



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.11.2015

CORAM:

THE HONOURABLE MR. JUSTICE **D. HARIPARANTHAMAN**

W.P. (MD) No. 19971 of 2015

N. Kaliyamoorthy

: Petitioner

Vs.

1. The Regional Joint Registrar of Co-operative Societies,
Pudukkottai [Post], Pudukkottai District.

2. The Circle Deputy Registrar of Co-operative Societies,
Aranthangi [Post], Pudukkottai District.

3. The President,
M.M. 162 Manamadai Primary Agricultural
Co-operative Credit Society, Manamadai Village,
Karambakkudy Taluk,
Pudukkottai District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for the issue of a Writ of Mandamus directing the respondents to disburse the entire retirement benefits due to the petitioner with 18% interest per annum at once.

For Petitioner : Mr. P. Ganapathi Subramanian

For Respondent Nos. 1 & 2: Mr. T. R. Janarthanam

Additional Government Pleader

For Respondent No. 3 : Mr. D. Muruganandham

Additional Government Pleader

ORDER

Heard both sides.

2. The petitioner was initially appointed as an Attender on 15.01.1977 and thereafter, he was promoted as Clerk. On reaching the age of superannuation, he retired from service on 30.04.2013.

3. The grievance of the petitioner is that he is not paid the retirement benefits, namely, the gratuity and the provident fund. Hence, he has filed this Writ Petition.

4. In view of the non-payment of the terminal benefits, the Writ Petition is taken up for final disposal, at the stage of admission itself, with the consent of the learned Additional Government Pleader for the respondents.



5. Normally, this Court would not entertain a Writ Petition against a Co-operative Society, since the employee is having alternative effective remedy of preferring a revision before the concerned authority under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983. But, in the case of non-payment of terminal benefits, which amounts to violation of Article 21 of the Constitution of India, I am inclined to entertain the present Writ Petition. In fact, the learned counsel has relied on the Judgment of this Court in **A.Sengodan Vs. The Registrar of Co-operative Societies**, reported in **2015 (5) CTC 726**, wherein I entertained a Writ Petition, when a Co-operative Society did not pay the terminal benefits and I issued a direction to the respondents therein to pay the terminal benefits to the petitioner therein.

6. In this case also, the petitioner retired from service on 30.04.2013. On his retirement, the third respondent society shall settle the terminal benefits. The petitioner rendered service for a period of 36 years. After rendering 36 years of service, it is unfortunate that the petitioner is not settled with the terminal benefits due to him.

7. At this juncture, it is useful to extract Sections 78 and 79 of the Tamil Nadu Co-operative Societies Act, 1983:-

Provident Fund: (1) A registered society not being an establishment to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Central Act XIX of 1952) applies, may establish a Provident Fund for the benefit of its employees to which shall be credited all contributions made by the employees and the society in accordance with the by-laws.

(2) A Provident Fund established by a registered society under sub-section (1) shall be invested in the financing bank, but shall not--

- (a) be used in the business of the society;
- (b) form part of the assets of the society;
- (c) be liable to attachment or be subject to any other process of any Court or other authority."

Gratuity Fund--(1) A registered society not being an establishment to which the Payment of Gratuity Act, 1972 (Central Act 39 of 1972) applies, may provide in its by-laws for payment of gratuity to the employees at such rates and on such conditions as may be specified in the by-laws and such society may establish a Gratuity Fund or make other arrangements for the purpose.

(2) A Gratuity Fund, if any, established by a registered society under sub-section (1) shall be invested in the financing bank, but shall not--

- (a) be used in the business of the society;
- (b) form part of the assets of the society;
- (c) be liable to attachment or be subject to any other process of any Court or other authority."



8. Even for the Co-operative Societies, which are not governed by the Employees Provident fund and Miscellaneous Provisions Act 1952 and the Payment of Gratuity Act, 1972, the Tamil Nadu Co-operative Societies Act, 1983, mandated for the provident fund and gratuity. Hence, the third respondent is bound to pay the provident fund and the gratuity, in view of Sections 78 and 79 of the Tamil Nadu Co-operative Societies Act, 1983, or if the third respondent is governed by the Employees Provident fund and Miscellaneous Provisions Act 1952 and the Payment of Gratuity Act, 1972, the petitioner is entitled to get the benefits under these statutes. It seems that the petitioner is not governed either by the Employees Provident fund and Miscellaneous Provisions Act 1952 or the Payment of Gratuity Act, 1972 and therefore, he is entitled to get provident fund and the gratuity, as per Sections 78 and 79 of the Tamil Nadu Co-operative Societies Act, 1983.

9. In these circumstances, the third respondent is directed to settle the provident fund and gratuity to the petitioner within a period of three months from today and if the amount is not settled within a period of three months from today, the third respondent shall pay interest at the rate of 9% per annum from the date of retirement till the date of settlement of the dues. If there are any other terminal benefits due to the petitioner, he could claim the same in the manner known to law.

10. The Writ Petition is disposed of on the above terms. No costs.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

- 1.The Regional Joint Registrar of Co-operative Societies,
Pudukkottai [Post], Pudukkottai District.
- 2.The Circle Deputy Registrar of Co-operative Societies,
Aranthangi [Post], Pudukkottai District.
- 3.The President, M.M.162 Manamadai Primary Agricultural
Co-operative Credit Society, Manamadai Village,
Karambakkkudy Taluk, Pudukkottai District.

+1cc to Mr.P.Ganapathi Subramanian, Advocate Sr.No.64684

akm/16.11.2015 /3p-5c/