



W.P.(MD)No. 620 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 620 of 2016

and

W.M.P(MD)Nos. 506 & 507 of 2016

N.Kaliyamoorthy ... Petitioner

Vs.

1.The Joint Registrar of Cooperative Societies,
Pudukottai Region,
Pudukottai,
Pudukottai District.

2. The Deputy Registrar of Cooperative Societies,
Pudukottai Circle,
Pudukottai,
Pudukottai District.

3. The President,
DRL (T)-8, Viralimalai Co-operative Primary
Agriculture and Rural Development Bank Limited,
Viralimalai Post, Illupur Taluk,
Pudukottai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, calling for the entire records



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relating to the impugned order passed by the 1st respondent in her proceedings Na.Ka.1037/2013 A2, dated 06.11.2015 and quash the same and consequently directing the respondents to disburse the retirement benefits by calculating as per last drawn wages, which were arrived at U/s. 12(3) of I.D Act after deducting already paid retirement benefits to the petitioner.

For Petitioner : M/s.D.Shanmugaraja Sethupathi

For R-1 & R-2 : Mr.S.R.A.Ramachandran
Additional Government Pleader

For R-3 : No Appearance

ORDER

This writ petition is filed to quash the impugned order, dated 06.11.2015 and also seeking consequential direction to disburse the retirement benefits by calculating the last drawn salary which was arrived at under Section 12(3) Settlement, after deducting of terminal benefits to the petitioner.

2. Heard M/s.D.Shanmugaraja Sethupathi, learned counsel appearing for the petitioner and Mr.S.R.A.Ramachandran, learned Additional Government Pleader, appearing for the respondents 1 & 2. Perused the material documents available on record.



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3. The petitioner was working as a Secretary in the 3rd respondent Cooperative Society Bank Limited from 01.10.1970 and retired from service on 30.09.2003. The petitioner's retirement benefits was disbursed by calculating the benefits as per G.O.Ms.No.186 Co-operation, Food and Consumer Protection Department, dated 16.08.2000.

4. The contention of the petitioner is that the 3rd respondent has entered into 12(3) settlement of the Industrial Disputes Act, dated 10.02.1999 before the Labour Commissioner and has disbursed salary under 12(3) and effect was given from 01.07.1997 onwards and the petitioner was receiving salary based on this settlement. Therefore, the petitioner claims that he is entitled to the salary as per the settlement. The last drawn salary ought to be taken into account for disbursing the terminal benefits. The respondents however had paid all the salary, but while calculating the terminal benefits have invoked the Government Order passed in G.O.Ms.No.186 Co-operation, Food and Consumer Protection Department, dated 16.08.2000. Aggrieved over the same, the petitioner has filed a petition under Section 153 of the Tamil Cooperative Societies Act, 1983 before the Joint Registrar. The Joint Registrar, after considering the entire aspects, has



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come to the conclusion that the *G.O.Ms.No.186 Co-operation, Food and Consumer Protection Department, dated 16.08.2000* is applicable and Section 12(3) of Industrial Disputes Act, settlement cannot be invoked for granting the benefits.

5. The petitioner has also relied on the order rendered by the Learned Single Judge of this Court, reported in *[2011] Supreme (Mad) 963, in the case of M.C.Kuppan Vs. The State of Tamil Nadu Rep. By the Secretary to Government, Chennai, in W.P.No.18090 of 2010, vide order, dated 24.02.2011* has held as under:

.....

“5. It must be noted that the fixation of wage in respect of a Cooperative Society including the District central Cooperative Bank has to be done in terms of Rule 149 of the Tamil Nadu Cooperative Societies Rules. It is not necessary that every order of the Government has to be implemented by the Cooperative Society. But, in the present case, the wage settlement has been arrived with all the Trade Unions functioning in the Bank with the assistance of the Government Labour Officers and signed under Section 12(3) of the



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Industrial Dispute Act. It is undoubtedly binding of all the employees including the past, present and future. Under Section 18(3) of the Industrial Dispute Act, it is made clear that the settlement, which has been arrived in the course of conciliation proceedings will not only bind the parties to the settlement but in terms of the extended operation provided under Section 18(3)(d) of the Act, the settlement will cover even the persons, who were employed in the establishment and also the persons, who will subsequently get employed in the said establishment. In the light of the extended operation of the settlement under Section 12(3) of the Industrial Disputes Act, the petitioners cannot have any scope to challenge the settlement. Further, the petitioners have made only the 4th respondent the management of the District Central Cooperative Bank as a party forgetting that the settlement has been signed on behalf of the workmen by four Trade Unions and they are also not parties”.

In the above judgment the Learned Single Judge has stated that the Government has issued Government orders and it is not necessary that every order of the Government has to be implemented by the Cooperative Society.



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6. Apart from the above reasoning, this Court is of the considered opinion that the Government order is only guidelines for the society. The settlement is under Section 12(3) of the Industrial Disputes Act. The Act would prevail over the Government Orders. Hence, this Court is inclined to allow this Writ Petition. The impugned order restricting the terminal benefits of the petitioner, is illegal. Therefore, the 3rd respondent is directed to pay the balance which were deducted based on the *G.O.Ms.No.186, Co-operation, Food and Consumer Protection Department, dated 16.08.2000*. The petitioner is entitled interest only for the Gratuity and Provident Fund amount. For the other terminal benefits, the petitioner is not entitled to any interest.

7. Accordingly, this Writ Petition is allowed in above terms. No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
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S.SRIMATHY, J

ksa

**Order made in
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