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W.P.No.5100 of 2016

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 27.06.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**W.P.No.5100 of 2016**

1.A.Pandian (Deceased)

2.Alagarasan

3.Vinothkumar

...Petitioners

[ P2 and P3 substituted as Lrs of the deceased  
sole petitioner vide order dated 21.2.2023 made  
in W.M.P.No.599 of 2023 in W.P.No.5100 of 2016 ]

Versus

1. The Deputy Registrar of Co-operative Society,  
Attur Circle, Attur – 636 102,  
Salem District.

2. S1332 Valayamadevi Primary Agricultural  
Co-operative Credit Society,  
Rep.by its President,  
Valayamadevi (Post)  
Attur Circle, Salem District,  
Pin Code – 636 121.

.. Respondents

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records relating to order passed by the second respondent dated 24.07.2015 and quash the same and consequently direct the first and second respondents to settle the entire retirement benefit with 18% interest.



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For Petitioners : Mr.R.Ramesh  
For Respondents : Mr.T.Chezhan  
Additional Government Pleader for R1  
Mr.L.P.Shanmuga Sundaram for R2

### **ORDER**

The petitioner has originally filed the present writ petition on the premise that he was the Secretary of the second respondent/Society; initially he had joined as Salesman on 19.6.1978 and subsequently, he was promoted as Clerk and from thereon as a Secretary; the petitioner has completed his service without any adverse remarks with the second respondent/Society.

2. The petitioner was denied his terminal benefits on the ground that the President of the Society, with consultation of the other Board of Directors had deposited Rs.5,00,000/- in a Fixed Deposit for a period of three years on 04.12.1999 with Aringar Anna Housing Society Limited, but the said amount was not returned by the said Society, even after the period of maturity.

3. The specific case of the petitioner is that he was not a



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decision making person in the second respondent/Society and it was the President, who took the decision and also signed relevant documents.

However, it is seen that the Society initially had taken action and also obtained a decree against the Aringar Anna Housing Society Limited as early as on 30.08.2004. Therefore, according to the petitioner, it would not be open to the respondents, to allege any loss, that too, saddle the petitioner with the entire liability along with President. Pending writ petition, the writ petitioner died and his legal heirs have been substituted in his place.

4. The first respondent has filed a counter affidavit stating that the decision to with-hold the retirement benefits was taken only after considering all relevant factors and in any event, if really aggrieved, the petitioner ought to have filed a Revision Petition under Section 153 of the Tamil Nadu Co-Operative Societies Act, 1961 and not approached this Court, that too, seeking relief by way of a writ petition under Article 226 of Constitution of India. It is also submitted that the petitioner cannot try to escape by shifting the burden on the President and the Directors of the Society.

5. Heard Mr.R.Ramesh, learned counsel for the petitioner,



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Mr.T.Chezhian, learned Additional Government Pleader for the first respondent and Mr.L.P.Shanmuga Sundaram, learned counsel for the second respondent.

6. The fact that a sum of Rs.6,70,000/- approximately was due and payable to the petitioner late A.Pandian is not in dispute. However, it is the contention of the respondents that as a responsible Secretary of the Co-operative Society, the petitioner failed in his duty to take necessary steps to recover the money from Aringar Anna Housing Society Limited, where a sum of Rs.5,00,000/- was deposited by way of Fixed Deposit. The surcharge proceedings initiated was for a sum of Rs.9,18,274/- together with future interest from 2005 onwards. Apart from that, it is stated that the petitioner has been the cause for the said loss. Therefore, the petitioner is not entitled to file the present writ petition.

7. This Court has considered the submissions of the learned counsel for the parties and also perused the records.

8. It is seen that the fixed deposit receipt was not signed by the petitioner and even the cheque for Rs.5,00,000/- to Aringar Anna



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Housing Society Limited was signed only by the President. The decision to invest the money was also ratified by the Board. Unfortunately, the amount invested was not returned by the Aringar Anna Housing Society Limited, where the money was deposited. In that regard, proceedings have also been taken to recover the money and a decree has also been obtained and what remains is only taking appropriate steps to recover the amount due and payable in terms of the decree.

9. Considering the entire gamut of the facts of this case, it would not be just and proper to fix liability on the petitioner, who was only a Secretary of the second respondent/Co-operative Society and deny his retirement benefits. Insofar as the alternative remedy being available to the petitioner, as contended by the learned counsel for the first respondents, no doubt, the petitioner could have approached the Revisional Court by way of Section 153 of the Tamil Nadu Co-Operative Society Act. The impugned order came to be passed as early as on 24.07.2015. The writ petition has been entertained in February 2016, and being finally heard, today in June, 2023. It would be inequitable and unfair to direct the petitioner to approach the Revisional Authority at this length of time, especially when the writ petition has been taken on file in



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the year 2016 itself.

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**10.** In view of the above, the contention of the learned counsel for the first respondent that the petitioner ought to have approached the Revisional Authority under Section 153 of the Tamil Nadu Co-Operative Society Act cannot be countenanced.

**11.** This Court having found that the petitioner cannot be denied the terminal and retirement benefits in the light of the proceedings taken by the second respondent/Society to recover the money and that a decree has also been obtained against Aringar Anna Housing Society Limited, the petitioner is entitled to his retirement benefits including arrears. Though the petitioner has prayed for the said sum to be repaid with interest at 18% per annum, this Court is of the view that the amounts due and payable to the petitioner shall be returned together with interest at the rate of 6% per annum. The respondents shall comply with orders of this Court within a period of six weeks from the date of receipt of a copy of this order.

**12.** Accordingly, this writ petition is allowed. There shall be no order as to costs.



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Index: Yes/No  
Speaking Order/Non-Speaking Order  
Neutral Citation Case : Yes/No  
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To

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Salem District.
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**P.B.BALAJI, J.,**

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