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W.P.No.11424 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.02.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.11424 of 2016

R.Arumugam,
Assistant General Manager(Retd.)
42/40, Durgaiamman Kovil Street,
Thiruvannamalai.

.. Petitioner

/versus/

1.The Joint Registrar,
Tamil Nadu Co-operative Societies,
Thiruvannamalai.

2.The State Registrar,
Thiruvannamalai State Co-operative Societies,
Thiruvannamalai.

3.The Managing Director,
Central Co-operative Bank,
Thiruvannamalai.

(R3 impleaded vide order dated 07.02.2023
made in W.M.P.No.479/2023 in
W.P.No.11424/2016 by MSRJ)

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent in Na.Ka.No.8659/2015/Sa.Pa (Appln.No.9/2015/Sa.Pa) dated 12.01.2016 and quash the same as illegal,



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improper and unjust and further direct the 2nd respondent to release the terminal benefits due towards the petitioner and thereby render justice.

For Petitioner :M/s B.S.Mitra Neshaa
for Ms.V.Srimathi

For Respondents :Mr.T.Chezhan,
Additional Government Pleader

ORDER

When the petitioner herein had retired from the services of the 2nd respondent- Co-operative Society, on 29.02.2004, his retirement benefits was withheld. The reason assigned is that, certain surcharge proceedings were pending against him. In this connection, he had preferred a Revision under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 before the Joint Registrar of Tamil Nadu Co-operative Societies in Rev.P.No.9 of 2015 and by an order dated 12.01.2016, the revision was rejected, predominately on the ground that, the surcharge proceedings were pending owing to which the Society had incurred certain losses. Challenging the same, the present Writ Petition has been filed.

2. The learned counsel appearing for the petitioner submitted that the pendency of the surcharge proceedings cannot be a reason for withholding the retirement benefits.



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3. Per contra, the learned Additional Government Pleader appearing for the respondents submitted that, in view of certain infirmities that had occurred, when the petitioner was in service, the Society had incurred huge loss and the same has to be recovered from him. He further submitted that as against the order passed under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983, an appeal in C.T.A.No.3 of 2006 has been filed and the same is pending.

4. When the petitioner reached the age of superannuation on 29.02.2004, admittedly, no surcharge proceedings were initiated. The surcharge order in No.2/05-06 passed under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 pertains to the alleged loss, that had occurred during the year 2005-2006, after the petitioner was permitted to retire from the service.

5. When no such proceedings were pending at the relevant point of time, this Court is unable to accept the submission as to how the second respondent may have the authority to withhold the retirement benefits



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which the petitioner is legally and rightfully entitled to.

6. This Court, in an identical circumstances in the case of ***P.Chinnappan vs. The Joint Registrar of co-op. Societies, Ariyalur Region, Ariyalur, Ariyalur District and others in W.P.No.22200 of 2017, dated 03.02.2022***, has upheld this ratio in the following manner.

“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.”

7. The right of the petitioner to receive the retirement benefits is a legal right, which cannot be withheld, in view of the pendency of the



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surcharge proceedings. Even assuming that the orders are passed against the petitioner in the surcharge proceedings, the mode of recovery under the Tamil Nadu Co-operative Societies Act, 1983, is only to invoke the provisions of the Revenue Recovery Act, 1890. Further more, the gratuity payment to the retired employee cannot be attached under the provisions of the Payment of Gratuity Act, 1972. Since the entire action of the respondents in withholding the retirement benefits is illegal and unconstitutional, he need not be directed to avail the alternate remedy under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983.

8. Thus, when the surcharge proceedings were not even initiated, when the petitioner had retired from the service, there is no justification on the part of the respondents to withhold the petitioner's retirement benefits.

9. Accordingly, the impugned order in Na.Ka.No.8659/2015/Sa.Pa(Appln.No.9/2015/Sa.Pa) dated 12.01.2016 on the file of the first respondent is quashed. Consequently, there shall be a direction to the respondents herein to forthwith disburse the entire retirement benefits of



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the petitioner including gratuity including statutory interest at the rate of 10% p.a., from the date of retirement, till the date of actual payment. Such order shall be passed, atleast, within a period of six weeks, from the date of receipt of a copy of this order.

10. Accordingly, the Writ Petition stands allowed. No costs.

14.02.2023

Index:yes/no
Speaking order/non speaking order
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To:

1.The Joint Registrar,
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Thiruvannamalai.

2.The State Registrar,
Thiruvannamalai State Co-operative Societies,
Thiruvannamalai.

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M.S.RAMESH, J.

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