



W.A(MD)No.625 of 2012

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2023

CORAM:

**THE HON'BLE MR JUSTICE R. SURESH KUMAR
AND
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

W.A(MD)No.625 of 2012

and

M.P(MD)No.2 of 2012

- 1.The Kumbakonam Co-operative
Urban Bank Ltd., represented
through its Secretary,
36, Nageswaran Sannathi Street,
Kumbakonam-612 001.
- 2.The Deputy Registrar of
Co-operative Societies,
Kumbakonam,
72/36 Sarangapani Sannathi Street,
Kumbakonam-612 001.

... Appellants/Respondents

.Vs.

D.Rajendran

... Respondent/Petitioner

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act, to set aside the order dated 14.07.2011 made in W.P(MD)No.8323 of 2008.



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For appellants : Mr.R.Ragavendran
Government Advocate
For Respondent : Mr.S.Seenivasagam

JUDGMENT

(Order of the Court was made by R. SURESH KUMAR,J.)

Assailing the order passed by the learned Single Judge under Article 226 of the Constitution of India in W.P(MD)No.8323 of 2008, dated 14.07.2011, the present intra Court appeal has been filed.

2. The appellants before this Court are the respondents in the writ petition, where, the respondent herein had challenged the Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 proceedings passed against the respondent herein, who was the writ petitioner (hereinafter called as writ petitioner) on the ground that, the Section 87 proceedings passed by the appellants against the writ petitioner was because that, the writ petitioner had released the salary of Rs.2,04,468/- to and in favour of M.Marimuthu, who was an employee of the Bank, to whom such salary had already been fixed by the predecessor of the writ petitioner, therefore, he claimed that he had only implemented the order passed by the predecessor.



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3. However, the appellants having found fault with the said action on the part of the writ petitioner in releasing the salary, initiated the Section 87 proceedings and ultimately passed the order impugned in the writ petition, dated 29.02.2008 to recover the said amount from the writ petitioner. Aggrieved over the same, the respondent herein has filed the aforesaid writ petition.

4. The learned Single Judge, who heard the matter, has found that, insofar as the fixation of the salary to the employee M.Marimuthu is concerned, that order still holds good as it has not been set aside though it may be wrong. Unless and until that order fixing the salary to the employee M.Marimuthu is set aside or modified, acted upon pursuant to the said order, which was already passed by the predecessor of the writ petitioner and releasing the salary cannot be found fault with and moreover the same issue cannot be brought under the purview of Section 87 of the Act itself.

5. We have heard the learned Government Advocate appearing for the appellants as well as the learned counsel appearing for the respondent.



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6. In fact, the learned counsel for the respondent has brought to the notice of this Court that, insofar as the fixation of salary for the said employee Marimuthu is concerned that has been approved and ratified by the very bank i.e., the appellants bank by the latest proceedings dated 29.12.2022, wherein, the bank has stated the following:-

“கும்பகோணம் கூட்டுறவு நகர வங்கியில் மேலாளராக பணிபுரிந்த திரு.எம்.மாரிமுத்து என்பவருக்கு சம்பள நிர்ணயம் தொடர்பான தணிக்கை மறுப்பு ரூ.4,31,754.- வங்கியின் 2015-2016 ஆம் ஆண்டு தணிக்கை அறிக்கையின்படி மறுக்கப்பட்ட இனத்தில் இருந்து விடுவிக்கப்பட்டு செலவு கணக்கிற்கு கொண்டு செல்லப்பட்டு நேர் செய்யப்பட்டுவிட்டது என்பதனை அன்புடன் தெரிவித்துக்கொள்கிறேன்.□

7. Relying upon this communication, the learned counsel appearing for the respondent/writ petitioner would submit that in fact the issue has been given quietus or it is concluded by virtue of the ratification order passed by the bank itself insofar as the salary that has been fixed to the said employee Marimuthu, therefore, the part of the salary which was released by the writ petitioner also is strictly in consonance with the orders passed by the bank or on behalf of the bank, therefore, the question of recovering any amount from the writ petitioner



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does not arise as projected by the appellants, which triggered the respondent/writ petitioner to file the writ petition.

8. Heard Mr.R.Ragavendran, the learned Government Advocate appearing for the appellants, who would submit that, even assuming that the amount has already been fixed as salary to the employee Marimuthu, before releasing the amount, the appellants should have been approached that after getting their approval only the said amount should have been released, without such approval being given by the appellants herein, writ petitioner/respondent ought not to have acted upon in releasing the amount belongs to the bank, thereby since he caused the loss to the bank such proceedings under Section 87 of the Act become necessitated, he contended.

9. We have considered the said submission made by the learned Government Advocate appearing for the appellants also, which in fact has been dealt with by the learned Single Judge in para-12 of the order, wherein the learned Judge has held that there is no provision, under which the Special Officer, exercising the power of the administrative committee, was required to take prior



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approval of Registrar to implement the order or the society. In absence of statutory provisions, rules or instructions, it can be raised that prior approval of Registrar was not required. This stand taken by the writ petitioner was in fact, dealt with by the learned Judge in para-13 of the order impugned in the wording that “I find force in the contention of the learned counsel for the petitioner in the absence of an order holding, the re-fixation of the salary or modified to be wrong it cannot said that there was any loss caused to the society”. For these reasons which have been stated by the learned Judge in justifying the order and by taking note of the subsequent ratification order passed by the appellants bank dated 29.12.2022, we feel that the order impugned passed by the writ Court is to be sustained as it does not call for any interference from this Court.

10. In view of the same, the writ appeal fails, hence, it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.S.K.,J.] [K.K.R.K.,J.]
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R. SURESH KUMAR, J.
and
K.K.RAMAKRISHNAN, J.

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JUDGMENT MADE IN
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