



W.P(MD)No.9767 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2022

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THE HONOURABLE MR.JUSTICE G. CHANDRASEKHARAN

W.P(MD).No.9767 of 2016

and

W.M.P(MD).No.5469 of 2017

T.Sundararaj,

: Petitioner

Vs

1. The Registrar of Co-Operative Societies,
Office of the Registrar,
No.170, Periyar E.V.R. High Road,
Kilparuk,
Chennai-600 010.

2. The Joint Director Of Co-Operative Societies,
Kanyakumari Division, Nagercoil

3. The Kanyakumari District Central
Co-Operative Bank Ltd.,
Rep. by the Managing Director,
Nagercoil-659 001

: 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, calling for records relating to the impugned order passed by the second respondent dated 12.03.2016 in Na.Ka.No.880/2016 ஈஓ and quash the same and issue a consequential direction to the second respondent to consider petitioner revision dated 12.01.2016 on merits and in accordance with law.

For Petitioner : M/s.N.Dilipkumar,

For R1 and R2 : Mr.M.Senthil Ayyanar,

Government Advocate (Crl.Side)

For R3 : Mr.D.Shanmugaraja Sethupathi

ORDER

This writ petition has been filed in the nature of Certiorarified Mandamus, seeking to quash the impugned order passed by the second respondent dated 12.03.2016 in Na.Ka.No.880/2016 ஈஓ and consequently, to direct the second respondent to consider the petitioner's application dated 12.01.2016.



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2.The learned Counsel appearing for the petitioner submitted that the petitioner joined in the third respondent Society as a Junior Supervisor, on 19.10.1971 and retired as Cashier on attaining the age of superannuation, on 31.12.2022. There was a surcharge proceedings in C.M.A.(CS) 26 of 2021, which is pending against him, on the file of the learned District Judge, Nagercoil. The petitioner was allowed to retire after withholding the terminal benefits, vide order, dated 31.01.2022 in R.C.No.3597/2002- 2003. This Court, in C.R.P(MD)No.41 of 2005, dated 15.12.2008, quashed the said surcharge proceedings. The third respondent Society had framed a gratuity scheme for its employees and the periodical deductions are deposited to the Life Insurance Corporation of India. The petitioner's file number is T.000203 and the gratuity amount of Rs.2,10,699/-(Rupees Two Lakh Ten Thousand Six Hundred and Ninety Nine Only) was paid to him on 13.10.2009. His gratuity amount was paid belatedly and therefore, he gave a representation to the authorities, seeking payment of interest on the belated payment. Then, he filed a writ petition in W.P(MD)No. 997 of 2011 and this Court disposed of the same and directed the third respondent therein to consider the petitioner's request and also directed that if the petitioner is found entitled for gratuity, it



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shall be paid with statutory interest of 10% per annum from the date it became due. He also sent an additional representation, dated 06.01.2014, seeking the benefits of interest upon the belated amount. But, there was no response and therefore, he sent a request under the Right to Information Act, on 01.07.2014. It was responded with an order, dated 06.06.2014, declining the interest. He filed an appeal before the first respondent on 01.09.2014, challenging the said order. He had repeatedly sent communications and vide communication, dated 09.07.2015, the first respondent redirected his appeal to the third respondent, for further action and that was disposed of by the third respondent by order, dated 04.08.2015, stating that the petitioner is not eligible for interest on the belated payment of gratuity. He again filed an appeal against the said order before the first respondent and that was returned holding that it is not maintainable and he can file a revision petition under Section 153 of the Co-operative Societies Act. He filed a revision petition under Section 153 of the said Act before the second respondent. The second respondent, in the impugned order, dated 12.03.2016 in Na.Ka.No.880 of 2016 ஈஹ, rejected the petitioner's revision petition, on the ground that it is barred by limitation. Therefore, the petitioner left with no other option, approached this Court.



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3.The learned Counsel appearing for the first and second respondents submitted that the first respondent is not a necessary party in this petition, for the reason that the second respondent is competent to decide the issue. The second respondent decided the petition on the ground that it was filed out of time. There is nothing wrong in the order passed by the second respondent.

4.The learned Counsel appearing for the third respondent submitted that against the original order passed on 06.06.2014, revision lies. However, the petitioner wrongly filed one Appeal and then another Appeal. It is out of time. He may approach the third respondent with a petition to condone the delay in filing the revision for disposal on merits.

5.I have considered the rival submissions and perused the records.

6.Admittedly, the gratuity was paid to the petitioner belatedly. Section 7(3)(A) Payment of Gratuity Act, 1972, runs as follows:

'(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to



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the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify.

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.'

7.It is clear that the petitioner is entitled to claim the interest amount for the belated payment of gratuity. The petitioner has been pursuing his cause from 2014, of course, before the wrong authorities, by filing Appeal instead of filing revision under Section 153 of the Co-operative Societies Act and now, revision petition is filed and that was dismissed on the ground of delay. Pursuing a cause before the wrong authorities may be condoned.

8.In view of the above, this Court directs the second respondent to dispose of the revision petition, as if it is filed on time, after giving opportunity to the petitioner and the third respondent, within a period of six weeks from the date of receipt of a copy of this order.



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9. With the above direction, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

28.07.2022

Index : Yes / No
Internet : Yes/ No
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To

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