



WP.No.5103 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2024

CORAM

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

WP.No.5103 of 2020
and
WMP.Nos.18858 & 6020 of 2020

E.Padmanaban

... Petitioner

Vs.

1. The Deputy Registrar of
Co-Operative Societies (Housing),
Cuddalore.
2. E.1356, Villupuram Co-Operative Building Society Ltd.,
Rep. by its President,
No.1-A, East Shanmugapuram,
Villupuram-605 602.
3. The Co-Operative Sub Registrar/Inspection Officer
U/s 82 of the TNCS Act,
E.1356, Villupuram Co-Operative Building Society Ltd.,
No.1-A, East Shanmugapuram
Villupuram-605 602.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India,
praying to issue a writ of Certiorarified Mandamus, calling for the records in
Na.Ka.No. 920/ 2019/sa.pa dated 29.01.2020 on the file of the 1st respondent
and quash the same consequently, direct the respondents 1 and 2 to pay the



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petitioner earn leave salary of Rs.4,46,888/- with 12% interest from 31.08.2017 to till payment.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents : Mr.V.Nanmaran
Additional Govt. Pleader for R1 & R3
Mr.L.P.Shanmugasundaram for R2

ORDER

The instant writ petition has been filed against the impugned order passed under Section 87 of “The Tamil Nadu Co-Operative Societies Act” [hereinafter shall be referred to as “the Act”] vide order dated 29.01.2020.

2. The learned counsel for the petitioner would submit that the petitioner was appointed as a Clerk in the 2nd respondent-Society on 16.07.1985. After completion of 32 years of unblemished service, he was allowed to retire from service on 31.08.2017. It is the further contention of the respondents that, having allowed the petitioner to retire, and also having settled all retirement benefits except the leave salary, all of a sudden, by invoking Section 87 of the Act, had issued an order of recovery of



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Rs.3,15,768/-, on the ground that the petitioner, knowing fully well about the Rules, had received the excess pay, beyond his entitlement. The learned counsel for the petitioner would contend that such excess payment could not be dealt under Section 87 of the Act. The learned counsel would further submit that after the retirement of the employee, if any such recovery order passed against the employee, it would cause iniquitous and harsh impact upon the employee. In support of his contention, the learned counsel relied upon the following judgements:-

1. ***State of Punjab and Ors Vs. Rafiq Masih (White Washer) etc.,*** reported in ***AIR 2015 SC 696***; and
2. ***Jagadish Prasad Singh Vs. State of Bihar and others*** reported in ***2024 SCC OnLine SC 1909***.

3. Per contra, the learned Additional Government Pleader would vehemently submit that, though the petitioner was permitted to retire and some portion of the retirement benefits were given, since it came to the knowledge of the Society that some misappropriation was committed by way of excess pay, an inspection under Section 81 of the Act was conducted, in which it came to light that one Ramalingam Kandhan along with this



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petitioner, has committed misappropriation, it is in this background, a surcharge proceedings were initiated. Accordingly, the petitioner cannot have any grievance against the Society, and would submit that the petitioner could very well submit his explanation to the notice, and if he is in a position to prove before the Authority about his innocence, he would definitely get relief, therefore, prayed to dismiss the writ petition.

4. I have given my anxious consideration to either side submissions.

5. Before we delve into the disputed facts, it is relevant to cull out the admitted facts. It is an admitted fact that the petitioner joined the 2nd respondent-Society on 16.07.1985, and he was promoted as a Secretary on 21.01.1991, eventually he was allowed to retire on 31.08.2017. Thereafter, vide order dated 12.10.2017, his retirement benefits were calculated and a proposal was sent to the Chairman, Villupuram Co-Operative Societies to settle his dues. While things were proceed in such a way, all of a sudden, after a period of one year i.e., on 11.10.2018, Section 81(2) summons of the Act were issued to the petitioner for the recovery of excess pay. Ultimately, after the issuance of Section 81(2) Act summons, notice under Section 87 of



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the Act, issued mentioning that there was an excess pay of Rs.3,15,768/- made to this petitioner, though the total surcharge amount was Rs.21,14,921/- for the petitioner and other 2 persons. It is settled principle of law that whenever any excess pay was made to the employee and in such payment, there is no role to the petitioner, that too in the absence of any misrepresentation, then it would definitely affect their right to life, and would be iniquitous and harsh, which cannot be enforced against the employee.

6. The learned counsel for the petitioner would further invite the attention of this Court about Section 87 notice, and would contend that, in order to invoke Section 87 of the Act, it is mandatory on the part of the respondents to charge the employee for misappropriation or fraudulent retention of money or guilty of breach of trust. In this case, the learned Additional Government Pleader though would contend that there was a misappropriation of funds on the part of the petitioner, while looking at Section 87 surcharge notice, the only allegation imputed against the petitioner is that he has been enjoying the excess pay. Accordingly, it is the contention of the petitioner that the very issuance of notice under Section 87 is without jurisdiction, as there are no ground against the petitioner for the alleged misappropriation and breach of trust.



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7. This Court has also gone through the 87 notice. The only allegation against the petitioner is that he has been enjoying a sum of Rs.3,15,768/- which was paid excess to his entitlement. Except this allegation, there are no ground made out in the notice as to the misappropriation and breach of trust. However, the learned Additional Government Pleader would submit that the petitioner being the Secretary, he knew the Rules, accordingly, he is also vicariously liable for the misdeeds committed by the other delinquents viz., Ramalingam and Kandhan. But, this Court is not in a position to accept such contention, as even according to the authority, there are no material allegation containing ingredient enumerated under Section 87 of the Act.

8. It is also pertinent to mention here that the judgement of the Hon'ble Supreme Court in *State of Punjab and Ors Vs. Rafiq Masih (White Washer) etc* reported in *AIR 2015 SC 696*, wherein the Hon'ble Supreme Court stipulated the instances where recovery could not be made. The relevant paragraph is paragraph 12 and the same reads as follows:-

“12. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the



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following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) 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.*
- (v) 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.”*

The petitioner also relied the latest judgment of the Hon'ble Supreme Court in ***Jagdish Prasad Singh Vs. State of Bihar and others [Civil Appeal No.1635 of 2013]***, to support their case.

9. While looking at the surcharge notice under Section 87 of the Act, it is nothing, but an action of the Co-Operative Society to recover the excess amount paid to the petitioner, that too after the retirement of the employee. As already discussed, to invoke Section 87, no misappropriation or breach of



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trust pleaded. In view of what has been stated hereinabove, the contention raised by the learned counsel for the petitioner that the issuance of notice under Section 87 of the Act is without jurisdiction is liable to be accepted, as far as this petitioner is concerned. Therefore, this Court is of the view that there is a merit in favour of the petitioner.

10. In the result, this writ petition stands allowed and the proceedings in Na.Ka.No.920/2019/sa.pa dated 29.01.2020 is hereby quashed only to the extent affecting this petitioner. As a concomitant, the recovery against this petitioner is illegal. As a result of which, the respondents 1 and 2 are hereby directed to pay the petitioner's leave salary in accordance with law, within a period of four(4) weeks from the date of receipt of a copy of this order, failing which, the petitioner is entitled for interest at the rate of 6% per annum thereafter. No costs. Consequently, connected Miscellaneous Petitions are also closed.

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Index : Yes /No

Speaking order : Yes/No

Neutral Citation : Yes/No



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C.KUMARAPPAN, J.

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