



W.P.No.29319 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 25.06.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.29319 of 2016
and
W.M.P.Nos.25371 & 25372 of 2016

S.Rajendran

... Petitioner

Vs.

1.The Registrar of Coop Societies,
(Housing), TNHB Complex,
Nandanam,
Chennai – 600030.

2.The Deputy Registrar (Housing)
East Garden Street,
Fairlands,
Salem- 16.

3.The President,
S.1337, Salem Industrial
Employees Coop. House,
Construction Society Ltd.,
No.86/44, Kalidasar Street,
Narayana Nagar,
Salem -15.

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of



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India praying for issuance of a writ of Certiorari, calling for the records of the impugned order passed by the 2nd respondent herein vide his proceedings in Na.Ka.1850/2012/Oo dated 25.07.2016 and quash the same.

For Petitioner : M/s.M.R.Jothimanian

For Respondents :
(for R1 and R2) : M/s.Vijaya Devi, Govt. Advocate

(for R3) : No appearance

ORDER

The petitioner seeks to quash the order passed by the 2nd respondent dated 25.07.2016 in and by which the 2nd respondent had directed disciplinary proceedings under 82 of the Tamil Nadu Cooperative Societies Act (hereinafter referred to as the “Act”) to be commenced despite the fact that the Surcharge Proceedings under Section 87 of the Act has been quashed by this Court in W.P.No.32116 of 2015 dated 28.06.2016.

2. The factual matrix is as follows:-

2.1. The petitioner was appointed as a Clerk on 15.03.1991 at



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the Pelukurichi Cooperative Housing Society. On 02.07.1992, he was promoted as a Secretary by orders of the 1st respondent. Thereafter, with the concurrence of the 1st respondent on 07.08.2003 he was appointed as a Secretary in the 3rd respondent Society for a period of 1 year. He was thereafter permanently appointed to this post by order of the 1st respondent dated 25.11.2003. The petitioner would submit that he has been rendering blemishless service to the satisfaction of his superior in the 3rd respondent society.

2.2. As per the direction of the 1st respondent a settlement under Section 18(1) of the Industrial Dispute Act (hereinafter referred to as the “ID Act”) was entered into between the 3rd respondent Society and its employees on 09.12.1994 in the scale of pay of Rs.1880-65-2140-75-2590-85-2750 which was approved by the 2nd respondent. Thereafter, the fixation of salary of the employees of the 3rd respondent was arrived at on the instructions of respondents 1 and 2. As per these instructions, the salaries were fixed at the rate of Rs.15000-400-18600 which was approved by the 2nd respondent in his



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proceedings dated 26.02.2008. The said proposal was also sent to the 1st respondent for approval.

2.3. Thereafter, the 2nd respondent had ordered an inspection under Section 82 of the Act against the petitioner on 10.10.2008 and an Inspection Officer was also appointed. Ultimately, the same was concluded and closed without further progress.

2.4. On 06.11.2008, the 2nd respondent had issued a Section 9-A notice to the petitioner stating that the petitioner's salary has to be refixed. In this regard, the 3rd respondent had issued a letter to the petitioner to which a written representation dated 22.04.2009 had been sent by the petitioner. However, to date, there was no order from the 2nd and the 3rd respondents.

2.5. On the basis of the Section 9-A notice the petitioner's salary was withheld by respondents 2 and 3 and only advance amounts were



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paid to the employees of the 3rd respondent Society. Therefore, the petitioner approached this Court by filing W.P.No.10703 of 2009 for disbursement of salary and the same was disposed of on 17.06.2009 with a direction to the 2nd respondent to consider the petitioner's representation and dispose of the same within a period of 8 weeks. However, this direction was not complied with by the 2nd respondent.

2.6. Meanwhile, the 1st respondent had issued an order based on the recommendation of the Streamlining Committee with regard to the fixation of salary to employees of Cooperative Society dated 15.06.2009. The petitioner is a 'C' category employee and respondents 2 and 3 had to fix the salary as per the letter of the 1st respondent. Though the 2nd the 3rd respondents had sent the proposal to the 1st respondent for fixation of salary of the employees of the 3rd respondent society on 06.08.2012, no orders were passed in this regard. While, so, on 10.08.2012 the 2nd respondent had issued a second inspection order under Section 82 of the Act and an Inspection Officer was appointed. The said second inspection is not permissible under the



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said Act.

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2.7. The petitioner would submit that this inspection report is totally unconnected with the disbursement of salary since the salary was fixed only on the basis of the settlement arrived at between the 3rd respondent Society and its employees. Therefore, the petitioner had filed W.P.No.12620 of 2013, challenging Section 82 inspection proceedings.

2.8. In W.P.No.12620 of 2013, this Court had passed an interim order directing the respondents to pay the salary and permitting the respondents to proceed with the audit under Section 82 of the Act. The audit report was submitted on 31.05.2013. Pursuant to which a notice under Section 87(1) of the Act dated 25.08.2015 was issued by the 2nd respondent to the petitioner and other employees. This notice was challenged in W.P.No.32116 of 2015 which was ultimately allowed by this Court on 28.06.2016. Upset with the action taken by the petitioner against Section 87 (1) proceeding dated 25.08.2015, the 2nd



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respondent directed the 3rd respondent to take action against the petitioner vide proceedings dated 18.09.2015.

2.9. As per Section 82 inspection report, the fixation of salary under Section 18(1) Settlement had not been approved by the 1st respondent. Therefore, the settlement itself was invalid and the 1st respondent had directed actions against the officials. The 2nd respondent who had approved the settlement on 26.02.2008 had proceeded to take action against the petitioner and the other officials. The petitioner would submit that he is only a Secretary of the 3rd respondent society and had no role to play in the settlement under Section 18(1) of the ID Act. The said settlement was entered into between the 3rd respondent Society and its employees. As the Chief Executive of the 3rd respondent society, he was only concerned with the implementation of the decision of the Board as well as the 2nd respondent.

2.10. Since the impugned proceeding had been initiated against



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the order of this Court made in W.P.No.32116 of 2015, wherein the Court had set aside the surcharge proceeding and as it was purely vindictive, the petitioner has approached this Court by filing this Writ Petition seeking a writ of certiorari to quash the proceeding of the 2nd respondent dated 25.07.2016. Under this impugned order the Deputy Registrar (Housing), namely, the 2nd respondent had directed the 3rd respondent to submit the report under Section 82 of the Act and the 3rd respondent was cautioned that if the inspection report is not submitted it would be taken that the 3rd respondent was working in support of the petitioner.

3. The 2nd respondent has filed a counter affidavit inter alia contending that the 2nd respondent has passed the impugned order on account of the orders passed in W.P.No.12620 of 2013 where the Court had allowed the respondents to proceed with inspection under Section 82 of the Act and directed the respondents to pay salaries to the petitioners. They had also submitted that in the light of the interim order passed in W.M.P.No.25372 of 2016 in W.P.No.29319 of 2016



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dated 23.08.2016, wherein an interim stay had been granted for 4 weeks, no more adjudication is pending in the instant case.

4. The 3rd respondent has filed a counter stating that audit inspection has been taken up and the report is awaited. Meanwhile, at the instance of the Government order dated 15.06.2009, fixation has been made and adjusted by giving effect to the Committee's recommendation by the 1st respondent. The 3rd respondent would further submit that the Audit Inspection is yet to reach its finality and the Streamlining Committee's report is yet to be given effect to and in these circumstances, the Writ Petition filed by the petitioner is premature.

5. Heard the learned counsels on either side.

6. The petitioner's counsel would draw the attention of the Court to the orders passed by this Court in W.P.No.12620 of 2013 on 21.09.2023, wherein the Court after taking into account all the



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settlements arrived at under Section 18(1) of the ID Act which is approved by the 2nd respondent held that the very same officer could not reopen the matter stating that it is contrary to the guideline issued by the 1st respondent. In the said order, the learned Judge also observed that the order of Surcharge Proceedings dated 25.08.2015 on the basis of the inspection report dated 31.05.2013 had been quashed by orders of this Court in W.P.No.32116 of 2015. Therefore, the inspection report dated 31.05.2013 has become invalid. The learned Judge observed that inspection under Section 82 of the Act has already been conducted and what remained is only the fixation of the salary based on the order dated 15.06.2009 passed by the 1st respondent. Therefore, the impugned order that has now been issued by the 2nd respondent is nothing but a revival of Section 82 proceedings which has already been held to be infructuous.

7. The impugned proceedings initiated under Section 82 of the Act is a clear case of malafide on the part of the 2nd respondent. Therefore, the said order has to necessarily be quashed and is



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accordingly quashed.

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8. It is further informed that the fixation of salary as directed by the order passed in W.P.No.12620 of 2013 is yet to be done. Therefore, the respondents 1 and 2 are directed to fix the salary of the petitioner as per the order dated 15.06.2009 and as per the proposal sent by the 3rd respondent dated 06.08.2009, on the basis of the settlement arrived at between the petitioner and the 3rd respondent dated 26.02.2008. The said exercise shall be completed on or before 25.07.2024.

9. With the above directions, the Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

10. *"For reporting compliance"* post the matter on 25.07.2024.

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(shr)

Index : Yes/No

Speaking Order: Yes/No



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Neutral Citation : Yes/No

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