



W.A.(MD) No.453 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.06.2024

CORAM

JUSTICE N. SESHASAYEE

and

JUSTICE L.VICTORIA GOWRI

W.A.(MD) No.453 of 2019

V.Elangovan

... Appellant/Petitioner

Vs.

- 1.The Registrar of Co-operative Societies,
No.170, EVR Periyar High Road,
Kilpauk,
Chennai-600 010.
- 2.The Joint Registrar of Co-operative Societies,
Thanjavur.
- 3.The Deputy Registrar of Co-operative Societies,
Sarangapani Sannathi Street,
Kumbakonam,
Thanjavur District.



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4.The Managing Director,
Kumbakonam Co-operative Urban Bank Ltd.,
Kumbakonam, Thanjavur District.

5.The President,
Kumbakonam Co-operative Urban Bank Ltd.,
Kumbakonam, Thanjavur District.

... Respondents/
Respondents

Prayer: Appeal filed under Clause 15 of Letters Patent against the order dated 13.11.2018 made in W.P.(MD) No.773 of 2015.

For Appellant : Mr.R.Maheswaran

For RR1 to 3 : Mr.S.Kameswaran
Government Advocate

JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

The appellant herein has approached this Court in W.P.(MD)No.773 of 2015 for disbursement of his surrender of Earned Leave following his superannuation on 31.05.2013. He was working as General Manager (in-charge) of the fifth respondent Bank.



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2. According to the appellant / writ petitioner, he has been permitted to retire and was also paid all his terminal benefits, except encashment of leave to his credit. The value of encashment comes to Rs.3,26,688/-. This amount apparently was withheld by the fifth respondent on the pretext that the writ petitioner had not handed over some documents.

3. Before the learned Single Judge, only respondents 1 to 3 have filed their counter and not respondents 4 and 5, who chose not to participate in the proceedings.

4. When the matter was taken up for consideration by the learned Single Judge, he relied on an affidavit of the appellant dated 05.08.2013, which was well after his retirement, wherein he had undertaken to return certain documents. The learned Single Judge passed a conditional order that the value of encashment of Earned Leave be given subject to the appellant parting with those documents.



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5. The learned counsel appearing for the appellant states that he had undertaken to surrender the documents, following which the fourth respondent, the Managing Director of the Bank has issued proceedings dated 23.07.2014 directing encashment of Earned Leave that was standing to the credit of the appellant. Indeed in that proceedings, he had merely directed withholding of GPF, as some kind of reconciliation was to be done. The learned counsel appearing for the appellant submits that, that amount has been paid.

6. Now, despite the proceedings of the fourth respondent, the fifth respondent, President of the Bank has issued a contrary order.

7. Heard Mr.R.Maheswaran, learned counsel for the appellant and Mr.S.Kameswaran, learned Government Advocate for Respondents 1 to 3.

8. Learned counsel for the appellant submitted that the appellant was the General Manager (in-charge) of the Cooperative Society at the time of his superannuation and whatever documents over which he had physical control



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at the relevant time, had been handed over. On 14.12.2013, the fourth respondent, Managing Director of the Cooperative Society in question, has issued a proceeding, wherein he had observed that about 60% of the documents which the appellant had handed over were immaterial records, that he was yet to hand over audit reports for the years 1974-1975, 1975-1976, 1980-1981, 1981-1982, 1982-1983 and 1984-1985, the minutes book and attendance registers. He submitted that so far as the minutes book and attendance registers are concerned, the said proceeding did not indicate the year in relation to which those documents are sought to be handed over. And it is true that the appellant had given an undertaking letter dated 09.12.2013, wherein he had agreed to hand over whatever documents over which he may have physical control, when he was holding the position of General Manager (in-charge) of the 5th respondent. But not every document which is not even sure where they are there. He added that the documents, which are about 30 years old, are sought to be handed over in 2013.

9. Per contra, the learned Government Advocate argued, on instructions, that the appellant is yet to surrender the details of secured and unsecured loans.



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10. Whoever the official of the Bank who has given instruction to the learned Government Advocate has given one of the most artificial instruction which this Court struggles to appreciate. The instant query that arises in the mind of the Court is that the appellant had superannuated some time in 2013, and currently we are in 2024, some 11 years after the superannuation of the appellant, and this Court wonders how the Bank is doing its business in the last 11 years without the list of secured and unsecured creditors? There are Registrars of the Cooperative Societies, and this Court wonders whether they at all are auditing the fifth respondent. *Prima facie* this Court does not believe the line of instruction given to the learned Government Advocate.

11. So far as the documents which the appellant is alleged not to have handed over are concerned, they essentially involve few audit reports, which were some 30 years prior to his superannuation as well as minutes book and attendance registers, which implies, as on 14.12.2013, when the fourth respondent had issued the proceedings, he was sure that barring these documents, no other document need to be handed over. Now, unless it is



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established that the appellant was in physical control of all the aforesaid audit reports, attendance register and minutes book, at the relevant time, it would not be appropriate to direct the appellant to hand over that which he might not even possess. Courts are here not to direct parties to do the impossible.

12. This Court has least hesitation to hold that the fifth respondent is deliberately dragging its feet from giving a happy send off to his former Manager. Its demand for document comes in bits and pieces and it amazes the Court how the thirty plus year old audit report is now currently relevant.

13. To conclude, this Court finds every reason to interfere with the order of the learned Single Judge. The fifth respondent is now directed to pay cash equivalent to the Earned Leave that stood to the credit of the appellant at the relevant time of his superannuation with interest at the rate of 6% per annum and the entire amount is directed to be paid within a period of four weeks from the date on which this judgment is hosted in the official website of this Court.



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14. In the result, this Writ Appeal is allowed and the order of the learned Single Judge dated 13.11.2018, made in W.P.(MD) No.773 of 2015 is set aside. No costs.

(N.S.S., J.) (L.V.G., J.)
18.06.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

Note: Upload judgment in the website by 20.06.2024.

sm/abr



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