IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.27029 of 2011
and M.P.No.2 of 2011

G.Eswaramoorthy

... Petitioner

Vs.

1.The Deputy Registrar of Co-ooperative
Societies, Erode Circle,
Erode, Erode District.

2.The Special Officer,
A.A.539, Avalpoondurai Primary,
Agricultural Co-op Credit Society,
Avalpoondurai, Erode Taluk,
Erode District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certeorarified Madamus, directing to call for the records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.2699/2005/Tho.Vae.Sa(1), dated 10.10.2011 and quash the same and consequently, direct the respondents to disburse the petitioner's balance retirement benefits to the tune of Rs.1,42,629/-.

For Petitioner	:	M/s.C.Prakasam
For Respondents	:	Mr.P.Kumaresan Additional Advocate General Assisted by Mr.M.Muthusamy, Government Advocate for R1 Mr.L.P.Shanmuga Sundaram for R2

ORDER

The brief facts that are relevant for disposal of this writ petition are as under:

The petitioner worked as Senior Clerk in the 2nd respondent/Society and retired from service on 30.09.2006. While the petitioner was in service, the petitioner and the 2nd respondent represented by its president entered into the settlement under Section 18(1) of Industrial Disputes Act 1947 (hereinafter in short Act) in respect of the pay scales and accordingly, the petitioner was paid pay and other allowances in terms of the said settlement till the date of his superannuation on 30.09.2006. However, thereafter when the petitioner made a claim for payment of terminal benefits the same were paide in terms of G.O.Ms.No.131, கூட்டுறவு பாதுகாப்பு துறை dated 04.06.1999 and an amount of Rs.7,89,251/- was paid as against the claim of the petitioner for an amount of Rs.9,31,880/- in terms of the above said settlement. Thus, the dispute in the present writ petition is in respect of balance amount of Rs.1,42,626/-.

2.Mr.C.Prakasam, learned counsel for the petitioner streneously contended that the 2nd respondent having paid the salary and other allowances in terms of the settlement entered into between the petitioner and 2nd respondent under Section 18 (1) of the Act till the date of his superannuation is not justified in not paying the terminal benefits in terms of said settlement and last drawn pay. He also further contended that the settlement entered into between the parties is binding on the 2nd respondent and they are not entitled to deviate from the said settlement so long the settlement stands. Thus, the simple case of the petitioner is that he is entitled for payment of terminal benefit basing upon his last drawn pay and in terms of the settlement dated 30.11.1998 entered into between the parties under Section 18 (1) of the Act.

3.Mr.Kumaresan, learned Additional Advocate General appearing for the 1st respondent contended that the said settlement dated 30.11.1998 that was entered into under Section 18 (1) of the Act between the petitioner and

2nd respondent is contrary to the various instructions issued by the Government especially the Government Letter No.6768/CN1/05-2 dated 04.04.2005 wherein specific instructions were issued in terms of G.O.Ms.No.131 கூட்டுறவு பாதுகாப்பு துறை dated 04.06.1999 stating that the establishment and contingency expenditure in a Socieity is restricted to 2% of their working capital and only in case if a particular Society earned profits in the current year and have operated on profits atleast for three years during the last five years then only they are entitled to retain their existing pay scales and accept the deposits in deviation of the salaries fixed under G.O.Ms.No.131 கூட்டுறவு பாதுகாப்பு துறை dated 04.06.1999. According to the leanred Additional Advocate General, the 2nd respondent/Society has not fulfilled the said conditions and has been running under loss. But contrary to the said Government letter dated 04.04.2005, the 2nd respondent entered into the settlement with the petitioner herein and therefore, the said settlement is void and the same cannot be acted upon. Thus, it is contended that the settlement entered into under Section 81 (1) of the Act is void and is unenforceable and therefore, the petitioner is not entitled for payment of terminal benefits in terms of the said settlement. He also further contended that, in case the petitioner is aggrieved by non implementation of the said settlement entered into under Section 18(1) of the Act, it is open to the petitioner to seek enforcement of the same in accordance with law by approaching the appropriate forum but not by way of filing the writ petition before this Court.

4.On the other hand, learned counsel for the petitioner placed reliance on the letter bearing R.C.No.138639/2007 PACB 1 dated 26.06.2008 and contended that in terms of the said letter dated 26.06.2008, the 2nd respondent is justified and entering into the settlement and is under obligation to pay the terminal benefits in terms of the said settlement.

5.This Court has carefully considered the submissions made on either side and also perused the entire materials available on record.

6.It is an undisputed fact that the 2nd respondent/Society is running under losses and has not made any profits during the relevant period i.e., either at the time of entering into the settlement under Section 18 (1) of the Act with the petitioner or at the time of superannuation of the petitioner from service. Once it is an admitted fact, whether the 2nd respondent/Society is entitled to enter into any such settlement entitling the petitioner over and above the pay scales prescribed under G.O.Ms.No.131 கூட்டுறவு பாதுகாப்பு துறை dated 04.06.1999 is doubtful. However, it is an admitted fact that such a settlement was entered into and the same was given effect to till the date of superannuation of the petitioner from service. As natural corollary the terminal benefits of the petitioner are liable to be paid basing upon the last drawn pay. It is not the case of the respondent that the last drawn pay of the petitioner is revised at any point of time.

7.Be that as it may, this Court having taken a note of the fact that it is only the Societies/Co-operative Bank which are making profits over a period of three years are entitled to such settlement fixing pay scales over and above the pay scales prescribed under G.O.Ms.No.131 கூட்டுறவு பாதுகாப்பு துறை dated 04.06.1999, but not societies which are making losses and fact that the 2nd respondent/Society is admittedly making losses at the relevant point of time, the validity of the settlement entered into under Section 18 (1) of the Act which prima facie appears to be contrary to the instructions issued by the

Government from time to time, has to be decided basing upon various factors and factual aspects. In the considered view of this Court, such an aspect cannot be gone into in a writ petition filed under Article 226 of the Constitution of India.

8.In the circumstances, this Court is not inclined to interfere with the impugned proceedings issued by the 1st respondent. However, it is left open to the petitioner to seek enforcement of the settlement entered into between the petitioner and 2nd respondent dated 30.11.1998 under Section 18 (1) of the Act by approach the appropriate forum and in accordance with law. Accordingly the writ petition is dismissed subject to above observations. No costs. Consequently, connected miscellaneous petition is closed.

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vsn
Index : Yes/No
Speaking Order : Yes/No

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