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W.P. No.34033 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.34033 of 2019 and
W.M.P.Nos.34629, 34630 & 34633 of 2019

S.Manikkam

... Petitioner

Vs.

1.The Registrar of Co-operative Societies,
No.170, E.V.R. High Road,
Kilpauk, Chennai – 10.

2.The Deputy Registrar of Co-operative Societies,
Attur Circle, Salem District.

3.S.1210 Thumbal Primary Agricultural
Co-operative Credit Society,
Rep. By its President, Thumbal Post,
Pethanaickenpalayam Taluk,
Salem District.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in Na.Ka. 2150/2018/Ve.Se.Sa(1) dated 30.05.2018 quash the same and direct the respondents to settle and disburse all petitioner retirement benefits ie. Payment of Gratuity, Provident fund and Earn Leave Salary, Security deposit and other monitory benefits of Rs.11,27,703/- with interest of 12% of Rs.1,92,049/- totally Rs.13,19,752/-.



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For Petitioner : Mr.M.S.Palaniswamy

For Respondents : Mr.R.Neethiperumal
Government Advocate for R1 & R2
: Mr.L.P.Shanmugasundaram
Standing Counsel for R3

ORDER

The prayer sought for herein is for a writ of certiorarified mandamus calling for the records of the 2nd respondent in Na.Ka. 2150/2018/Ve.Se.Sa(1) dated 30.05.2018 quash the same and direct the respondents to settle and disburse all petitioner retirement benefits i.e., Payment of Gratuity, Provident fund and Earn Leave Salary, Security deposit and other monitory benefits of Rs.11,27,703/- with interest of 12% of Rs.1,92,049/- totally Rs.13,19,752/-.

2. The petitioner was working at the 3rd respondent Society as Secretary and he retired from service on superannuation with effect from 31.05.2018. Though the petitioner was permitted to retire on his superannuation, his retirement benefit to the extent of Rs.14,93,719/- has been retained and it has not been paid by the respondents to the petitioner and in this regard the order dated 31.05.2018 which is impugned herein states that, since certain loan advanced by the 3rd respondent Society



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during the Secretaryship of the petitioner since has not been recovered, unless and until loan is recovered, the amount payable to the petitioner by way of retirement benefits cannot be paid, therefore, accordingly it was withheld. Challenging the same, the present writ petition has been filed.

3. Heard Mr.M.S.Palaniswamy, learned counsel appearing for the petitioner who would submit that, once the petitioner has been permitted to retire from service on his superannuation, there has been no lien between the Society and the petitioner, hence the retirement benefits cannot be retained by the respondents.

4. Moreover, he would further submit that the gratuity and the other retirement benefits cannot be retained for this kind of reasons because there has been no disciplinary proceedings against the petitioner before the superannuation and no surcharge proceedings have been initiated against the petitioner during his service before his superannuation.



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5. When that being so, there was absolutely no reason for the respondents to retain the retirement benefits payable to the petitioner since it is a non pensionable service as the petitioner only depending on the retirement benefits, this kind of order cannot be passed, therefore he seeks indulgence of this Court against the impugned order.

6. Heard Mr.R.Neethiperumal, learned Government Advocate appearing for respondents 1 and 2 and Mr.L.P.Shanmugasundaram, learned Standing Counsel appearing for the 3rd respondent. They would submit that, a huge amount advanced as loan to various persons/ members of the 3rd respondent Society only at the Secretaryship period of the petitioner and if that amount has not been recovered, then it can be treated as a pay debt, by thus the 3rd respondent Society would incur a heavy loss, therefore, that loss sustained to the Society has to be reimbursed only by the petitioner. Therefore, normally the employee who is in-charge of the Society would be made responsible for recovering the said amount. Only for the said purpose, the said amount of Rs.14,93,719/- payable to the petitioner as retirement benefits has been retained, though the petitioner was permitted to retire from service on superannuation.



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7. Heard the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

8. As has been rightly pointed out by the learned counsel for the petitioner, once the petitioner reached the superannuation and he has been permitted to retire from service, the question of retaining the retirement benefits as there is no lien between the employer and the petitioner does not arise.

9. In the instant case, admittedly there has been no surcharge proceedings nor any disciplinary proceedings as contemplated or initiated till the superannuation of the petitioner and the petitioner also was permitted to retire happily on the superannuation. Therefore, at this juncture, there can be no further proceedings against the petitioner and if any action is initiated now by the 3rd respondent Society and hence the retainment of the retirement benefits payable to the petitioner, as has been stated in the impugned order, it cannot be sustained. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:



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That the impugned order is quashed and there shall be a direction to the respondents especially the 3rd respondent to release the retirement benefits payable to the petitioner i.e., Rs.14,93,719/- with interest at the rate of 6% per annum from the date of due on other benefits and the statutory interest on the gratuity from the date of its due and till the date of payment and that shall also be calculated and be paid to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

10. With this direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

04.07.2022

Index : Yes / No

Speaking Order : Yes / No

Sgl



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To

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2. The Deputy Registrar of Co-operative Societies,
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This writ petition has been listed under the caption 'For being mentioned' at the instance of the learned counsel appearing for the petitioner.

2. In the order dated 04.07.2022 in para 2 line 4, an amount of Rs.14,93,719/- has been mentioned instead of Rs.13,19,752/-. The same mistake occurred in para 6 line 12 and in the operative portion of the order in para 9 at line 4, therefore the typographical error since is pointed out, the figure Rs.14,93,719/- at paragraphs 2, 6 and 9 of the order dated 04.07.2022 shall be read as Rs.13,19,752/-.

3. The Registry is directed to issue the corrected order copy to the parties.

17.10.2022

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