IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.17895 of 2020
and W.M.P.No.22185 of 2020

A.Munusamy ... Petitioner

/vs/

1. The Registrar of Co-operative Societies (Housing),
   Vepery,
   Chennai – 7.

2. The Deputy Registrar of Co-operative Societies (Housing),
   Cuddalore Region,
   Cuddalore.

3. Gingee Taluk Co-operative House Building Society,
   Rep. by its President,
   Gingee,
   Villupuram District. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the order passed by the first respondent in Na.Ka.No.3486/2019/sa.pa.1 dated 09.03.2020 and consequential 4 orders passed by the third respondent dated 20.07.2020 quash the same and direct the respondents to pay Gratuity of

Rs.9,21,865/- Provident fund Rs.1,22,792/- and leave salary Rs.3,36,400/- total Rs.13,81,057/- with statutory interest at the rate of 12% from the date of retirement till payment.

For Petitioner ... Mr.M.S.Palaniswamy
For Respondents ... Mr.Chezhiyan
Additional Govt. Pleader for R1 & R2
Mr.L.P.Shanmugasundaram for R3

ORDER

This Writ Petition has been filed to quash the order passed by the first respondent in Na.Ka.No.3486/2019/sa.pa.1 dated 09.03.2020 and the consequential orders passed by the third respondent dated 20.07.2020 and to direct the respondents to pay Gratuity, Provident fund and leave salary along with statutory interest at the rate of 12% from the date of retirement till payment to the petitioner.

2. The petitioner retired from service on 30.11.2017 after having served as the Secretary of the second respondent society. Subsequent to his retirement, the third respondent passed an order stating that the petitioner was getting excess pay and hence he is not entitled to get retirement benefits. It is further stated that the petitioner is liable to repay the balance

amount of Rs.21,53,905/- after the retirement benefits of the petitioner got adjusted against the alleged total due of Rs. 28,27,579/-.

3. The learned counsel for the petitioner submitted that the second respondent has granted permission to enter into a settlement with the third respondent and the employees of the society and by which the salary of the petitioner has been fixed as 8000-275-13500; however the said settlement was objected by the second respondent by stating that the salary has been fixed contrary to the Registrar's Circular; the said proceedings of the second respondent dated 02.11.1999 was challenged by way of preferring a Writ Petition in W.P. No.18243 of 1999 and the same was dismissed with a liberty given to the petitioner to raise an industrial disputes petition or workout any statutory remedy open to them; accordingly, an Industrial Dispute petition in I.D.No.148 of 2022 has been raised and in which the award has been passed on 15.11.2007; in the said award, the fixation of the salary as per the earlier settlement between the third respondent and the employees association was arrived at and the subsequent order of the Registrar dated 02.11.1999 was set aside; however the said award was not

challenged by any of the respondents and it has become final; in view of the above award, the petitioner continued to get the old salary as per the settlement and he retired from service after attaining superannuation on 30.11.2017.

3.1 In fact the second respondent has passed the proceedings dated 28.06.2018 by stating that the retirement benefits of the petitioner will be paid after the conclusion of 2017-2018 audit; the calculations have also been made to show the amount that is due to be paid to the petitioner; however, in the said order it has not been stated that the petitioner was deriving excess salary and his retirement benefits is more than the dues to be recovered from him; all of a sudden, the impugned order has been issued by stating that the petitioner is liable to repay excess amount and he is not entitled to get any retirement benefits as stated in the proceedings of the second respondent dated 28.06.2018; as per Section 78 and 79 of the Tamil Nadu Cooperative Societies Act, 1983 retirement benefits of the employees cannot be withheld after he was allowed to retire by stating any extraneous reasons. For the sake of clarity, Section 78 and 79 of the Tamil Nadu

Cooperative Societies Act, 1983 is extracted hereunder:

*" **78. Provident Fund** .__ (1) A registered society not being an establishment to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Central Act XIX of 1952) applies, may establish a Provident Fund for the benefit of its employees to which shall be credited all contributions made by the employees and the society in accordance with the by-laws .*

(2) A Provident Fund established by a registered society under sub - section (1) shall be invested in the financing bank, but shall not __

(a) be used in the business of the society;

(b) form part of the assets of the society;

(c) be liable to attachment or be subject to any other process of any court or other authority.

***79. Gratuity Fund .__** (1) A registered society not being an establishment to which the Payment of Gratuity Act, 1972 (Central Act 39 of 1972) applies, may provide in its by-laws for payment of gratuity to the employees at such rates and on such conditions as may be specified in the by-laws and such society may establish a Gratuity Fund or make other arrangements for the purpose.*

(2) A Gratuity Fund, if any, established by a registered society under sub - section

(1) shall be invested in the financing bank, but shall not__

(a) be used in the business of the society;

(b) form part of the assets of the society;

(c) be liable to attachment or be subject to any other process of any court or other authority."

4. The learned counsel for the second respondent submitted that the third respondent has given only intimation letter to the petitioner that he has to repay the excess sum received by way of employees provident fund and it is not a recovery order. It is further submitted that as per the guidelines under Section 181 of the Tamil Nadu Cooperative Societies Act, 1983, the third respondent society ought not to have revised the pay scale without prior permission of the first respondent; however the Labour Court has not considered the circular issued by the first respondent on 16.10.1997, while passing the order; if the petitioner is aggrieved he can challenge the order of the first respondent by filing appropriate proceedings under Section 153 of the Tamil Nadu Societies Act, 1983 and he can even file a review petition under Section 154 of the Act.

5. In sum and substance it is submitted by the respondents that the petitioner has not exhausted the alternative remedy before filing this writ petition. It is understandable that the recovery proceedings has been initiated by the respondents for the loss caused due to mismanagement of the petitioner. The impugned proceedings only revolves around the alleged

excess salary and that has already been settled by the award passed by the Labour Court in I.D.No.148/2002. Having failed to challenge the award and allowed it to become final and got it notified in the Government Gazette, now the respondents have turned around and issued the impugned order even without giving any notice to the petitioner. The order even if it is an intimation, does contain a conclusion that the petitioner had received excess salary. Before arriving at such a conclusion, the petitioner ought to have been given with an opportunity of being heard.

6. The above stand taken by the respondents 1 and 2 have already been subjected to the legal proceedings before the appropriate forum and due orders have also been passed and attained finality. Only under such circumstances the respondents have raised the issue once again by giving the impugned proceedings by stating that the petitioner has got excess salary in view of the new salary fixed subsequent to the settlement between the third respondent society and the employee association. The settlement has been accepted and acted upon and according to which the petitioners and others are receiving salary without any objection raised by the

respondents 1 to 3. Even at the time of retirement of the petitioner, the respondents 1 to 3 did not pass any resolution as to the issues now mentioned in the impugned order.

7. In this regard it is appropriate to cite the order passed by a single Judge of this Court held in ***A.Sengodan Vs. Registrar of Co-operative Societies, Chennai and others reported in (2015) 6 MLJ 684*** wherein it is made crystal clear that the retiral benefits cannot be withheld by the respondents unless any statutory authority had withheld Provident Fund / Gratuity in accordance with the statutes governing the same. The above order was challenged by the Society by way of preferring a Writ Appeal in W.A.No.1466 of 2015 and the said appeal was dismissed by confirming the order of the single Judge.

8. Even though the learned counsel for respondents 1 and 2 are not parties to the Industrial Disputes Proceedings in I.D. No.148/2002, the fact remains that the respondents 1 and 2 are well aware of the fact that the petitioner was drawing the salary on the basis of the settlement and even in

the order sanctioning the retirement benefits, the first and second respondents did not make any mention about the alleged excess payment of salary etc. Hence, I feel that the impugned order passed by the first and third respondents should be quashed and the petitioner should be granted with the retirement benefits.

9. In view of the reasons stated above, this writ petition is allowed and the order passed by the first respondent in Na.Ka.No.3486/2019/sa.pa.1 dated 09.03.2020 and consequential orders passed by the third respondent dated 20.07.2020 are hereby quashed and the respondents are directed to pay the retirement benefits totalling a sum of Rs.13,81,057/- (Gratuity- Rs.9,21,865/-, Provident fund - Rs.1,22,792/- and leave salary - Rs.3,36,400/-) to the petitioner, within a period of four weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

15.11.2023

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R.N.MANJULA ,J.

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To:

1. The Registrar of Co-operative Societies (Housing),
   Vepery,
   Chennai – 7.

2. The Deputy Registrar of Co-operative Societies (Housing),
   Cuddalore Region,
   Cuddalore.

3. The President,
   Gingee Taluk Co-operative House Building Society,
   Gingee,
   Villupuram District.

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