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Writ Appeal No.933 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.11.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE G.ARUL MURUGAN**

**Writ Appeal No.933 of 2012
and M.P.No.1 of 2012**

The Special Officer,
P.Nadampalayam Primary Agricultural,
Cooperative Bank,
Nadampalayam Post,
Avinashi Taluk,
Coimbatore District.

... Appellant

Vs

1. K.Murugasamy, (Died)
2. The Joint Registrar,
Co-operative Societies,
Coimbatore Circle,
Coimbatore.
3. The Deputy Registrar of Co-operative Societies,
Coimbatore Circle, Coimbatore.
4. M.Vimala Devi
5. M.Anandh

... Respondents

[R4 and R5 are brought on records as legal heirs of deceased 1st respondent viz., K.Murugasamy vide order dated 31.08.2023 made in CMP.No.19843 of 2023 in W.A.No.933 of 2012]



Writ Appeal No.933 of 2012

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 08.02.2012 made in W.P.No.48727 of 2006.

For Appellants : Mr.N.Manokaran
For Respondent : Mr.R.Kumaravel
Additional Government Pleader
[R2 and R3]
R1- Died
R4 and R5 – No appearance

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This intra-court appeal has been directed against the order passed by the Writ Court dated 08.02.2012 made in W.P.No.48727 of 2006.

2. The respondent was an employee of the appellant Society, against whom some surcharge proceedings seems to have been initiated by the Society.

3. In the meanwhile, the employee has become superannuated and was retired. However, his retiral benefits including the gratuity to the extent of more than 5 lakhs was retained and it has not been released by the Society. Therefore, in order to release the retirement benefits, the writ



petitioner/respondent had approached the Writ Court by filing a writ petition in W.P.No.48727 of 2006.

4. The said writ petition having been heard was ordered by the Writ Court by order dated 08.02.2012, where the learned Judge has passed the following order:

“A bare reading of the above said provisions would make it crystal clear that Provident Fund and Gratuity amounts cannot be attached. Now it is stated in the counter that the loss caused to the third respondent bank is to the tune of Rs.2,29,212.74, but according to the learned counsel for the petitioner he is entitled to the consolidated amount of Rs.5,59,833/- and as such, the third respondent herein is hereby directed to deduct the amount of Rs.2,29,212.74 as stated above and the balance amount out of the amount of Rs.5,59,833/- with simple interest @ 6% p.a from the date the amount fell due till the date of payment, shall be paid to the petitioner within a period of eight(8) weeks from the date of receipt of a copy of this order.

11. It is made clear that the order passed by this Court in this writ petition does not mean that the liability of the petitioner, if any to the third respondent, is wiped out and it is for the third respondent to recover the same in the



manner known to law, as this Court is of the considered view that the impugned order dated 30.09.2006, allowing the petitioner to retire without prejudice to the pendency of the writ petition in W.P.No.225 of 2004 and without prejudice to the pendency of the administrative and audit objections, does not suffer from infirmities and illegalities and more particularly W.P.No.225/2004 was already allowed in favour of the petitioner setting aside the suspension order passed against him earlier and the other pending proceedings is not at all against the petitioner.”

5. Aggrieved over the same, the Society preferred the present appeal.

6. Heard Mr.N.Manokaran, learned counsel appearing for the appellant/Society.

7. Insofar as the respondent/retired employee is concerned during the pendency of the appeal, since he died, his legal heirs have been brought on records. Though notice had been served and the names have been printed in the cause list, none of them appeared before this Court.

8. Be that as it may. On merits, it is the submission of the learned counsel appearing for the appellant/Society that, calculation that has been



taken by the learned Judge on the basis of the submission made by the writ petitioner's counsel before the Writ Court was erroneous one because the gratuity amount altogether payable to the employee was only Rs.4,20,283/- however, it was wrongly calculated as Rs.5,59,833/-.

9. Therefore in the said amount i.e., Rs.4,20,283/- the payment of surcharge of Rs.2,29,212.74 + interest is calculated, Rs.2,00,424.64 is the due payable by the petitioner to the Society.

10. However, we found that the said calculation given by the Society with regard to the payment of surcharge with interest is concerned, it is to be noted that the learned Judge in fact directed the Society to retain the amount of Rs.2,29,212.74 equal to the surcharge amount.

11. Insofar as the gratuity and retirement benefits payable to the employee is concerned, it has become due immediately after his retirement i.e., from 30.09.2006, definitely it gains interest that is the reason why the learned Judge through the impugned order directed to retain the amount equal to the loss caused to the Society by way of



surcharge proceedings but pay back the balance amount to the employee of-course with interest at the rate of 6% per annum. If this is calculated certainly the amount payable to the employee is more and not to the tune of Rs.4,20,283/- alone as stated by the learned counsel appearing for the appellant/society.

12. Be that as it may, as the legal heirs of the employee are not before this Court despite the notice having been served on them, on the basis of the arguments advanced by the learned counsel appearing for the appellant/society and having taken note of the factual matrix of the case, we feel that this appeal can be disposed of with the following directions:

- ◆ That the appellant Society can retain the sum of Rs.2,29,212.74 as directed by the learned Judge in paragraph 10 of the impugned order and the remaining amount out of the gratuity and other retirement benefits payable to the deceased employee is concerned shall be paid back to the legal heirs of the employee with interest at the rate of 6% per annum as allowed by the learned Judge.
- ◆ In this context, whether the amount payable to the employee is Rs.5,59,833/- or Rs.4,20,283/- alone as claimed by the learned counsel appearing for the appellant/Society is concerned, we do



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not want to go into that controversy as of now. Assuming that if Rs.4,20,283/- shall be taken into account as a amount payable to the employee, out of which Rs.2,29,212.74/- can be retained. However, remaining amount with interest at the rate of 6% from the date of due till the date of payment shall be calculated and be paid within a period of eight(8) weeks from the date of receipt of a copy of this order.

With these directions, this Writ Appeal stands disposed of. No costs. Connected miscellaneous petition is closed.

(R.S.K.,J.)

(G.A.M., J.)

10.11.2023

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
mp

To

1. The Joint Registrar,
Co-operative Societies,
Coimbatore Circle,
Coimbatore.
2. The Deputy Registrar of Co-operative Societies,
Coimbatore Circle, Coimbatore.



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