



W.P.(MD)No.21038 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:19.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 21038 of 2015

and

W.M.P(MD)No. 18622 of 2017

1. P.Ramanathan (**Died**)

2. Santha

3. Saravanan

4. Poongodi

5. Manjula

6. Rani

7. Meenal

... Petitioner

[P2 to P7 are substituted vide Court order, dated 19.01.2023]

Vs.

1. The Registrar of Co-operative Societies,

N.V.Natarajan,

Kilpauk,

Chennai – 10.

2. The Joint Registrar/Managing Director,

Ramanathapuram District Central Co-operative Bank,

Vandikkara Street,

Ramanathapuram District, Ramanathapuram.

... Respondents



W.P.(MD)No.21038 of 2015

WEB COPY

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in R.C.No.002350/14-15/E1, dated 20.04.2015 and quash the same as illegal and unconstitutional, consequently direct the 2nd Respondent to disburse Rs.56,204/- which has been deducted from the leave salary of the petitioner and along with interest.

For Petitioner : M/s.S.Balamurugan

For Respondents : Mr.R.Ragavendran, for R-1
Mr.D.Shanmugaraja Sethupathi, for R-2

ORDER

This writ petition is filed for *Writ of Certiorarified Mandamus*, to quash the impugned order, dated 20.04.2015 with a consequential direction to the 2nd Respondent to disburse a sum of Rs.56,204/-.

2. Heard Mr.S.Balamurugan, the Learned Counsel appearing for the petitioner, Mr.R.Ragavendran, the Learned Counsel appearing for the 1st respondent and Mr.D.Shanmugaraja Sethupathi the Learned Counsel appearing for the 2nd respondent and perused the material documents placed on record.



W.P.(MD)No.21038 of 2015

WEB COPY

3. The petitioner has joined in the respondent society as Clerk during the year 1970. After rendering 31 years of service, on attaining superannuation on 30.06.2001 he ought to have retired from the Bank, as Manager. But the eve of retirement, i.e., on 29.06.2001, the respondents have issued a charge memo, stating that while he was working at Ramanathapuram District Central Cooperative Bank Limited, Thiruvadanai, from 26.03.1994 to 16.08.1995, the petitioner has failed to verify the correctness of the particulars furnished in the loan application, which caused loss to the 2nd respondent bank to the tune of Rs. 4,26,010/-. The petitioner was allowed to retire from service without prejudice to the pending disciplinary proceedings.

4. The petitioner has challenged the said charge memo in W.P.(MD) No.9558 of 2008 and the same was allowed, vide order, dated 10.12.2008. The relevant portion of the order is extracted hereunder:

“5. Admittedly, as on the due date of retirement of the petitioner on attaining the age of superannuation, there was no enabling provision either in the Cooperative Societies Act or in any other Rule, empowering the bank to keep the petitioner in service beyond the said date of retirement and to continue the disciplinary proceedings. As submitted by



W.P.(MD)No.21038 of 2015

WEB COPY

the Learned Counsel appearing for the petitioner, the Special bye-law is not applicable to the petitioner. Therefore, as held by this Court in G.Manoharan's case and C.Surendran's case cited supra, the impugned order is liable to be quashed. At the same time as rightly pointed out by the Learned Counsel appearing for the second respondent, the right of the bank to initiate separate proceedings to recover the loss caused to the bank from the petitioner should also be preserved.

6. In the result, this writ petition is allowed, the impugned order of the second respondent dated 29.06.2001 is quashed. However, the respondents are at liberty to initiate separate proceedings only to recover the loss caused to the bank by the petitioner. No costs. Consequently, the connected miscellaneous petitions are closed."

5. The contention of the petitioner is that the charge memo was issued in the year 2008 and the petitioner had already attained superannuation and ought to have retired from service in the year 30.06.2001. But the contention of the respondents is that even though this Court has quashed the charge memo, but has granted liberty to the respondent to collect the loss from the petitioner. Thereafter only, the respondents have issued recovery proceedings in the year 2015.



W.P.(MD)No.21038 of 2015

WEB COPY

6. The contention of the petitioner is that the respondents have not issued any Show Cause Notice and directly issued the recovery proceedings. Moreover, the recovery was in the year 2015, but the alleged loss is for the period 26.03.1994 to 16.08.1995. It is a belated recovery, without show cause notice proceedings.

7. It is seen from the counter that the respondents deducted from the petitioner Rs.56,204/- towards loss of the bank. Pending writ petition, the bank had initiated recovery proceedings against the debtor and recovered Rs.29,054/-. Hence the respondents had remitted back the amount of Rs.29,054/- to the petitioner Account No.253052880. Hence the claim of the respondents is that the balance amount of Rs.27,150/- is recoverable from the debtor, after recovering the said amount, the same would be remitted to the petitioner.

8. This Court is not able to accept the said contention, since this Court has already held that the recovery is belated one and without any notice, hence the respondents is not having any right to retain the balance amount of Rs.27,150/-. Therefore, the respondents are directed to repay the balance amount of



W.P.(MD)No.21038 of 2015

WEB COPY

Rs.27,150/- to the petitioner. Pending writ petition, the writ petitioner died and his Legal Heirs were impleaded. Hence, the respondents are directed to return the amount of Rs.27,150/- to the legal heirs within a period of six weeks. However, the amount carries no interest.

9. With these observations and directions, this Writ Petition is allowed as stated supra. No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
ksa

19.06.2023



W.P.(MD)No.21038 of 2015

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To

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W.P.(MD)No.21038 of 2015

S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No. 21038 of 2015**

19.06.2023