



W.A.No.2622 of 2018

7THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS.K.GOVINDARAJAN THILAKAVADI

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R.Chinnadurai

...Appellant

Vs.

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

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

3.The President,
Nadukuppam Primary Agricultural
Co-operative Credit Society,
Nadukuppam Village & Post,
Panruti Taluk, Cuddalore District.

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 09.02.2018 in W.P.No.13 of 2018.

For Appellant : Mr.V.S.Jagadeesan

For Respondents : Mr.G.Nanmaran

Special Government Pleader for R1 & R2



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J U D G M E N T

WEB COPY (Judgment of the Court was made by R.SUBRAMANIAN, J.)

Challenge in this intra-court appeal is to the order of the Writ Court, dismissing the Writ Petition on the ground that the appellant has been convicted by the criminal Court.

2.The appellant, who was working as a Secretary in the 3rd respondent Co-operative Society was found to have misappropriated a sum of Rs.14,703/-, for which, criminal proceedings in C.C.Nos.323 & 324 of 1992 were initiated and was convicted by the Judicial Magistrate, Cuddalore. However, on appeal, the Appellate Court namely, the District and Sessions Judge, Cuddalore, modified the sentence with a direction to the appellant to repay the sum of Rs.14,703/- along with a sum of Rs.298/- on or before 05.01.2012.

3.It is not in dispute that the appellant had paid back the money as directed by the Appellate Court. Despite such payment, the retiral benefits of the appellant were not disbursed by the Society. Hence, the appellant



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approached this Court in W.P.No.13 of 2018, seeking a mandamus directing the respondents to disburse the petitioner's terminal benefits, gratuity, provident fund and earned leave salary under Sections 78 & 79 of the Tamil Nadu Co-operative Societies Act, 1983. The Writ Court dismissed his Writ Petition on the ground that the appellant having been found guilty of misappropriation is not entitled to the relief.

4.We have heard Mr.V.S.Jagadeesan, learned counsel appearing for the appellant and Mr.G.Nanmaran, learned Special Government Pleader appearing for the respondents 1 & 2.

5.We are unable to sustain the order of the Writ Court. The Criminal proceedings related to the findings of misappropriation. Even if the conviction has been retained by the Appellate Court, the Society must have taken proceedings under Section 87 for recovery of the amounts due it. In the absence of surcharge proceedings under Section 87, the Society cannot retain the money that belongs to the employee.



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6.It is now pointed out that the total amount found to have misappropriated is not Rs.14,703/- but, it is more than Rs.2,00,000/- and it is also stated that there are some audit objections. There is no proceeding initiated under Section 87 of the Co-operative Societies Act. Proceedings of recovery must have been initiated within seven years. As of today, the right of the Society to initiate surcharge proceedings is also barred by limitation.

7.This Court and the Hon'ble Supreme Court repeatedly held that the retiral benefits is the property of the employee and it cannot be retained by the employer without any specific reasons. The Society has not taken any proceedings under Section 87 for recovery. It is also seen that the loss caused to the Society that is, Rs.14,703/- has been repaid by the appellant. Therefore, the dismissal of the Writ Petition cannot be sustained.

8.Once it is conceded that the retiral benefits is the property of the employee, the employer is bound to disburse the same even in cases where the employee is dismissed from service. We are, therefore, unable to sustain the order of the Writ Court. This Writ Appeal is therefore, allowed



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and the Writ Petition stands allowed. There will be a mandamus, directing the 3rd respondent / Society to disburse the retiral benefits, including other benefits to the appellant within a period of three months from the date of receipt of a copy of this order. No costs.

(R.S.M.,J.) (K.G.T.,J.)
07.02.2023

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Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

To:-

- 1.The Joint Registrar of Co-operative Societies,
Cuddalore Region, Cuddalore,
Cuddalore District.
- 2.The Deputy Registrar of Co-operative Societies,
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and
K.GOVINDARAJAN THILAKAVADI, J.

KKN

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