IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 06.03.2023

CORAM:
THE HON'BLE MRS.JUSTICE S. SRIMATHY

W.P.No.872 of 2018
and W.M.P.No.1047 of 2018

D.Lokaiah ...Petitioner

Vs

1.The President,
C.2517, Chinnavarikkam Primary Agricultural
Co-operative Credit Society,
Chinnavarikkam Village and Post,
Ambur Taluk, Vellore District.

2.The Secretary,
C.2517, Chinnavarikkam Primary Agricultural
Co-operative Credit Society,
Chinnavarikkam Village & Post,
Ambur Taluk, Vellore District.

3.The Joint Registrar of Co-operative Societies,
Vellore Zone,
Vellore District. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records in Na.Ka.No.9165/2017 A2 Review Petiton No.5 of 2017 passed by the third respondent dated 14.09.2017 and quash the same and further direct the respondents 1 and 2 to settle all the withheld retirement benefits with 18% interest to the petitioner.

For Petitioner : No representation

For Respondents : Mr.T.Chezhiyan
Additional Government Pleader

O R D E R

This Writ Petition is filed challenging the order dated 14.09.2017 passed by the third respondent rejecting the Review Petition filed by the petitioner and consequently to direct the respondents 1 and 2 to settle all the withheld retirement benefits with 18% interest.

2.The case of the petitioner is that he was employed in the respondent society as salesman from 1986 to 2015 and on 31.05.2015, he attained the age of superannuation and retired from service. On the eve of retirement, a charge memo was issued, alleging that the petitioner has caused a loss of Rs.1,09,788/- to the society during the period from 1997 to 1999 since excess salary was paid to him by the society. The respondent claimed that there was an audit objection to that effect and that was brought to the knowledge of the petitioner, on the verge of his retirement. Immediately, the petitioner gave a consent letter dated 20.05.2015 consenting to deduct the amount so that he can retire peacefully. Accordingly, after withholding the sum of Rs.1,09,788/-, the petitioner was permitted to retire. After retirement, the petitioner submitted representation for refund of the withheld amount.

However, the respondent relied on the consent letter dated 20.05.2015 and refused to consider the representation of the petitioner.

3. Even according to the respondents in their counter in Para 12, it was stated that the petitioner cannot take a different stand to ignore the consent letter dated 20.05.2015 given by him.

4.This Court is of the considered opinion that the respondents have not considered the objection of the petitioner properly. The loss is assessed on the basis of the audit objection. The respondents cannot take the audit objection as it is and fix the liability on the petitioner. After receipt of the audit objection, the respondents ought to have conducted enquiry, if in the enquiry it is proved that there is excess payment, then the respondents ought to have fixed the liability on the petitioner and thereafter, proceeded for recovery. Such an action was not resorted to by the respondents, but simply accepted the audit objection and recovery is made. This lapse cannot be acceptable and hence, the impugned order is set aside. Moreover, the consent letter dated 20.05.2015 was given by the petitioner to peacefully retire from service, otherwise the petitioner could not get the terminal benefits. The petitioner has submitted the consent letter with apprehension, otherwise the terminal benefits would not be paid. Hence the consent is not voluntary. Therefore, such consent letter cannot be acted upon. Hence, the respondents are directed to repay the deducted amount to the petitioner with interest at the rate of 6% per annum within a period of eight weeks from the date of receipt of copy of this order.

5.With the above directions, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

06.03.2023

Index:Yes/No
Speaking order/Non-speaking order
vkr

To

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S.SRIMATHY, J.

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