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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2023

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.6657 of 2023
and W.M.P.No.6721 of 2023

S.Elumalai ... Petitioner

Versus

1.The Joint Registrar of Co-operative
Societies,
Villupuram Region,
Villupuram District.

2.The Deputy Registrar of Co-operative
Societies,
Thirukkovilur Circle,
Villupuram District.

3.The Management of E-1503,
Arakandanallur Primary Agricultural
Co-operative Credit Society,
Rep. by its President/Secretary,
Arakandanallur,
Villupuram District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the order passed by the 3rd respondent dated 10.02.2023 and quash the same

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and consequently, direct the respondents to pay the retirement benefits to the petitioner namely Employees' Provident Fund, Gratuity and Leave Encashment with statutory interest 12% from the date of retirement i.e., 31.07.2022 till the payment.

For Petitioner	: Mr.L.P.Shanmugasundaram
For Respondents	
For R1 & R2	: Mr.S.Arumugham Government Advocate
For R3	: Mr.C.Jayaprakash Government Advocate

ORDER

This writ petition has been filed challenging the order passed by the 3rd respondent dated 10.02.2023 and consequently to direct the respondents to pay the retirement benefits to the petitioner namely Employees' Provident Fund, Gratuity and Leave Encashment with statutory interest 12% from the date of retirement i.e., 31.07.2022 till the payment.

2. It is the case of the writ petitioner that he was appointed as Office Assistant in the 3rd respondent Society on 01.10.1985 and thereafter, he was

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promoted as Senior Clerk on 01.08.2019. After completing 37 years of service in the 3rd respondent Society, he attained the age of superannuation on 31.07.2022. However, his retirement benefits namely Employees Provident Fund, Gratuity and Leave Encashment and other statutory retirement benefits have not been paid. Hence, the petitioner filed a writ petition before this Court in W.P.No.31387 of 2022 for direction to the respondents to pay the retirement benefits with 10% statutory interest from the date of retirement till the payment. This Court, by an order dated 24.11.2022, directed the respondents to consider the representation of the petitioner and pass final orders in terms of judgment of the Division Bench of this Court dated 08.02.2019 passed in W.A.No.1466 of 2015. However, now the impugned order came to be passed on 22.02.2023, holding that during the audit for the year 2018-2019, certain irregularities have been found, which resulted in loss to the Society to the tune of Rs.10,05,110.75/-. Therefore, the request of the petitioner was rejected. Challenging the same, the present writ petition has been filed.

3. It is the main contention of the writ petitioner that admittedly no charge whatsoever was framed against the petitioner and no enquiry either under Sections 81 or 90 of the Tamil Nadu Co-operative Societies Act, as

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contemplated, has commenced. Therefore, the respondents cannot withhold the terminal benefits particularly Gratuity, Provident Fund and Leave Encashment, which have already been ordered to be settled by the Division Bench of this Court in W.A.No.1466 of 2015.

4. The 3rd respondent filed counter affidavit wherein it is stated that the writ petition filed by the petitioner is not maintainable in terms of Full Bench Judgment of this Court reported in ***2006(4) CTC 689*** and writ appeal alone is maintainable under Section 152 of the Tamil Nadu Co-operative Societies Act. Paragraph No.7 of the counter affidavit as follows:

> *" 7. I humbly submit that in the final audit conducted in the Arakandanallur Primary Co-operative Credit Society, during the year 2018-2019, serious defects were raised by the audit team for causing deficit of stocks of empty gunny bags to the tune of Rs.57,712/-, plastic gunny bags to the tune of Rs.411/-, essential materials to the tune of Rs.3,977.25 in the fir shops under the control of the society in the year 2018-2019 and further caused deficit of stocks of empty gunny bags to the tune of Rs.2,45,440/-, plastic bags to the tune of Rs.4,966.50/- in the head office thereby caused a loss*

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to the society to the tune of Rs.3,12,536.75/- and further false accounts were written in the diary as such an inverter battery for Rs.58,830/- was purchased without purchasing it thereby causing loss and further lesser interest was collected in the jewel loan auctioned thereby causing a loss to the tune of Rs.6,33,744/- and it has been informed in the audit conducted during the year 2018-2019 that a total loss was caused to the society to the tune of Rs.10,05,110.75/-."

Hence, it is their contention that only on the basis of the alleged misappropriation, the said amount has been withheld.

5. I have given my concious consideration that admittedly, the petitioner was not permitted to retire from service and his terminal benefits have been withheld.

6. Though certain discrepancies were found in the audit for the year 2018-2019, it is relevant to note that based on the audit report, no surcharge proceedings were initiated under Section 87 of the Tamil Nadu Co-operative

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Societies Act. Now, the petitioner though was not permitted to retire, it appears that no departmental proceedings were also initiated against him however, he was relieved from service on 31.07.2022. It is relevant to note that even assuming that any surcharge proceedings culminates as against the petitioner which is enforceable order. Whereas as per Sections 78 and 79 of the Tamil Nadu Co-operative Societies Act, there is clear bar for attaching the Provident Fund as well as Gratuity. Further, the Division Bench of this Court in W.A.No.1466 of 2015, after perusing various statutory proceedings including the Payment of Gratuity Act, 1972, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Sections 78 and 79 of the Tamil Nadu Co-operative Societies Act, 1983, held that the terminal benefits cannot be withheld in the absence of any statutory provision enabling the same and directed the respondents to pay the amount.

7. It is the case of the petitioner that there is totally a sum of Rs.16,59,831/- payable to the petitioner though he was not permitted to retire from service. In such view of the matter, the respondents are directed to release all the retirement benefits namely Provident Fund, Gratuity and Leave Encashment to the petitioner, within a period of two months from the date of

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receipt of a copy of this order and liberty is hereby granted to the respondents to proceed against the petitioner in the event of any surcharge proceedings reached its logical conclusion for recovery of any alleged amount as per law. However, the respondents are directed to settle the retirement benefits as indicated above, with statutory interest at the rate of 10% per annum, within a period of two months from the date of receipt of a copy of this order and in the event of failure to settle the amount, the amount shall carry 12% interest till the amount is settled.

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

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<u>N. SATHISH KUMAR, J.</u>

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