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W.P.(MD)No.6073 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.6073 of 2016

M.Ganesan

... Petitioner

vs.

1.The Deputy Registrar of Co-operatives,
Tiruchirapalli Region,
Tiruchirapalli 20.

2.The President,
District Police Employees Co-operative,
Thrift and Credit Society,
Subramaniapuram,
Tiruchirapalli 20.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in proceedings in Na.Ka.No.1287/2014/ Noo.Koo, dated 21.04.2014 and to quash the same and to issue a



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consequential direction to the respondents to pay all the terminal benefits to the petitioner and amount of provident fund with interest @ 18% per annum after deducting the amount of employees contribution under the Provident Fund Scheme.

For Petitioner	: Mr.R.Saseetharan
For R1	: Mr.K.S.Selvaganesan Additional Government Pleader
For R2	: No appearance

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the proceedings, dated 21.04.2014 of 1st respondent and consequently to direct the respondents to pay the terminal benefits to the petitioner and amount of provident fund with interest @ 18% per annum after deducting the amount of employee contribution under the Provident Fund Scheme.

2. The petitioner was initially appointed as Junior Assistant on



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13.06.1981, thereafter, he was promoted to various posts and retired from service as Secretary on 31.08.2010. The petitioner has served 30 years in respondent's society. The respondents have initiated surcharge proceedings against the then Secretary namely G.Chakrapani, the present Secretary, the petitioner herein and P.Muruganantham, the Clerk under Section 87 of the Tamil Nadu Cooperative Societies Act. The petitioner was held liable by the order, dated 06.09.2007 by the Deputy Registrar of Cooperatives, Tiruchirappalli. As against the same, the petitioner preferred C.M.A. (CS)No.14 of 2008 before the District Judge, Trichy and the same was allowed on 10.01.2009 by setting aside the order dated 06.09.2007 and remanded the case for fresh disposal after giving opportunity to all the affected parties.

3. The first respondent, vide proceedings, dated 25.03.2009, issued a notice to grant opportunity for the 4 charges for which the petitioner,



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Chakrapani and Muruganantham are alleged to have been liable for the loss caused to the 2nd respondent Society. The petitioner submitted an explanation on 30.07.2009 and the said Muruganandam has submitted an explanation on 15.05.2009. As far as the said Chakrapani, who was the former Secretary retired on 31.05.1999 and then died. So, notice was issued to the legal heirs of the said Chakrapani namely Valliammai and the said Valliammai submitted an explanation on 18.04.2009. After considering the explanation, the 1st respondent, vide order, dated 23.09.2009, has fixed the liability on the petitioner as well as the Chakrapani but the 2nd respondent has left the Clerk namely Muruganandam.

4. The contention of the petitioner is that in the said proceedings the 1st respondent has deducted the loan amount paid by the police employees and deleted from the amount, which was again and again



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shown under the head of liability and arrived at a total loss caused to the Society as Rs.4,80,035/- as against the amount of Rs.28,35,970/- which is given as an amount of loss caused to the society in the notice, dated 25.03.2009 as per inspection report. By an order, dated 23.09.2009, the first respondent has finally stated that the loss caused to the Society is Rs.4,80,035/-, the petitioner and the former Secretary Chakrapani are liable. After the surcharge proceedings, no action was taken for recovery. Thereafter, the terminal benefits were withheld by the 1st respondent. The petitioner was paid only the EPF but the respondents have not paid gratuity, encashment of leave and arrears of pay on the ground of pending surcharge proceedings. The petitioner submitted several representations but the respondents had not paid the same. Infact the 2nd respondent on 13.03.2014 had recommended the petitioner's case to the 1st respondent to pay the terminal benefits of Rs.8,41,090/-.



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5. The contention of the petitioner is that the Society had advanced loan to some employees, but the same could not be recovered, since some employees died, some were under suspension and some were convicted and were in prison. The petitioner had given seven names of the deceased employees. Therefore, it is not the fault of the petitioner for not recovering the amount. Hence, the surcharge proceedings initiated against the petitioner is unwarranted. Hence, the petitioner is before this Court.

6. The 1st respondent has filed a counter affidavit stating that during the statutory audit for the year 2004-2005 of the Society, certain irregularities were found out. As per the provisions the Secretary alone is responsible for not maintaining the loan records. Hence the then Secretary, Chakrapani and the subsequent Secretary, the petitioner herein



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were made liable. The said Muruganantham was serving as Clerk and hence liability was not fixed on him. The allegation against the Secretaries is that they had not properly executed documents, maintained the records and has not initiated to recovery the loan from the defaulters, thereby caused loss to the society. An inspection under Section 82 of the Tamil Nadu Co-operative Societies Act was ordered and it was found that loans sanctioned to the members of the Society were not properly collected and the official have not taken statutory action to collect the amount from the concerned defaulting members. Hence, it was recommended to initiate surcharge proceedings against the concerned officials. The reason stated by the petitioner that the same could not be collected because some of the employees were deceased and some of them were convicted cannot be accepted. Therefore, the 1st respondent submitted that the petitioner cannot be paid the entire amount. Moreover, as on date, the petitioner is liable to pay the said surcharge



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proceedings amount along with interest. Hence, the amount was retained and there is no illegality in retaining the said amount. Hence, the impugned order may be sustained.

7. Heard Mr.R.Saseetharan, learned Counsel appearing for the petitioner and Mr.K.S.Selvaganesan, learned Additional Government Pleader appearing for the 1st respondent and perused the records.

8. After hearing the rival submissions of the parties, it is seen that Section 87 enquiry proceeding was initiated and an order was passed as early as 2007. The petitioner as well as the other delinquents have preferred C.M.A.(CS)No.14 of 2008 and the District Court, vide order, dated 10.01.2009, has remitted back for fresh disposal. After considering the same, the authorities have disposed of the remanded case, vide order,



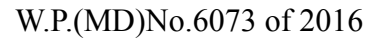
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dated 25.03.2009, by fixing the liability on two delinquents namely Chakrapani and the petitioner to the tune of Rs.4,80,035/-.

9. Moreover the allegation against the petitioner is that he had not maintained the records and has not collected the loan amount from the defaulters. But the contention of the petitioner is that the loan could not be recovered since some of the defaulters had died, some of them were under suspension and was not receiving income and some of them faced cases and were inside prison. And these persons either was receiving subsistence allowance or was not receiving any income, hence the amount could not be recovered. But the plea of the petitioner was not taken into account by the respondents while deciding the case. Even according to the respondents, pending proceedings some of the amount was recovered and hence the final liability was reduced. The liability



10. The contention of the respondent is that in the surcharge proceedings, it is ordered that the amount ought to be recovered along with interest and hence the amount of Rs.7,12,268/- is retained. On perusing the impugned communication, dated 21.04.2014, it is seen that the respondents have stated that the order dated 23.09.2009 had directed to recover Rs.11,87,655/- but the order only states to recover Rs. 4,80,035/- along with interest, which means the respondents have imposed interest to the said amount, but it is not evident from which period to which period interest is imposed. This Court is of the considered opinion that the respondents are still recovering the amount



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from the defaulters and the respondents are entitled to recover from the defaulters along with interest. Hence the imposition of interest to the petitioner is unjust and cannot be sustained. It is seen from the records that the petitioner has retired from service on 31.08.2010. And the respondents have passed an order dated 25.03.2009. If the respondents had implemented the order of the District Court, dated 10.01.2009 and the remand order dated 25.03.2009, the respondents would have deducted Rs.2,40,016/- from the petitioner as well as the same amount from the other co-delinquent. Instead of recovering it at the earliest, the respondents have deliberately not recovered the amount from the terminal benefits but have retained Rs.7,12,268/-, thereby imposing huge interest to the said amount is causing serious prejudice to the petitioner. The respondents instead of recovering it at the earliest stage, the respondents have deliberately recovered in a belatedly by imposing huge interest.



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11. Therefore, this Court is of the considered opinion that the respondents are entitled to recover only Rs.2,40,016/- from the petitioner as well as from the Chakrapani. The respondents are not entitled to any interest because of the belated recovery. Moreover, still the respondents are having power to recover from the defaulter along with interest. Therefore, this Court is directing the respondents to retain Rs.2,40,016/- and release the balance amount to the petitioner and the said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

12. With the above said observation, the writ petition is allowed.

No costs.

Index : Yes / No
Internet : Yes
NCC : Yes / No
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To

The Deputy Registrar of Co-operatives,
Tiruchirapalli Region,
Tiruchirapalli 20.



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S.SRIMATHY, J

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