMANIAM, J.

SSR

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