IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.22200 of 2017

P.Chinnappan ...Petitioner

-Vs-

1.The Joint Registrar of Co-op. Societies,
Ariyalur Region, Ariyalur,
Ariyalur District.

2.The Deputy Registrar of
Co-op. Societies,
Ariyalur, Ariyalur District.

3.The President,
TY. Spl. 69, Koovathur Primary
Agricultural Cooperative Credit Society,
Koovathur Post,
Udayarpalayam Taluk,
Ariyalur District. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order made in Na.Ka.No.1150/2014 sapa dated 21.07.2017 on the file of the firs respondent herein and quash the same and consequently direct the third respondent to pay the terminal benefits to the tune of Rs.25,12,138/- to the petitioner such as Gratuity, Provident Fund, Dearness Allowance, Leave Salary, Deposit, etc. within a time frame.

For Petitioner : Mrs.C.Suguna
for Mr.C.Munusamy

For R1 & R2 : Mr.M.R.Gokulakrishnan,
Additional Government Pleader

For R3 : Mr.L.P.Shanmugasundaram

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. The Hon'ble Supreme Court in the case of State of Punjab Vs. Rafiq Masih (White Washer) (2015) 4 SCC 334, has categorically held that recovery from employees, particularly when the mistake of excess payment was on the part of the employer, is impermissible in law. The relevant portion of the order reads as follows:-

> "18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:
>
> (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
>
> (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
>
> (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
>
> (iv) 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 should have rightfully been required to work against an inferior post.
>
> (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

3. In the present case, the petitioner, who worked as a Secretary in the third respondent Society, retired on

30.06.2009. The third respondent herein had not disbursed the retirement benefits, but for the gratuity amount of Rs.4,59,299/- alone. Even, the gratuity amount was paid on 17.10.2016.

4. At the time of retirement, there were no surcharge proceedings pending against the petitioner. By a mere submission that some loss has occurred to the Society, the petitioner's retirement benefits have been withheld. As per the counter averments, the surcharge proceedings were initiated only on 13.09.2012. Thus, when no charge or action for recovery is pending at the time of the petitioner's retirement, the third respondent has no authority to withhold the retirement benefits of the petitioner, particularly, when he was permitted to retire.

5. Even otherwise, the alleged loss to the third respondent Society cannot be recovered from a retired person, in view of the law laid down by the Hon'ble Supreme Court in White Washer's case (supra). Thus, the petitioner herein would be entitled for all the benefits.

6. In the counter affidavit filed by the third respondent herein, it is stated that the balance of the retirement benefits have been invested in a financing bank with interest.

7. In the light of the above observations, the impugned order dated 21.07.2017, is quashed. Consequently, there shall be a direction to the third respondent herein to forthwith disburse the entire retirement benefits to the petitioner, along with accrued interest, within a period of two (2) weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed, accordingly. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

hvk

To

1.The Joint Registrar of Co-op. Societies,
Ariyalur Region, Ariyalur,
Ariyalur District.

2.The Deputy Registrar of
Co-op. Societies,
Ariyalur, Ariyalur District.

3.The President,
TY. Spl. 69, Koovathur Primary
Agricultural Cooperative Credit Society,
Koovathur Post,
Udayarpalayam Taluk,
Ariyalur District.

+1cc to Mr.C.Munusamy, Advocate SR.No.6790

+1cc to Government Pleader SR.No.7399

KSM(CO)
GMY(16/02/2022)