



W.P(MD)No.6981 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.6981 of 2021

and

W.M.P.(MD)No.5363 of 2021

N.Krishnasamy

... Petitioner

Vs.

1.The Registrar of Co-operative Societies (Housing),
Tamil Nadu Co-operative Housing Society Complex,
2nd Floor, No.48, Ritharton Road,
Vepperi,
Chennai-600 007.

2.The Deputy Registrar (Housing),
Ramilnagasamy Charitable Building Campus,
Daniel Thomas Nagar,
Medical College Road,
Opposite to Old Housing Unit,
Thanjavur-613 007.

3.The President,
T.834, Shanmuga Nagar Co-operative Building Society,
Opposite to Kundavai Natchiar Women's College,
Kannan Nagar,
Thanjavur-613 007.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the third respondent i.e., proceedings No.Nil dated 11/02/2021 of the President , T.834 Shanmuga Nagar Co-operative Building Society , Thanjavur and quash the same relating to recovery alone since the society has already refixed the pay in the cadre of Manager and consequently direct the respondents i.e., the Registrar of Co-operative Societies (Housing) , Chennai , the Deputy Registrar (Housing) Thanjavur and the President, T.834 Shanmuga Nagar Co-operative Building Society, Thanjavur to disburse the retirement benefits as per the refixation of pay already done in the cadre of Manager and payment of Employees provident fund as contributed and entitled by the petitioner.

For Petitioner : Mr.S.Visvalingam

For R1 & R2 : Mr.R.Ragavendran
Government Advocate

ORDER

Heard the learned counsel on either side.

2. The writ petitioner was appointed as Secretary in Thirukattupalli Co-operative Housing Society through employment exchange on 23.04.1983. His service was regularized on 23.04.1984. Thereafter, he was posted in third respondent society with effect from 01.05.1996. He was posted as manager on 01.04.2001. He retired from service on 30.09.2015. The petitioner was not disbursed with the retirement benefits. The petitioner raised a dispute in that



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regard and he had been petitioning to the Registrar of the Co-operative Society in this regard. In this background, the petitioner's pay in the cadre of Manager was refixed by the third respondent and he was called upon to remit a sum of Rs.14,50,326/-. According to the respondents, this amount was paid in excess of the petitioner's entitlement and therefore, he was obliged to refund the same. Challenging the said communication, the present writ petition has been filed.

3. The respondent has filed a detailed counter affidavit. The learned Government Advocate took me through its contents. The stand of the respondent set out in Paragraph No.5 of the counter affidavit reads as follows:-

“5. The final audit of the 3rd respondent Co-operative Society was conducted every year by the Co-operative Audit Department of Tamil Nadu Government under the control of the Finance Department of the Tamil Nadu Government. The final audit was conducted in the 3rd respondent Cooperative Society under Section 80 of 1983 Tamil Nadu Cooperative Societies Act and the Audit Certificate was issued by the Assistant Director of Cooperative Audit, Thanjavur. I humbly submit that the final audit was completed in the third respondent Cooperative Society upto the year 2018-2019. And I also submit that in this final audit report also, there is pay objection in the audit report and the objection amount of Rs.14,32,138.60 as on 31.03.2019 was not remitted by the petitioner as on date.”

It can be seen therefrom that the refixation has been done only pursuant to the audit objections.

4. After carefully considering the rival contentions and going through



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the materials on record, I am more than satisfied that the impugned order has to be set aside. The writ petitioner had retired from service way back in the year 2015. Several years thereafter, the order calling upon the petitioner to refund a sum of Rs.14,32,138.60/- has been passed. The learned Government Advocate would strongly assert that the petitioner had given a letter of undertaking and therefore, the present writ petition will not lie.

5. On going through the papers enclosed in the typed set of papers, it is seen that the letter of undertaking referred to by the learned Government Advocate was given by the writ petitioner on the eve of his retirement. I can understand if such a undertaking was obtained at the time of fixing his pay. But no such undertaking was obtained from the petitioner then. Only at the time of retirement, it was obtained. This will not in any way advance the case of the respondents. My attention has been drawn by the learned counsel appearing for the petitioner to the order dated 18.12.2019 in W.P.(MD)No.873 of 2019 (C.Karuppiah Vs. The Principal V.S.S.Government Arts College, Poolankurich, Sivagangai District). The learned Judge had extensively relied on the decision reported in **(2015) 4 SCC 334 (State of Punjab and others Vs Rafiq Masih (White Washer))**. It is well settled that directing recovery long after the retirement of the employee will definitely cause enormous hardship. It is not as



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if the petitioner had misrepresented and thereby obtained an erroneous pay fixation. More than anything else, the respondents are attempting to put the clock back by almost 19 years.

6. Respectfully following the ratio laid down by the Hon'ble Apex Court, I hold that the impugned recovery cannot be allowed. The impugned communication is set aside. I have only set aside the order directing refund or recovery what has been paid to the petitioner cannot be recovered. It is of-course open to the respondents to correctly fix the petitioner's pay after giving due notice to the petitioner. The pensionary and other benefits payable to the writ petitioner shall be paid as per re-fixation. I have not gone into as what it would be his entitlement. The entire exercise of re-fixation and disbursement of the benefits to the petitioner shall be concluded within a period of ten weeks from the date of receipt of a copy of this order.

7.The Writ Petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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To

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