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W.P.No.13663 of 2020



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.13663 of 2020

&

W.M.P.Nos.16989 of 2020 & 26743 of 2023

1. C. Ramalingam

2. R. Ramasamy

3. N. Chinnappan

...

Petitioners

versus

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

2. The Deputy Registrar of Co-operative Societies,
Thiruchengode Circle,
Thiruchengode,
Namakkal District.

3. The President,
S-1394, Kurumbalamahadevi Primary,
Agricultural Co-operative Credit Society Ltd.,
Kurumbalamahadevi & Post,
P. Velur Taluk,
Namakkal District

...

Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of declaration declaring the Surcharge award passed by the second respondent u/s.87 of the Tamilnadu Co-operative Societies Act, 1983 in Na.Ka.3540/2004/Sa.Pa. Dated 30.08.2004 is time barred and unenforceable against the petitioners and consequently direct the respondents to settle and disburse all the retirement benefits viz Provident fund, Gratuity, Earned leave salary and security deposit and other monetary benefits with interest at 12% interest p.a. from the date of retirement till the date of actual payment.

For Petitioner : Mr. S. Kamadevan
For Respondents : Mr.G. Nanmaran,
Special Government Pleader

ORDER

Challenging the Surcharge Award passed by the second respondent in Na.Ka.No.3540/2004/Sa.Pa, dated 30.08.2004, the present writ petition has been filed.

2. The first petitioner was appointed as clerk on 05.05.1976, the second petitioner was appointed as clerk on 01.06.1974 and the third petitioner was appointed as Attender on 01.09.1972 in the third respondent



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society. The surcharge award was passed against the ex-Board of Directors and the employees of the society on 30.08.2004 for payment of the revised scale of pay pursuant to the settlement entered under Section 18(1) of the ID Act.

3. The respondents permitted this petitioners to retire from service on attaining superannuation, but further stated that the settlement of terminal benefits will be subject to the outcome of the Surcharge proceedings. Since the petitioners have not done any misappropriation or mismanagement, they have filed this writ petition seeking declaration declaring the surcharge award passed by the 2nd respondent in Na.Ka.3540/2004/Sa.Pa dated 30.08.2004 is time barred and enforceable against the petitioners and consequently direct the respondents to disburse all the retirement benefits and other monetary benefits with interest .

4. Heard both sides and perused the materials available on records carefully.

5. It is the submission of the learned counsel for the petitioners that Section 87(1) of the Co-Operative Societies Act does not include the salary paid to the petitioners on an understanding that there is a settlement, for



which the petitioners are entitled to get the salary so fixed. Admittedly, no disciplinary proceedings have been initiated against the petitioners on the allegations that they had involved in any mismanagement or misappropriation in order to cause loss to the society. Even when there is loss caused to the Society, the surcharge proceedings can be initiated unless there is any willful negligence, misappropriation or mismanagement on the part of the employee. In this regard, I feel it is relevant to refer the judgment of the Division Bench of this Court reported in **2016 (4) LW 452 (S.Ramadevi /vs/ The Special Officer, Ambur Co-operative Sugar Mills, Vadapudupet, Vellore District.)** , wherein it is held that merely because loss was caused to the Society, the Surcharge proceedings cannot be initiated unless there is any willful negligence on the part of the employee or the employee had voluntarily involved in any mismanagement or misappropriation. In the similar line of observation, this Court has passed the order in C.R.P.No.825 of 2020 also and the relevant part of the said order is extracted as under :-

“ 28. As rightly pointed out by the learned Counsel for the Revision Petitioner, by any stretch of imagination, the definition of Section 87(1) of the Co-operative Societies Act cannot be invoked in this particular case. None of the wording



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in Section 87 (1) of the Act attracts the conduct of the Petitioner attracting the surcharge proceedings. Also, as rightly pointed out by the learned Counsel for the Revision Petitioner, the memo issued is not found acceptable as it is silent about which Rule was violated . The vague definition, “that the Society suffered loss”, will not be acceptable in any Court of law in the light of the rulings cited by the learned Counsel for the Petitioner in (i) **(1994) 2 SCC 521** in the case of **Shyam Babu Verma and Others Vs. Union of India and others**, (ii) **(2013) 16 SCC 482** in the case of **Premlata Joshi Vs. Chief Secretary, State of Uttarakhand and Others** and (iii) **(2015) 4 SCC 334** in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others**.

29.As per the reported ruling of the Hon'ble Supreme Court in **(1994) 2 SCC 521** in the case of **Shyam Babu Verma and Others Vs. Union of India and others**, it was held that the higher pay scale was erroneously given to the Petitioners since 1973. The pay scale of the Petitioners reduced in 1984. Since the Petitioner received higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them. Here also, the facts of the case before this Court attracts the same ratio as laid down by the Hon'ble Supreme Court for no fault of his the Petitioner had works as Clerk of the H.H.484 Alaganandal Primary



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Agricultural Co-operative Bank. Based on the promotion granted to him by the authority empowered to grant promotion namely the Special Officer of H.H.484 Alaganandal Primary Agricultural Co-operative Bank. It was not sent for approval is not the fault of the Petitioner herein. Merely stating that the society suffered loss cannot at all be accepted in the light of the previous inspection in which loss was not found out, except the salary paid to the Petitioner as Clerk for the work done by him, that cannot be recovered.

*30.As per the reported ruling in (2013) 16 SCC 482 in the case of **Premlata Joshi Vs. Chief Secretary, State of Uttarakhand and Others**, as far as payment of excess salary made to the appellant in promotional post is concerned, we are of the opinion that the promotion given to her is because of the wrong exercise of the department in not applying Rules correctly and it is not because of any misrepresentation or suppression by the appellant, no recovery amount is called for. This ratio squarely applies to the facts of the case before this Court.*

*31.As per the reported ruling of the Hon'ble Supreme Court in (2015) 4 SCC 334 in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others**, the recovery of amount paid in excess without fault of recipient,*



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benefit of non-recovery, recoveries would be impermissible in the following circumstances: (i) Recovery from employees belonging to Class III and IV (Group C and D); (ii) Recovery from retired employees, or employees who are due to retire within one year of order of recovery; (iii) Recovery from employees to whom excess payment have been made for a period in excess of five years, before order of recovery is issued; (iv) Recovery where employee is wrongfully required to discharge duties of higher post and has been paid accordingly and (v) In any other case, where Court concludes that the recovery if effected from an employee would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh equitable balance of employer's right to recover. The observation of the Hon'ble Supreme Court is applicable to the facts of the case as the Petitioner was appointed as Office Assistant on compassionate ground, subsequently, considering the financial status of H.H.484 Alaganandal Primary Agricultural Co-operative Bank and the fact that the clerical posts are vacant and qualified person is available as Office Assistant, the Special Officer of the H.H.484 Alaganandal Primary Agricultural Co-operative Bank had by the board proceedings promoted him as Clerk which was not sent for approval by inadvertence, there cannot be any recovery from the Petitioner as he had worked as Clerk of H.H.484 Alaganandal Primary Agricultural Co-operative Bank.



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32. *In the light of the above rulings and the wordings under Section 87(1) of the Act do not indicate any wrongful act committed by the Petitioner, it is a fact that he had worked as a Clerk based on the promotion granted to him and drawn salary as Clerk of the Co-operative Bank which cannot be faulted. Therefore, the surcharge proceedings passed by the original authority is found to be non-application of mind of the original authority. The Appellate Authority also had not applied its mind to the grounds of appeal preferred by the Petitioner. Therefore, the order of the learned Principal District Judge/Appellate Tribunal under the Co-operative Societies Act, Thiruvannamalai confirming the surcharge proceedings is also to be set aside.”*

6. The very allegation of the first respondent is that loss has been caused to the Society due to the wrong fixation of salary and disbursal to the petitioners, who are the employees of the Society. Nowhere it is stated that the petitioners had misrepresented something or involved in any act of negligence that would cause loss to the Society. Neither it has been stated that the petitioners have been involved in misappropriation nor any other action of misconduct that has resulted in the loss of Society. Under such



circumstances, it is wrong on the part of the respondents to presume that Section 87(1) of the Co-Operative Societies Act is applicable to the present context and initiate surcharge proceedings against the petitioners. In view of the above settled legal position, the surcharge proceedings against the petitioners lack in legality and hence, the same is liable to be quashed.

7. Accordingly, this Writ Petition is allowed and the Surcharge Award passed by the second respondent in Na.Ka.No.3540/2004/Sa.Pa.dated 30.08.2004 is quashed and the respondents are directed to settle all the retirement benefits with interest at the rate of 9% from the date of retirement till the date of disbursement. No costs. Consequently, connected Miscellaneous Petitions are closed.

10.10.2023

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

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R.N.MANJULA, J.

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