IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2024

CORAM:

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

W.P.No.4500 of 2020

V.Chandran ... Petitioner

-Vs-

1. The Joint Registrar of Co-operative Societies/
   The Revision Authority,
   Namakkal Region,
   Namakkal 637 001.

2. No.S.390, Pothanur Primary Agricultural,
   Co-operative Credit Society Ltd.,
   Represented by its President,
   Pothanur 637 208.
   Namakkal District. ... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records relating to the passing of the first respondent in his proceedings in No.Na.Ka.5873/2017/Sa.Pa. Dated 24.10.2018 in so far it relates to the direction to the petitioner to remit a sum of Rs.1,12,962/- being the audit objections and quash the same and consequently direct second respondent to pay and settle the provident Fund of Rs.1,05,203/- ordered by the first respondent along with interest at the rate of 9 percent p.a. for its belated payment from the date of retirement on 31.05.2012 till its payment.

For Petitioner	: Mr.K.Premkumar
For R1	: Mr.M.Murali Government Advocate
For R2	: No appearance

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 24.10.2018, insofar as it relates to the direction to the petitioner to remit a sum of Rs.1,12,962/- based on the audit objections.

2. Heard both sides and perused the materials available on record.

3. The petitioner had joined in the service of the respondents as Salesman. Subsequently, he had attained the age of superannuation and he was permitted to retire from service with effect from 31.05.2012. However, the retirement benefits of Provident Fund, arrears of salary as per G.O.Ms.No.238 dated 01.04.2000 were withheld due to audit objections. Therefore, the petitioner submitted a detailed representation

to settle the retirement benefits. However, it was not considered and as such, the petitioner was constrained to file a writ petition before this Court in W.P.No.2321 of 2017. This Court, by an order dated 01.02.2017 directed the second respondent to consider the representation submitted by the petitioner and dispose of the same, within a period of eight weeks from the date of receipt of the order. The second respondent passed an order, thereby rejected the terminal benefits of Rs.1,05,203/-, a sum of Rs.1,12,962/- being the audit objections recoverable and the balance of Rs.7,759/- is till due from the petitioner. Aggrieved by the same, the petitioner preferred a revision before the first respondent and it was allowed and set aside the rejection of terminal benefits passed by the second respondent. Further directed the second respondent to settle the balance terminal benefits with interest at the rate of 9%.

4. Accordingly, the first respondent directed the petitioner to remit a sum of Rs.1,12,962/- being an audit objection to the second respondent and directed the second respondent to pay a sum of Rs.1,05,203/- being the Provident Fund. However, it was not paid to the petitioner even after repeated request.

5. A perusal of the counter filed by the second respondent revealed that during the final audit conducted for the year 1996 – 1997, the auditor submitted a report and a settlement under Section 12(3) of the Industrial Disputes Act, 1947 has been entered between the employees and the management on 25.06.1991. In the said settlement, a resolution has been made that a salary of the employees has been fixed and revised with effect from 01.10.1990 for both the employees working in the banking sector and in the fair price shops. The settlement term was completed on 30.09.1993. Subsequently, another settlement was entered on 21.03.1994 and accordingly, the employees of the Banking sectors salary and other retirement benefits alone resolved to be given for the employees working in the fair price shop has not been considered.

6. Admittedly, the petitioner was allowed to retire from service and there was no disciplinary proceeding pending against him. However, the petitioner was not paid with retirement benefits and as such, the petitioner submitted a representation. On receipt of the representation from the petitioner, the respondents had passed an order to recover the

amount and the objections raised in the audit. That apart, allegedly the petitioner was paid excess salary that too from the year 1997 – 2004. After a period of eight years from the date of his retirement, that too on the representation submitted by the petitioner, order has been passed on the ground of audit objections. When no recovery was made till the date of his retirement and while he was in service, after his retirement, the recovery would cause undue hardship. Deduction from the contribution of the Provident Fund is also impermissible in law.

7. 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.

8. 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."*

9. In view of the above, the impugned order cannot be sustained and is liable to be quashed. Accordingly, proceedings passed by the first respondent in No.Na.Ka.5873/2017/Sa.Pa., dated 24.10.2018, in so far it relates to the direction to the petitioner to remit a sum of Rs.1,12,962/- being the audit objections, is hereby quashed. The second respondent is

directed to settle the provident fund of Rs.1,05,203/- to the petitioner with interest at the rate of 6% p.a from the date of retirement of the petitioner i.e. 31.05.2012 till the date of payment.

10. Accordingly, this writ petition stands allowed. No costs.

24.09.2024

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
mn

G.K.ILANTHIRAIYAN. J,

mn

To

1. The Joint Registrar of Co-operative Societies/
   The Revision Authority,
   Namakkal Region,
   Namakkal 637 001.

2. The President,
   No.S.390, Pothanur Primary Agricultural,
   Co-operative Credit Society Ltd.,
   Pothanur 637 208.
   Namakkal District.

W.P.No.4500 of 2020

24.09.2024