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WA No.302 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2024

CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

AND

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

WA No.302 of 2022

The Management,
Appellate Authority.188,
Perunthurai R.S.Primary Agricultural
Coop.Credit Society
Perunthurai R.S. And Post,
Erode

: Appellant

versus

1.K.K.Subramaniam

2.The Joint Registrar of Co.Op Societies,
(Revisional Authority)
Erode Zone, Erode

: Respondents

Prayer: Writ appeal filed under Clause 15 of the Letters Patent against the order of the learned Single Judge in WP No.30901 of 2018 dated 04.08.2021.

For the Appellant : Mr.A.Selvendiran

For Respondent No.1 : Mr.V.Kathirvelu

For Respondent No.2 : Mrs.Geetha Thamaraiselvan



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JUDGMENT

(Made by D. KRISHNAKUMAR, J.)

This appeal is preferred by the Management of Perunthurai R.S.Primary Agricultural Cooperative Credit Society, aggrieved by the order of the learned Single Judge in WP No.30901 of 2018, dated 04.08.2021.

2. The first respondent has filed the writ petition seeking a direction against the appellant to sanction and disburse provident fund along with interest, from 08.02.1984 till the date of payment.

3. Before the Writ Court, the first respondent submitted that he was initially appointed as clerk in 1967 in the appellant society and he was subsequently promoted as accountant, and later as secretary. He was subjected to disciplinary proceedings and was placed under suspension on 21.12.1984. Thereafter, he was dismissed from service on 27.04.1987. The order of dismissal was challenged before the Labour Court, Salem, in ID No.13 of 1995. By order dated 09.02.1995, Labour Court has dismissed the industrial dispute and confirmed the order of dismissal.



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4. Thereafter, in the year 2014, after 27 years, the first respondent filed a revision petition under Section 153 of the Tamil Nadu Cooperative Societies Act before the second respondent for a direction to the appellant to pay provident fund and gratuity amount, with interest at 12%. The revision petition was partly allowed and the revisional authority held that the first respondent was entitled to provided fund amount of Rs.1,44,371.10/- and not gratuity. The first respondent has not challenged the said order and therefore, rejection of request for gratuity has become final. The first respondent filed the writ petition seeking direction against the appellant to pay the provident fund along with 18% interest.

5. Learned Single Judge observed that notwithstanding the fact that the first respondent was a delinquent employee who was subsequently dismissed from service, there was no justification in retaining the provident fund amount, and directed the appellant to pay an amount of Rs.1,44,371.10 along with interest at 7.5% from the date of dismissal from service till the date of payment. The said order of the learned Single Judge is challenged in the present appeal.



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6. Learned counsel for the appellant submitted that the first respondent was dismissed on 27.04.1987. Challenging his dismissal, he raised an industrial dispute in ID No.13 of 1995 before the Labour Court, Salem. The same was also dismissed. Therefore, his dismissal from service has become final. Without taking any steps for nearly three decades to seek provident fund amount or gratuity, in the year 2014, the first respondent has filed revision petition. The revisional authority has negated the request for gratuity; however, has directed the appellant to pay provident fund amount of Rs.1,44,371.10/-. The appellant has also agreed to pay the same. However, the first respondent has filed writ petition seeking interest at the rate of 18%. The learned Single Judge has granted 7.5% interest. Learned counsel strenuously contended that the delay of nearly three decades to file a revision seeking provident fund and gratuity should have been considered by the learned Single Judge and interest portion should have been denied. Even otherwise, the grant of 7.5% interest is excessive.



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7. Learned counsel for the first respondent submitted that the direction to the appellant to pay 7.5% interest on the provident fund amount is just and proper and does not require any interference by this Court. Learned counsel pressed into service the judgment of Hon'ble Supreme Court in the case of *Vijay L.Mehrotra vs. State of U.P. and others (2001) 9 SCC 687*. The Hon'ble Supreme Court has directed the respondent therein to make payment with 18% simple interest with effect from the date of retirement till the date of payment. The learned counsel submitted that the interest awarded by learned Single Judge should be enhanced from 7.5% to 18%, following the judgment of the Apex Court.

8. The case before the Hon'ble Supreme Court was totally different from the case on hand. It was a case of retirement simplicitor. In this case, the respondent has suffered dismissal from service. Therefore, the facts are totally different. Moreover, in the case on hand, there is also a huge delay of nearly three decades in filing the revision petition.



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9. As regards the period for which the first respondent is entitled to, this Court had an occasion to consider a similar issue in the order in WP No.13463 of 2021, dated 21.03.2022, (S.Ramakrishnan vs. The Chief Executive Officer, Perambalur Sugar Mills Ltd., Perambalur District. This Court has referred to the judgment of the Hon'ble Supreme Court in *Union of India & Ors. v. Tarsem Singh [(2008) 8 SCC 648]*. The Apex Court has held as under:

“5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or



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affected several others also, and if the re- opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. *For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."*

10. From a reading of the above, it is clear that the claim for retirement benefits cannot be rejected outright; however, it cannot also be granted from the date of claim, ignoring delay and laches. To strike a balance, the Hon'ble Supreme Court has granted relief three years prior to the filing of the writ petition, viz., from the date the claim was first made or challenged.



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11. In the case on hand, the first respondent has filed a revision petition on 25.09.2014. Therefore, he is entitled for interest from 25.09.2011, for Rs.1,44,371.10.

12. This Court is of the view that the rate of interest granted at 7.5% is low; however, the same cannot also be granted at 18%, as claimed by the first respondent. Interest of justice would be subserved if rate of interest is fixed at 12%.

13. Accordingly, this Court passes the following order:

(i) The appellant is directed to pay interest at 12% p.m. on Rs.1,44,371.10 from 25.09.2011.

(ii) The entire amount shall be paid to the first respondent within a period of twelve (12) weeks from the date of receipt of a copy of this judgment; failing which, the appellant shall pay



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enhanced interest at 18% p.a. from
25.09.2011 till the date of payment.

(iii) The writ appeal stands disposed of.

(iv) There shall be no order as to costs.

Consequently, CMP No.2175 of 2022 is
closed.

(D.K.K., J.) (K.B., J.)
27.06.2024

Index : Yes/No
Neutral Citation : Yes/No
tar

Office to note

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To

The Joint Registrar of Co.Op Societies,
(Revisional Authority)
Erode Zone, Erode



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AND

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