



WP(MD) No.16720 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.07.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) No.16720 of 2024

and

W.M.P.(MD)Nos.14467 & 14472 of 2024

R.Pitchai Mani

... Petitioner

Vs.

1.The Joint Registrar of Cooperative Societies,
Tirunelveli Region,
Palayamcottai,
Tirunelveli – 1.

2.The Deputy Registrar of Cooperative Societies,
Tirunelveli Circle,
Maharaja Nagar,
Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for records relating to the impugned order passed by the 1st respondent in Na.Ka.422/2024 Tho Ve Sa dated 31.01.2024 and quash the same as illegal insofar as the same relates to permitting the petitioner to retire on



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condition to recover the surcharge amount is concerned and consequently direct the respondents to grant pensionary, retirement benefits and all other monetary benefits along with interest at the rate of 18 percent within the period that may be stipulated by this Court.

For Petitioner : Mr.R.Ilango
For Respondents : Mr.S.Kameshwaran
Government Advocate

ORDER

The petitioner has filed this Writ Petition challenging the order dated 31.01.2024 passed by the first respondent in Na.Ka.422/2024 Tho Ve Sa permitting the petitioner to retire on condition that the surcharge amount determined against him in the surcharge proceedings shall be recovered from his terminal benefits with consequential direction to the respondents to grant pensionary, retirement benefits and all other monetary benefits along with interest at the rate of 18 percent within the period that may be stipulated by this Court.

2. Heard Mr.R.Ilango, learned counsel for the petitioner and Mr.S.Kameshwaran, learned Government Advocate for the respondents.



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3. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

4. The challenge is only in respect of the condition as to having lien over the retirement benefits for the surcharge payable by the petitioner.

5. The learned counsel appearing for the petitioner submitted that the legal position in respect of deduction of the surcharge amount has already been settled by this Court holding that it can be recovered as revenue recovery and hence, the terminal benefits of the petitioner need not be withheld. However, he further submitted that there is no pending surcharge against the petitioner as on today.

6. On perusal of the documents available on record, it appears that the surcharge proceedings initiated against the petitioner was set aside in an appeal filed by the co-delinquent in CMA(CS)No.92 of 2003, against which, the respondents had filed a revision before this



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Court in CRP(NPD)No.1004 of 2006, which was also dismissed vide order dated 25.07.2011.

7. Apart from the above position, the recovery in respect of surcharge proceedings has already been settled in various judgments of this Court by holding that the surcharge proceedings can be recovered as similar as that of the revenue recovery and hence, recovery can be made as against other assets of the petitioner.

8. The learned counsel appearing for the petitioner submitted that the petitioner is having his own properties and hence, his retirement benefits cannot be withheld. In such case, the respondents can proceed with appropriate proceedings against the petitioner to recover the surcharge amount determined against the petitioner.

9. The issue raised in the Writ Petition has been elaborately discussed and covered in the earlier judgment passed in the Writ Petition in ***W.P.(MD)No.14097 of 2024 dated 01.07.2024 (S.Samidurai Vs. The Joint Registrar of Cooperative Societies, Tirunelveli Region,***



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Palayamcottai, Tiruenveli), wherein the order has been analysed as under:-

“6.The legal position relating to deduction of surcharge amount from the retirement benefits of an employee is set at rest as the recovery of such amount has to be considered as revenue recovery under Section 87(2) of the Tamil Nadu Co-operative Societies Act, which reads thus:

“(2)Without prejudice to any other mode of recovery which is being taken or may be taken under this Act or any other law for the time being in force, any sum ordered under this section to be repaid to a registered society or recovered as a contribution to its assets may be recovered as if it were an arrears of land revenue and for the purpose of such recovery, the Registrar shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864).”

7.Hence, the authorities are empowered to proceed under the above provision for recovery of the surcharge amount in accordance with law.



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8.At this juncture, the learned counsel for the petitioner submitted that the petitioner has filed an appeal before the Tribunal challenging the surcharge proceedings and the same is pending in C.M.A.(CS) No.12 of 2014.”

10. Since the issue in the aforesaid case is similar to that of the issue raised in this writ petition, the petitioner is also entitled to get the similar relief as granted by this Court.

11. Hence, the authorities are empowered to proceed under the above provision for recovery of the surcharge amount in accordance with law. Accordingly, the respondents are at liberty to take any action for recovery of surcharge amount by creating charge over the other assets of the petitioner.

12. It is needless to mention here that since the surcharge proceedings has been completed, the respondents are directed to pay the retirement benefits within a period of four weeks from the date of receipt of a copy of this order.



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13. With the above directions, this writ petition is disposed of.

No costs. Consequently, connected miscellaneous petitions are closed.

25.07.2024

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

1.The Joint Registrar of Cooperative Societies,
Tirunelveli Region,
Palayamcottai,
Tirunelveli – 1.

2.The Deputy Registrar of Cooperative Societies,
Tirunelveli Circle,
Maharaja Nagar,
Tirunelveli.



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R.N.MANJULA, J.

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Order made in
W.P.(MD)No.16720 of 2024

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