

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2015

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAI SWAMY

W.P.No.3303 of 2015

K.Shanmugam

... Petitioner

vs.

1. The Assistant Commissioner of Labour,
Salem.

2. Kolathur Primary Agricultural Co-operative
Bank Limited,
Rep. By its President,
Kolathur,
Salem District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of mandamus, directing the respondents to make payment of gratuity of Rs.4,54,054 with 10% interest from 01.10.2007 to till the date of payment as ordered by the 1st respondent in P.G.No.16 of 2009, dated 01.03.2012 to the petitioner.

For Petitioner : Mr.V.Elangovan
For Respondents : Mr.L.P.Shanmugasundaram
Special Government Pleader

ORDER

Heard, Mr.V.Elangovan, learned counsel appearing for the petitioner and Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing for the respondents.

2. The petitioner has filed the above writ petition to issue a writ of mandamus, directing the respondents to make payment of gratuity of Rs.4,54,054 with 10% interest from 01.10.2007 till the date of payment as ordered by the first respondent in P.G.No.16 of 2009, dated 01.03.2012.

3. According to the petitioner, he was working as Secretary in the second respondent society and on superannuation, he retired from the service on 30.09.2007. He had served 37 years in the respondent society. On 05.04.2008, he preferred an application to the second respondent to pay all the retirement benefits viz., gratuity, which amounts to Rs.5,87,425/- with 24% interest. However, the second respondent did not pass any orders, therefore, the petitioner filed a petition before the Assistant Commissioner of

Labour, Salem under section 7 of the Payment Gratuity Act r/w. Rule 10(1) for the payment of gratuity in P.G.No.16 of 2009. The second respondent contended that surcharge proceedings under section 87 of the Tamil Nadu Co-operative Societies Act was initiated against the petitioner for the recovery of a sum of Rs.37,62,000/- and that the matter is pending before the District Court, Salem in C.M.A.No.19 of 2009. On 30.11.2010, the Assistant Commissioner of Labour passed an order directing the second respondent to pay a sum of Rs.3,50,000/- with 10% interest. Aggrieved over the same, the petitioner preferred an appeal before the Joint Commissioner of Labour, Coimbatore in Gratuity Appeal No. 11 of 2011 and the Joint Commissioner of Labour remanded the matter back to the original authority for fresh disposal. After rehearing the matter, the Assistant Commissioner of Labour, passed an order on 01.03.2012, directing the second respondent to pay a sum of Rs.4,54,054/- together with interest at the rate of 15% from 1.10.2007 till the date of payment. The second respondent preferred an appeal with a delay of 59 days before the appellate authority and the same was rejected by the appellate authority. In spite of the order dated 1.3.2012, the second respondent has not paid the gratuity amount of Rs.4,54,054/- together with interest to the petitioner. In these circumstances, the petitioner has filed the present writ petition.

4. In the counter affidavit filed by the second respondent, the second respondent has stated that since the surcharge proceedings are pending and that in the surcharge proceedings dated 27.2.2009, the liability was fixed against the petitioner for a sum of Rs.37,62,839/- with interest at the rate of 17% per annum, the petitioner should not be allowed to withdraw the gratuity amount.

5. The contention raised by the second respondent is against the settled principles of law. Under section 79 of the Tamil Nadu Co-operative Societies Act, a gratuity fund, established by a registered society under section 79(1) shall not be liable to attachment or be subject to any other process of any court or other authority.

6. The learned counsel for the petitioner, in support of his contentions, relied upon the the following judgements:-

(i) CDJ 2014 MHC 3450 (D.Govinarasan v. The Joint Registrar of Co-operatives Societies, Tiruvallur and another) wherein, this court held that the gratuity amount shall not be denied to an employee, on the ground of pendency of surcharge proceeding.

(ii) CDJ 2014 MHC 3459 (The Management S.439, Salem Agricultural Producers' Co-operative Marketing Society Ltd. v. V.Rajendran and others) wherein, this court held that when the employee was not dismissed and even in the case of termination, very limited scope is available for the employer for forfeiting the gratuity and this court permitted the employee to withdraw the amount that is being deposited with the third respondent Controlling Authority.

7.The ratios laid down in the above referred judgments relied upon by the learned counsel appearing for the petitioner squarely applies to the facts and circumstances of the present case. Merely because surcharge proceeding is pending in C.M.A.No. 19 of 2009 before the Co-operative Tribunal/District Court, Salem, the same will not preclude the petitioner from keeping the gratuity amount.

8. Applying the ratios laid down in the above referred judgments, I am of the considered view that the petitioner is entitled to get the gratuity amount of Rs.4,54,054/- together with interest at the rate of 10% per annum from 1.10.2007 till the date of actual payment.

9. It is also brought to the notice of this court that the second respondent had already deposited the amount of Rs.4,54,054/- on 28.05.2012 before the first respondent.

10. In these circumstances, the first respondent is directed to release the said amount and permit the petitioner to withdraw the same. Since the second respondent had deposited only a sum of Rs.4,54,054/- before the first respondent, the second respondent shall pay the interest from 1.07.2007 till 28.5.2012 at the rate of 10% per annum to the petitioner.

With these observations, the writ petition is allowed. However, there shall be no order as to costs.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

Rj

To

1. The Assistant Commissioner of Labour,
Salem.

2. The President,
Kolathur Primary Agricultural Co-operative
Bank Limited,
Kolathur, Salem District.

+1cc to Mr.S.Doraisamy, Advocate, S.R.No.12109

+1cc to Mr.L.P.Shanmuga Sundaram, Advocate, S.R.No.12067

+1cc to the Government Pleader, S.R.No.12157

W.P.No.3303 of 2015

KGK(CO)
CA(11/03/2015)