THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No. 3774 OF 2015

O R D E R:

The petitioner herein sought for a writ of mandamus for declaring the action of the respondent in not releasing the amount of gratuity and encashment of earned leave, which are part of retiral benefits to him till date, as illegal and arbitrary.

It is the claim of the petitioner that he was initially recruited as a Secretary to Vempada Primary Agricultural Cooperative Society and subsequently, he has also served District Cooperative Central Bank, Vizianagaram. The petitioner has ultimately retired from service on attaining the age of superannuation in 2010.

When notice was issued in this case, on 20.02.2015, the Chief Executive Officer of the District Cooperative Central Bank, Vizianagaram filed a detailed counter-affidavit. It is stated in the counter-affidavit, in paragraph 9, that after the petitioner has retired from service on 30.06.2010, as per the Memorandum of Intent (MOI), entered into by and between the Andhra Pradesh Cooperative Banks Association and A.P. State DCCBs' Employees Union, Hyderabad, this respondent bank has released its bank share in a sum of Rs.1,30,467/- towards retiral benefits to the petitioner, through their communication dated 31.12.2004. This amount of Rs.1,30,467/- comprised of amount of gratuity, leave encashment, etcetera. It was also further pointed out that a sum of Rs.75,000/- was subsequently released on 27.02.2015 being the APCOB's share of additional compensation to the petitioner, but unfortunately, the statement that followed this data reads as under:

> " Even though the bank share of gratuity & leave encashment released, but the petitioner has not approached the bank to receive the benefits till to date........"

Learned counsel for the petitioner takes a serious exception to this statement and submits that the bank has not communicated anything on 31.12.2014 to the petitioner and the question of the petitioner not approaching the bank for securing his retiral benefits is simply an unbelievable story spun by the bank to get out of their obligation to pay for interests for the delayed payment of gratuity. The learned counsel has also pointed out that on 31.12.2014, the 3rd respondent bank has communicated to the Branch Manager of Vizianagaram Branch of the bank that a sum of Rs.1,30,467/- was released for payment, but however, the first condition incorporated in that order reads as under:

> " The retirement benefits will be kept in deposit for a period of one year either in Fixed Deposit or Cumulative Deposit."

Condition No.2 thereafter, reads as under:

> " The Branch Manager is advised not to allow any loan against such deposit."

Further, only the monthly interest is directed to be paid to the petitioner depending upon the circumstances against the FDR.

The criticism of the learned counsel for the petitioner to the conditions incorporated in the order dated 31.12.2014 are well-merited. It is none of the business of the employer to hedge the grant of gratuity with conditions. It is for the beneficiary to consider putting the gratuity amount to most effective and productive use. The bank cannot confine the amount to a fixed deposit receipt, without allowing even a loan to be raised thereon. It is atrocious to think that the bank should decide as to how the retiral benefits should be utilized by the employee concerned. Realizing this difficulty to sustain legally the conditions incorporated in the order dated 31.12.2014, Ms. Uma, learned Standing Counsel for the 3rd respondent would submit that all these conditions have been incorporated only as a precautionary measure because the petitioner has not approached the bank and to prevent any possible misuse or abuse of such funds, if the petitioner approaches the 3rd respondent bank, the bank is willing to either deliver the FDR or encash equivalent amount of the FDR or allow the petitioner to prematurely cancel the FDR if he dos not intend to keep the said money in such an account.

Therefore, this Writ Petition stands disposed of with a direction to the 3rd respondent to take appropriate measures, as suggested by their learned Standing Counsel at the Bar today. This task must be completed within a maximum period of seven days from the date on which the petitioner approaches the 3rd respondent and submits a representation, in writing. Insofar as the dues payable by the Primary Agricultural Cooperative Societies are concerned, steps must be taken to release all such amounts, which are otherwise payable by it, as expeditiously as is possible, preferably within a maximum period of three months from the date of receipt of a copy of this order, inasmuch as the petitioner has completed nearly five years of post-retiral period. No costs.

Consequently, the miscellaneous applications, if any shall also stand disposed of.

NOOTY RAMAMOHANA RAO, J

15th April 2015

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