IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.1246 of 2020
and W.M.P.No.1508 of 2020

G.Meenakshisundaram ...Petitioner

-Vs-

1. The Registrar of Co-operative
Societies (Housing)
Veppary,
Chennai – 600 007.

2. The Deputy Registrar of Co-operative
Societies (Housing),
Cuddalore.

3. SA.HSG 83, Tittakudi Taulk
Co-operative Housing Society Ltd.,
Rep. by its President,
Nadu Veethi, Tittakudi,
Cuddalore District. ... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in Na.Ka.322/2019 Ki.ve.thi dated 26.04.2019 and consequential order of the third respondent dated 19.06.2019, quash the same and direct the respondents to pay the petitioner's balance retirement benefits of Rs.20,25,812/- with 12% interest from 30.04.2019 to payment.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents
For R1 & R2 : Mr.T.M.Rajangam
Government Advocate
For R3 : Mrs.T.Girija

**ORDER**

This writ petition has been filed challenging the order dated 26.04.2019 passed by the second respondent thereby directing the third respondent to recover excess salary paid to the petitioner and the order dated 19.06.2019 passed by the third respondent thereby order to recover excess amount from the petitioner's retirement benefits.

2. The petitioner was appointed as Clerk and subsequently he was promoted as Accountant and Manager in the third respondent society. On 30.11.2010, he became Secretary in-charge of the third respondent society. Thereafter he attained the age of superannuation on 30.04.2019 and the third respondent society passed resolution dated 08.03.2019, thereby allowing the petitioner to retired from service as on 30.04.2019. Though the petitioner was permitted to retired from service and no disciplinary or surcharge proceeding pending against the petitioner, the petitioner was not paid the retirement benefits to the tune

of Rs.34,23,329/- and the arrears of salary to the tune of Rs. 4,58,383/-.

3. While being so, the second respondent by its communication dated 26.04.2019 informed that as per the audit report, 2017-2018 from 01.01.1998 to 31.03.2014, the petitioner was paid excess salary of Rs.5,48,122/-. Accordingly, the third respondent passed order to recover the said amount from the retirement benefits of the petitioner. Aggrieved by the same, the petitioner filed the present writ petition.

4. The learned counsel appearing for the petitioner submitted that the third respondent compelled and obtained consent letter from the petitioner to deduct the excess salary. Even then, the petitioner was paid only a sum of Rs.18,24,637/- out of Rs.38,50,449/-. Even after deducting a sum of Rs.5,48,122/-, the third respondent ought to have disbursed more than Rs.15,00,000/- as his retirement benefits. The second respondent has no authority or jurisdiction to order to recover the excess payment from the petitioner's retirement benefits. As directed by the second respondent, the third respondent after deducting the amount under various heads, paid a sum of Rs.18,19,457/- in favour of the petitioner.

4.1. He further submitted that the petitioner's salary was fixed on the basis of the settlement arrived under Section 18(1) of the Industrial Dispute Act (hereinafter referred to as "the ID Act"). The petitioner was paid salary from the year 1998 based on the said settlement. After allowing the petitioner retired from service, after the period of several years, the respondents 2 & 3 have passed orders to recover the excess amount which was wrongly paid to the petitioner.

4.2. He further submitted that admittedly, there was no disciplinary proceeding or surcharge proceeding pending against the petitioner. The audit objection raised based on the circular dated 22.02.1995 bearing No.R.C.1/95/C4. The said circular was under challenge before this Court in W.P.No.6228 of 1998 and this Court by an order dated 20.11.2006 quashed the said circular, insofar as it portion nullifying the settlement arrived at under Section 18(1) of the ID Act. The petitioner was paid salary on the basis of the settlement arrived under Section 18(1) of the ID Act.

4.3. He further submitted that the Registrar of Cooperative

Societies (Housing) Chennai, by its communication dated 30.03.1995, considering the representation received from the employees of Taluk Cooperative Housing Societies, in respect of pay anomalies in implementation of Section 18(1) direction, requested all the Deputy Registrar (Housing) to allow the employees of the Taluk Cooperative Housing Societies to draw their pay as per settlement already made until further orders. Therefore, the order impugned in this writ petition cannot be sustained and liable to be quashed.

5. The respondents filed counter affidavit and the learned Government Advocate appearing for the respondents submitted that the first respondent issued guidelines under Section 181 of the Tamil Nadu Co-operative Societies Act, 1983 by the proceedings in R.C.No.1/95/C4 dated 22.02.1995 to revise the time scale and increase the pay of the employees with effect from 01.01.1994. However, the said circular was not followed by the third respondent society and had not obtained prior approval from the first respondent for not following the above direction. Therefore, the petitioner was paid excess salary based on the irregular pay fixed by the board based on the settlement arrived under Section 18(1) of the ID Act.

5.1. Further the petitioner was issued notice and after giving an opportunity of hearing the order of recovery was passed. In fact, the petitioner had given no objection certificate for deducting of excess amount which was paid to him from him retirement benefits. After having been given consent for withhold of excess amount, he cannot now challenge the order of recover.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. As per the audit objection, the petitioner was paid excess salary of Rs.5,48,122/-. As rightly pointed out by the learned counsel appearing for the petitioner, the petitioner was paid salary based on the settlement arrived under Section 18(1) of the ID Act. That apart, the circular issued by the first respondent in R.C.No.1/95/C4 dated 22.02.1995 was under challenge before this Court in W.P.No.6228 of 1995 and this Court by an order dated 20.11.2006, held as follows :-

*12. In the instant case, as per the first Circular dated 09.06.1994 directions were issued by the respondent based* *on which 18(1) settlement was entered into between the employees and the Societies and it was given effect to and all the benefits were granted. While so, the impugned Circular has been issued when the subsisting settlement is in force. Therefore, i am of the view that the judgment cited by the counsel for the petitioner (supra) is squarely applicable to the case on hand, as, in the said judgment, the First Bench had quashed the impugned order on the ground that the Joint Registrar did not have jurisdiction to pass an order nullifying the 18(1) settlement. Following the same, I hold that the respondent had passed the order under challenge without jurisdiction and as such, it cannot nullify the settlement arrived at under Section 18(1) of the Industrial Disputes Act.*

*In the light of what is stated above, the impugned Circular insofar as the portion nullifying the settlement arrived at under Section 18(1) of the I.D. Act shall not be in force to the prejudice of the petitioner union. Accordingly, impugned Circular is quashed and the writ petition stands allowed. Consequently, connected W.P.M.P. No.10088 of 1995 is closed. No costs."*

8. That apart, the first respondent itself requested all the societies to allow the employees to draw their pay as per settlement

already made, until further orders. Accordingly, the petitioner was paid salary. Further the petitioner was allowed to retire from service as on 30.04.2019. After having been allowed the petitioner to retire from service, the second and third respondent ought not to have ordered for recovery as if the petitioner was excessively paid, that too from 01.01.1998 to 31.03.2014 to the tune of Rs.5,48,122/-.

9. The Hon'ble Supreme Court of India repeatedly held and also issued guidelines to recover the excess amount paid to the employees. In the latest judgment dated ***08.08.2024*** in ***Civil Appeal No.1635 of 2013*** in the case of ***Jagdish Prasad Singh Vs. State of Bihar and ors.***, the Hon'ble Supreme Court of India held that no recovery can be made from the employees belonging to Class III and Class IV service and retired employees. Further the respondent cannot recovery excess amount paid to the employees after the period of several years.

10. In the case of ***State of Punjab and ors Vs. Rafiq Masih (White Washer) and ors.***, reported in ***(2015) 4 SCC 344***, the Hon'ble Supreme Court of India held that in few situations, the recovery from the employees would be impermissible in law as follows:-

*(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*

*(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery. Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*

*(iii) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*

*(iv) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

11. That apart, excess salary was not paid on the

misrepresentation or fraud committed on the part of the petitioner. Likewise no recovery is possible if such excess payment was made by the employer by applying a wrong principle for calculating the salary or on the basis of a particular interpretation of rule or order, which is subsequently found to be erroneous.

12. In view of the above discussions, the impugned orders passed by the second respondent in Na.Ka.322/2019 Ki.ve.thi dated 26.04.2019 and consequential order of the third respondent dated 19.06.2019, are hereby quashed. The third respondent is directed to disburse the balance terminal amount of Rs. 20,25,812/- along with interest at the rate of 6% per annum, within a period of six weeks from the date of receipt of a copy of this Order.

13. With the above directions, the Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

10.09.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

rts

To

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2. The Deputy Registrar of Co-operative
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3. The President,
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**G.K.ILANTHIRAIYAN. J,**

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