



W.P.(MD)No.7613of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.7613 of 2016

and

W.M.P.(MD) No.6358 of 2016

V.Rathinavathy

... Petitioner

Vs.

- 1.The Joint Registrar of Co-operative Societies,
Commercial Tax Office Complex,
Mannarpuram,
Race Course Road,
Tiruchirappalli – 20.
 - 2.The Commissioner of Employees Provident Fund Organisation,
Sub-Regional Office,
P.B.No.588, Shree Complex,'D' Block,
No.18,Madurai Road,
Trichy – 620 008.
 - 3.The Deputy Registrar/Managing Director,
Amaravathi Consumer's Co-operative Wholesale Stores Ltd.,
308, No.1 Old Goods Shed Road,
Trichy – 620 002.
- ... Respondents



W.P.(MD)No.7613of 2016

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, calling for the records relating to the order of the 3rd respondent in Na.Ka.No.C1/2014-15/SR dated 29.11.2014 and quash the same in so far as the conditional order to adjust the retirement benefits of the petitioner and also direct the 3rd respondent to pay the terminal benefits eligible to the petitioner and to direct the 3rd respondent to sign and forward the Form 29 and 10-D of the petitioner to the 2nd respondent.

For Petitioner : Mr.V.O.S.Kalaiselvam

For Respondent : Mr.K.S.Selvaganesan,
Additional Government Pleader for R-1 and R-3

Mr.N.Dilipkumar for R-2

ORDER

This writ petition is filed challenging the impugned order, dated 29.11.2014 with consequential relief to adjust the retirement benefits of the petitioner and also directed the 3rd respondent to pay terminal benefits eligible to the petitioner and to direct the 3rd respondent to sign and forward the Form 29 and 10-D of the petitioner to the 2nd respondent.



W.P.(MD)No.7613of 2016

WEB COPY

2. Heard Mr.V.O.S.Kalaiselvam, learned counsel appearing for the petitioner and Mr.K.S.Selvaganesan, learned Additional Government Pleader papering for R-1 and R-3 and Mr.N.Dilipkumar, learned Standing counsel appearing for R-2. Perused the material documents available on record.

3. The brief facts are that the petitioner joined service of the 3rd respondent Stores as Clerk on 13.10.1975 and after completing 39 years of service has attained superannuation and retired from service on 30.11.2014. At the time of retirement, the petitioner was working as Superintendent and was also discharged his service of General Manager in-charge. At the time of retirement, there was no pending charges of the surcharge proceedings against the petitioner. However, in the order of retirement, dated 29.11.2014 it was alleged that there was negligence in supervision, a loss of Rs.11,20,000/-occurred in the Society and hence, condition was imposed to adjust the same in the retirement benefits.



W.P.(MD)No.7613of 2016

WEB COPY

4. The contention of the petitioner is on account of her retirement she is entitled to get bonus for the years 2014-2015 for 8 months, of Rs.2,800/-and earned leave for 8 months, amounting to Rs.1,53,192/-. So, totally the petitioner is entitled to get Rs.5,58,867/-. The respondents have initiated enquiry under Section 81 of Tamil Nadu Cooperative Societies Act, 1983, where the report states that while doing renovation work and without completing the renovation work, bills were passed and the Deputy Registrar, Accountant, General Manager, Section Writer and the Board of Directors are responsible for the same. The Board of Directors are also held responsible. In the surcharge proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act, the Board of Directors were fixed liability. Even though, the petitioner had retired from service on 30.11.2014, vide order, dated 29.11.2014 (one day prior to the date of retirement), there was a communication that she was allowed to retire from service on condition that the loss would be recovered from her retirement benefits. Challenging the said order, the present writ petition is filed.

5. The respondents have filed counter stating that under Section 81 of the Tamil Nadu Cooperative Societies Act, enquiry report was submitted on



W.P.(MD)No.7613of 2016

WEB COPY

03.02.2020 and Section 87 of the Tamil Nadu Cooperative Societies Act, a report submitted on 12.02.2020. And based on the report the respondents are entitled to recover the amount from the petitioner as well.

6. Pending writ petition, the 3rd prayer for sending the Form was already forwarded and the petitioner has received EPF fund.

7. It is seen from the records that the petitioner has retired from service on 30.11.2014 itself. The respondents are empowered to initiate criminal proceedings, disciplinary proceedings and surcharge proceedings and the three proceedings are independent to each other. In the present case, there is no criminal proceedings against the petitioner. The respondents have not initiated disciplinary proceedings but initiated only surcharge proceedings. For surcharge proceedings, the petitioner has already filed CMA and the same is pending. In such circumstances the respondents are not empowered to withhold the terminal benefits of the petitioner.



W.P.(MD)No.7613of 2016

WEB COPY

8. If the society had incurred loss, then the respondents are empowered to recover the same, by attaching the properties of the petitioner. Moreover, in the present case, there is no allegation of misappropriation and it is only the allegation of lack of executing supervisory power properly. Therefore, the respondents are not empowered to withhold the petitioner's terminal benefits.

9. Accordingly, the impugned order, dated 29.11.2014 is hereby quashed. The respondents are directed to pay terminal benefits applicable to the petitioner. After completion of the CMA proceedings, the respondents are at liberty to initiate proceedings to recover, if so advised or if necessary. The respondents are directed to disburse terminal benefits, within a period of 8 weeks from the date of receipt of a copy of the order.

10. With these observations and directions, this Writ Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
ksa

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W.P.(MD)No.7613of 2016

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W.P.(MD)No.7613of 2016

S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No. 7613 of 2016**

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