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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.10781 of 2015

E.Ponmani ... Petitioner

-Vs-

1. The Joint Registrar of Co-operative Societies,
   Collectorate Office Complex,
   Tiruvallur (PO) and (Dt).

2. The President,
   J.J.747, Orakkadu Primary
   Agricultural Cooperative Credit
   Society Ltd,
   Orakkadu (PO),
   Chennai-600 067. ... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the records of the first respondent relating to his order in No.Rc.2939/2014 A3 dated 28.11.2014 confirming his earlier order in No.Rc.575/2012 A3 dated 22.12.2012 and quash both the orders and consequently direct the respondents to settle the total amount of Rs.1,92,863/- due to the petitioner with interest at 12% from the dates when the individual items became payable.

For Petitioner : Mr.P.Anbarasan

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For Respondents
R1 : Mr.Yogesh Kannadasan
Special Government Pleader
R2 : Mr.N.Nithianandam

ORDER

This Writ Petition has been filed for the issuance of Writ of Certiorarified Mandamus, calling for the records of the first respondent relating to his order in No.Rc.2939/2014 A3 dated 28.11.2014, thereby confirming his earlier order of deduction to the tune of Rs.1,40,897/-, in No.Rc.575/2012 A3 dated 22.12.2012.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

3. The petitioner had joined in the service of the second respondent and he was superannuated as Secretary of the society on 31.05.2010. While he was in service, he was suspended from service on 29.04.2003. The same was challenged before this Court in W.P.No.10852 of 2004. Though the suspension order was stayed by this Court by an order dated 21.04.2004, the petitioner was reinstated to

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service only on 20.01.2005. Subsequently, the writ petition in W.P.No.10852 of 2004 was dismissed on the ground that already the suspension order was revoked. Subsequently, the second respondent served a charge memo dated 01.09.2009, after a period of six years. The enquiry was conducted and found that four charges had been partly proved. After issuance of show cause notice, the petitioner was permitted to retire voluntarily. However, the petitioner was settled with retirement benefits after deduction of Rs.1,40,897/-. Therefore, the petitioner filed a revision before the first respondent. The first respondent disposed the revision by an order dated 22.12.2012, thereby directed the second respondent to disburse the terminal benefits after deducting the admitted amount by the petitioner. Aggrieved by the same, the petitioner again filed a review before the first respondent and the same was dismissed.

4. The learned counsel for the petitioner contended that

(i) the accumulation in the Provident Fund account was Rs.1,22,620/-. Out of this, Rs.36,000/- was invested in the Central Co-operative Bank branch at Ponneri in the petitioner's name. The balance amount was being utilized in the funds of the society. Therefore, a sum

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of Rs.36,000/- was recovered from the retirement benefits due to the petitioner.

(ii) For the year 2007-08, the Government sanctioned exgratia payment of Rs.1,200/- to all employees of Co-operative Societies. All the employees of Co-operative societies who had worked for minimum 30 days in a year are eligible to get it. But the respondent society deducted a sum of Rs.1,003/- on the pretext that the petitioner had worked only for 60 days in the year 2007-08.

(iii) the second respondent also deducted a sum of Rs.11,075/- towards the alleged loss in the auction sale of jewels. In the disciplinary proceedings, the Domestic Enquiry Officer held that the said charge was not proved against the petitioner.

5. It is the further contention of the learned counsel for the petitioner that the petitioner had applied for medical leave annexed with medical certificates for a period of 175 days. The leave exhausted till 10.09.2007. As per the settlement under Section 12(3) of the Industrial Disputes Act No.Rc.1934/99 dated 15.09.1999, the employee of the society is entitled for other benefits in accordance with the orders of the

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Government from time to time. Therefore, the leave salary of Rs.70,420/- for a period of 175 days of medical leave is very much available to the petitioner. He also contended that the suspension order was stayed by this Court on 21.04.2004. Whereas, the petitioner was reinstated to service only on 20.01.2005. The intervening period has to be treated as duty and the difference of amount of Rs.74,365/- is to be paid to the petitioner.

6. A perusal of the counter filed by the second respondent revealed that insofar as a sum of Rs.36,000/- which was invested in the in the Central Co-operative Bank branch at Ponneri is concerned, it was inadvertently with held by the second respondent. Therefore, the second respondent agreed to refund the same. Insofar as the exgratia amount is concerned, admittedly the petitioner had worked only for 60 days for the year 2007-08. The remaining period, the petitioner was unauthorizedly absent and subsequently he had submitted a leave application under the medical leave along with medical records. Insofar as the sum of Rs.11,075/- is concerned, the petitioner alone was responsible for the loss in the auction sale of the jewels. Therefore, it was deducted from the

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terminal benefits of the petitioner. During the suspension period, the petitioner was paid with eligible subsistence allowance and as such the period of suspension cannot be treated as duty and the petitioner is not entitled for entire salary for that period.

7. In view of the above, the second respondent is directed to disburse a sum of Rs.36,000/- which was invested in the Central Co-operative Bank branch at Ponneri in the petitioner's name forthwith. Insofar as the loss in the auction sale of jewels is concerned, the petitioner was exonerated from the said charge. That apart, the amount due to the loss in the auction sale of jewels were recovered from other delinquents. Therefore, the petitioner is entitled for a sum of Rs.11,075/- forthwith. Insofar as the leave salary is concerned, the petitioner is at liberty to submit a fresh representation to the second respondent. On receipt of the same, the second respondent is directed to consider the same, if the petitioner is entitled for leave salary.

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8. With the above directions, this writ petition is disposed of. No costs.

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Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

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   Tiruvallur (PO) and (Dt).

2. The President,
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