IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2024

CORAM :

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

W.P. No.4767 of 2012
and M.P.No.1 of 2012

1. R.Venugopal (deceased)
2. Santha
3. Srinath …Petitioners

P2, P3 substituted as legal heirs of the deceased P1 vide order dated 27.11.2023 made in WMP.No.23426 of 2023 in W.P.No.4767 of 2012 by MSKJ

Vs

1. The Joint Registrar of
   Co-operative Societies
   Kancheepuram Region
   Kancheepuram,
   Kancheepuram District.

2. The Special Officer
   GC 2349 Vadamanipakkam Primary Agricultural
   Co-op Credit Society,
   Vadamanipakkam Village & Post
   Maduranthagam Taluk,
   Kancheepuram District. …Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.2480/2011/A3, dated 30.12.2011 and quash the same and consequently direct the respondents to disburse balance retirement benefits amount to the tune of Rs.2,00,719/- to the petitioner.

For Petitioner	: Mr.C.Prakasam
For Respondents	: Mrs.P.Vijaya Devi Government Advocate for R1 Mr.L.P.Shanmuga Sundaram for R2

ORDER

This writ petition has been filed to call for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.2480/2011/A3, dated 30.12.2011 and quash the same and consequently direct the respondents to disburse balance retirement benefits amount to the tune of Rs.2,00,719/- to the petitioner.

2. The learned counsel for the petitioners submitted that the deceased petitioner was appointed as Secretary on 01.02.1978 in the second respondent Society and retired from service on attaining the superannuation on 30.06.2008. The 2nd respondent allowed the deceased petitioner to retire from service and at

that time the 2nd respondent disbursed the retirement benefits to the tune of Rs.6,70,024/- on various dates from 13.12.2008 to 21.12.2009. But as per the retirement benefits of the deceased petitioner the total amount is a sum of Rs.8,70,743/- together with three months difference salary amount but the amount disbursed by the second respondent is only a sum of Rs.6,70,024/- as against the total retirement benefits of Rs.8,70,743/-. The learned counsel further submitted that the deceased petitioner made a request to the 2nd respondent to disburse his balance retirement benefits to the tune of Rs.2,00,719/- but the 2nd respondent was not inclined to disburse his balance retirement benefits, but on the other hand by giving some reasons or the other for refusal to pay the balance amount to the deceased petitioner. He further submitted that the deceased petitioner approached the 1st respondent and preferred Statutory Revision under Section 153 of Tamil Nadu Cooperative Societies Act, 1983 but the same was rejected by the 1st respondent vide his proceedings Na.Ka.No.2480/2011/A3 dated 30.12.2011.

3. The learned counsel further submitted that when the 2nd respondent allowed the deceased petitioner to retire from service on 30.06.2008 imposing two conditions that if any audit objections is raised for the period 2007 – 2008 i.e., till 30.06.2008 that the deceased petitioner should pay the said amount and

another condition that only after audit was over till the period upto 30.06.2008 the security deposit to the tune of Rs.4,300/- will be repaid to the deceased petitioner. The 2nd respondent has not issued any notice or making any representation before the Deputy Registrar of Cooperative Societies for initiating enquiry under Section 81 of Tamil Nadu Cooperative Societies Act, 1983 before the retirement of the petitioner. But when the petitioner preferred Statutory Revision under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983 before the 1st respondent, the 2nd respondent filed the counter in the petitoner's revision and in that counter alone the 2nd respondent disclosed the alleged recovery amount to the tune of Rs.97,650/- from the petitioner that too, without disclosing any details and also without conducting either enquiry under Section 81 or Inspection under Section 82 of the Tamil Nadu Cooperative Societies Act, 1983. He further submitted that the 2nd respondent cannot suo-moto fix the liability on the petitioner without furnishing any details that too after a lapse of three years from the date of retirement of the deceased petitioner.

4. The learned counsel further submitted that the respondents has given 15 items of recovery from the deceased petitioner but the said recovery is not at all valid in law, since before arriving such amount the 2nd respondent ought to have conducted enquiry and should have issued notice to the deceased

petitioner, but without giving any opportunity to the deceased petitioner, the 2nd respondent has come forward with such liability against the deceased petitioner before the 1st respondent that too after a lapse of three years from the date of retirement of the deceased petitioner and the 1st respondent has also accepted the same and passed an impugned order dated 30.12.2011 which is under challenge in the present writ petition.

5. The learned counsel further submitted that the 1st respondent failed to consider while passing orders observed that the 1st respondent cannot give relief under provisions of Section 153 of Tamil Nadu Cooperative Societies Act, 1983 but as per under Section 153 of Tamil Nadu Cooperative Societies Act, 1983 the 1st respondent is alone competent authority to decide the issue. The respondents themselves admitted that they have to disburse the retirement benefits to the tune of Rs.70,384/- and the same is not paid to the petitioners till date.

6. Counter affidavit was filed by the 2nd respondent on 26.06.2012 in which it is stated that there was a pending dues from the deceased petitioner as per audit report 2007-2008 i.e., till 30.06.2008 to the 2nd respondent's society for a sum of Rs.97,650,57/- which was due to the negligence and irregularity of the deceased petitioner. The details of the pending amount payable by the petitioner

to the 2nd respondent are as follows:-

Pending amount to be disbursed	: Rs.1,68,035.00
As per list due by the petitioner (As per audit report 31.03.2008)	: Rs. 97,650.57
Balance amount to be disbursed	Rs. 70,384.43

7. The learned Standing Counsel appearing for the 2nd respondent submitted that a sum of Rs.6,70,024/- was paid to the deceased petitioner at the time of his retirement on 30.06.2008 after deducting the outstanding of the amount due from the deceased petitioner to the respondents. Moreover, the deceased petitioner at the time of superannuation has executed a bond in favour of the 2nd respondent Society as per the audit report 31.03.2008 to abide by the conditions and objections. The learned Standing Counsel further submitted that the deceased petitioner is duty bound to discharge his liability to the 2nd respondent Society and his liability is undisputed which the deceased petitioner has not disclosed in his affidavit in spite of executing a bond to that effect in favour of the 2nd respondent at the time of his superannuation i.e., on 30.06.2008. He further submitted that the 2nd respondent allowed the deceased petitioner to retire on 30.06.2008 on two conditions, one is that the deceased petitioner should abide by the objections raised during the audit report for the

year 2007-2008 i.e., on 30.06.2008 with respect to any dues payable by the deceased petitioner and the caution deposit of the deceased petitioner will be paid after completion of audit upto 30.06.2008. The first petitioner being the Secretary of the Society is the whole and Chief of the affairs of the Society and as a Secretary of the 2nd respondent Society he is duty bound to maintain all the records of the society and the petitioner should have been proper in issuing credits to its members and also in collecting the same. But in the audit report for the year starting from 2003 to 2008 a sum of Rs.97,650.57 was due from the 2nd respondent society members.

8. The learned counsel further submitted that it is not necessary that on all the occasions the District Registrar should initiate Section 81 proceedings and the question of Section 81 and 82 proceedings arise only when the irregularities are not been found out. Moreover, since the dues were pending even during the period of the petitioner, the petitioner ought to have initiated Arbitration proceedings under Section 90 of the Act and should have taken steps to recover the amount which the petitioner failed to do and resulted in loss to the 2nd respondent's Society to the tune of Rs.97,650/-. Whenever dues are paid by the members it is the duty of the secretary to see that all the dues to the Society and recovery are made in time and as a secretary of the society the petitioner did not

make any attempt to recover the said amount of Rs.97,650/- from the members and the same came to the knowledge of the 2nd respondent society belatedly and immediate action was taken and the petitioner was relieved on attaining the age of superannuation only on conditions as stated supra.

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

10. In the case on hand, a sum of Rs.97,650.57 was due from the members of the 2nd respondent Society and the deceased petitioner being the secretary of the Society has not collected the same and this was found in the audit report of the year 2007-2008. The deceased petitioner retired from service after attaining the age of superannuation on 30.06.2008 at that time he has given a Bond dated 30.06.2008 and a copy of the same was submitted before this Court by the learned Standing Counsel appearing for the 2nd respondent. The balance amount of the benefits to be disbursed to the deceased petitioner is a sum of Rs.1,68,035.00 out of which a sum of Rs.97,650.57 was deducted and the balance is a sum of Rs.70,384.43 to be paid to the petitioner. The amount for a sum of Rs.70,384.43 is the balance to be paid to the petitioner by the 2nd respondent as per the counter affidavit. Even the petitioner in his prayer has stated that the 2nd respondent have admitted that the retirement benefits to a tune

of Rs.70,384.43 and the respondents may be directed to settle the same to the petitioner.

11. The deceased petitioner has failed to recover / collect a sum of Rs.97,650.57 which was due from the members of the Society and he was made liable to pay the same and it was deducted by the 2nd respondent since the petitioner has executed a bond dated 30.06.2008 on the date of his retirement stating two conditions that the deceased petitioner shall abide by the objections raised during the audit report for the year 2007-2008 with respect to any dues payable by the deceased petitioner and refund of the caution deposit for a sum of Rs.4,300/- payable to the deceased petitioner shall be paid after the completion of the audit report up to 30.06.2008. Hence it crystal, clear and evident that the deceased petitioner is liable to pay a sum of Rs.97,650.57 for two reasons

1. the amount is payable by the members of the society since the petitioner is the secretary incharge of administration of the Society failed to take steps to recover the same from the members of the 2nd respondent society for which he is liable to pay the said amount.
2. the deceased petitioner has executed a bond dated 30.06.2008 on the date of his superannuation stipulating the above two conditions as stated

supra.

12. In view of the above factual matrix of the case and the discussion this Court is of the considered view that the order passed by the 1st respondent in his proceedings Na.Ka.No.2480/2011/A3 dated 30.12.2011 does not warrant any interference by this Court and the same is hereby confirmed.

13. More over, the 2nd respondent has admitted in the counter affidavit that the balance retirement benefits to a sum of Rs.70,384.43 is yet to be settled to the deceased petitioner and the counter affidavit was filed on 20.06.2012. If the 2nd respondent has not paid the amount till date the same has to be paid to the petitioners. The legal heirs of the deceased petitioner are directed to give a representation to the 2nd respondent enclosing the Death Certificate of R.Venugopal as well as the legal heir ship certificate and on receipt of the same the 2nd respondent is directed to disburse the amount within a period of four weeks.

14. In the result, the writ petition is dismissed with the above direction. No costs. Consequently, connected miscellaneous petition is also closed.

11.01.2024

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Index : Yes/No
Speaking Order : Yes/No

J. SATHYA NARAYANA PRASAD, J.

dpq

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