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W.P.Nos. 2895 c



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.10.2024

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE P.B. BALAJI

W.A.No. 2895 of 2024

and CMP.Nos. 21347 of 2024

The Inspection Officer/Field Officer,

Vellakoil Primary Agricultural Co-operative Credit Society,

Vellakoil, Kangayam Taluk,

Tiruppur District

.. Appellant

Vs

1.R.Jaganathan

2.C.Poongodi

3.The Deputy Registrar of Co-operative

Societies, Dharapuram Circle,

Dharapuram, Tiruppur District.

..Respondents

Prayer : Writ Appeal is filed under Clause 15 of Letter Patent to set aside the order made in W.P.No. 26327 of 2015, dated 23.06.2022 and allow the writ appeal.

For Appellant : Mr. M.R.Dhalapathy Vignesh Kumar

For Respondents : Mr.L.P.Shanmugasundaram – R1 &R2



JUDGMENT

(Order of the Court was made by the D.Krishnakumar, J)

Aggrieved by the order of the writ court made in W.P.No. 26327 of 2015, dated 23.06.2022, the present writ appeal has been filed.

2. Brief facts :

The first respondent herein, while working as Assistant in the appellant Society, was promoted as Senior Assistant in the year 1991. Likewise, the second respondent, while working as Clerk, was promoted as Senior Assistant in the year 1994. The pay scales payable to the employees of the Society was revised, pursuant to a settlement dated 23.03.1994 entered under Section 12 (3) of the Industrial Disputes Act, 1947. After about two years, the appellant -society had ordered for an inspection of the second respondent Society under Section 82 of The Tamil Nadu Co-operative Societies Act (hereinafter referred as 'Act') and submitted a Inspection report dated 24.09.2014, alleging that the promotions given to both the respondents herein were not authorised and had been receiving excess salaries. It was stated that the first respondent herein had caused a loss to the society to the tune of Rs. 6,02,035/- and the second



respondent herein to the tune of Rs.4,76,898/- by way of excess salaries.

Challenging the said inspection report, the 1st & 2nd respondents herein had filed a writ petition in W.P.No.26327 of 2015 and the writ court by order dated 23.06.2022 set aside the said inspection report. Aggrieved by the said order of the writ court, the society has filed the present writ appeal.

3. The learned counsel for the appellant has submitted that the 1st & 2nd respondents herein were promoted to the post of Senior Assistants in the year 1991 & 1994. Though their pay scales were revised as early in the year 1994, the Deputy Registrar of Cooperative Societies had ordered enquiry under Section 82 of the Tamil Nadu Co-operative Societies Act only on 26.05.2014. Based on the inspection report dated 24.09.2014, it was found that the 1st & 2nd respondents were paid excess salaries to the tune of Rs. 6,02,035/- and Rs.4,76,898/- respectively.

4. The learned counsel for the appellant has further submitted that since the respondents 1 & 2/writ petitioners are not entitled to excess salary and committed loss to the Society, the appellant society had initiated surcharge proceedings under Section 82 of the Act. Further, even before initiation of



next course of action i.e to initiate proceedings under Section 87(1) of the Act, they have approached the writ court, therefore, the order of the writ court is liable to be set aside.

5. The learned counsel for the respondents 1 &2 has submitted that the writ court by correctly relying upon the decision of the Hon'ble Supreme Court in the case of State of Punjab and Others vs. Rafiq Masih (white washer) had set aside the Inspection Report dated 24.09.2014 filed under Section 82 of the Act, therefore the order of the writ court is perfectly valid and does not require any interference by this Court.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1&2 and perused the materials available on record.

7. Undisputedly, the recovery of excess salaries from the respondents 1&2 relates to the certain omissions done by the appellant society in the years 1991 & 1994. The Inspection report under Section 82 of the Act was filed by the appellant-society on 24.09.2014, which is after a delay of 23 years and



20 years respectively. It is also to be noted that, as per Section 87 of the Act, though the Registrar of the Society empowers to pass orders for recovery of the loss caused to the Society, it stipulates limitation for such recovery at seven years from the date of such acts/omissions by the Society. Therefore the appellant cannot enforce any action as against the respondents 1& 2/writ petitioners.

8. The Hon'ble Supreme Court in the case of ***State of Punjab and others -Vs- Rafiq Masih (White Washer) reported in (2015) 4 SCC 334*** outlined several specific instances where recovery would be impermissible by the employer. The relevant portion is extracted hereunder;

“....

....

(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”



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9. The aforesaid decision of the Hon'ble Supreme Court squarely applies to the facts of the case hand. As per above Clauses of the decision, recovery cannot be made by the employer for the excess payment paid for a period of excess of five years. In the case on hand, as discussed above, the recovery process was initiated after period of 23 years & 21 years as against the respondents 1&2 respectively, for the excess salaries wrongly paid to the respondents in their promotional posts. Therefore the recovery of these alleged loss to the society, is impermissible in law, as held by the Hon'ble Supreme Court in the decision cited supra.

10. In view of foregoing reasons, we do not find any reasons to interfere with the order passed by the writ court in W.P.No.26327 of 2015, dated 23.06.2022. Accordingly, the writ appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

(D.K.K., J.) (P.B.B., J.)
14.10.2024

Index: Yes / No
Internet: Yes



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