



W.A.(MD) No.2150 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.A.(MD)No.2150 of 2024
and
C.M.P.(MD) No.15141 of 2024**

1.The Joint Registrar of Co-operative Societies,
Tirunelveli Region, Palayamkottai,
Tirunelveli - 1.

2.The Regional Deputy Registrar of
Cooperative Societies (Housing),
Tirunelveli Region,
71-B, Tiruchendur Road,
Palayamkottai,
Tirunelveli - 2.

... Appellants

-VS-

S.Samidurai,
Co-Operative Sub Registrar (Retd.),
12, Gandhi Nagar 2nd Street,
Sankarankovil,
Tenkasi District.

... Respondent



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WEB COPY Writ Appeal filed under Clause 15 of Letters Patent to allow this Writ Appeal by setting aside the order, dated 01.07.2024 made in W.P.(MD).No.14097 of 2024.

For Appellants : Mr.S.R.A.Ramachandran,
Addl. Government Pleader.

For Respondent : Mr.M.Jerin Mathew

JUDGMENT

[Judgment of the Court was made by R.SUBRAMANIAN, J.]

The challenge to the writ petition was the proceedings of the Joint Registrar of the Cooperative Societies allowing the petitioner therein to retire subject to the condition that the alleged financial loss to the society will be recovered from his retirement benefits, if the surcharge orders are passed or affirmed in the pending appeals.

2.In the view of the said order which was made on 30.09.2019, there was a consequential order determining provisional pension. That was also challenged. The Writ Court concluded that pendency of surcharge proceedings or the fact that award has been passed in the surcharge proceedings cannot be a ground to



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retain any of the retirement benefits of an employee. This Court had repeatedly, relying upon the provision in Pension Rules, held that the amount due under surcharge order cannot be recovered from the pensionary benefits of the employee concerned. Report will have to be made to the proceedings under the Revenue Recovery Act for such recovery. The Writ Court has only followed the earlier judgments of this Court to conclude that the orders allowing the petitioner in the writ petition to retire subject to the conclusion of the surcharge proceedings and preserving the right of the department to recover the loss from his pensionary benefits is unjust. The consequential order determining provisional pension has also been quashed. A direction has also been issued to pay the retirement benefits as well as re-determine the pension.

3.Mr.M.Jerin Mathew, learned counsel for the respondent would submit that the surcharge proceedings have ended in his favour and the appeals in C.M.A.(CS) No.12 of 2014 and C.M.A.(CS) No.19 of 2015 have been allowed by the Cooperative Tribunal namely, the learned Principal District Judge, Thoothukudi on 15.07.2024 and 18.07.2024 respectively. Therefore, the only ground on which the impugned orders are passed also seized to exist. Hence, we



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see no merit in the writ appeal and the writ appeal fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

NCC : No

[R.S.M., J.]

[L.V.G., J.]

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