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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2016

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THE HONOURABLE **MRS.JUSTICE PUSHPA SATHYANARAYANA**

W.P(MD) .No.813 of 2016

D.SUBBAMMAL

.. Petitioner

Vs.

1. THE REGISTRAR(HOUSING),
TAMIL NADU HOUSING BOARD COMPLEX, II FLOOR,
493 ANNASALAI, NANTHANAM, CHENNAI 600 035.
2. THE MANAGING DIRECTOR,
TAMIL NADU CO.OP HOUSING FEDERATION, NO.48,
RITHORTAM ROAD, VEPERY, CHENNAI 600 007.
3. THE DEPUTY REGISTRAR
(HOUSING), NO.3D, SALAI MANINAGARAM,
VIRUDHUNAGAR REGION,
VIRUDHUNAGAR DISTRICT.
4. THE PRESIDENT,
MDA HSG 108, SRIVILLIPUTHUR TALUK,
CO.OP HOUSING SOCIETY LTD.,
NO.13/1 NGO COLONY, SRIVILLIPUTHUR POST,
VIRUDHUNAGAR DISTRICT - 626 125.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a WRIT OF MANDAMUS to direct the respondents to disburse the entire retirement benefits including the arrears of salary due to the petitioners deceased husband Mr.Durai Namasivayam with 18% Interest p.a. to the petitioner.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.T.S.Md.Mohideen
Additional Government Pleader

ORDER

The husband of the petitioner one Durai Namasivayam was employed with the fourth respondent and gradually he was promoted and raised to the level of Secretary in the year 1991. The husband of the petitioner died on 21.05.2013, while he was in service. Though he died in the year 2013, his death-cum- retirement benefits including arrears of salary had not been paid to him. The other amounts viz., gratuity, leave surrender salary, security deposit and arrears of salary were also not paid by the respondent. While so, the fourth



respondent vide his letter dated 31.07.2014, certified that there was an arrears of Rs.87,40,381/- due to six employees from August, 2008 to June 2014. The fourth respondent has not paid the Provident Fund and Gratuity due to the husband of the petitioner till today. Therefore, the writ of Mandamus is filed seeking a direction to the respondent to dispose of the retirement benefits including the arrears of salary to the petitioner.

2.The fourth respondent has filed his counter stating that in respect of the petitioner's husband, there was a surcharge proceedings initiated and subsequently, dropped by proceedings in Na.Ka.No.2398/2001, dated 26.05.2008. There was also an 18(1) statement stated to have been entered in between the petitioner and the fourth respondent.

3.Be that as it may, it is submitted that no salary was paid to the employees from 2008 due to lack of availability of funds. Admittedly, the services of the petitioner's husband were also regularised. A letter, dated 20.08.2015 from the Deputy Registrar (Housing) to the Registrar (Housing), specifically states that the salary, that was denied as per the audit objection between 2001 and 2007, was subsequently released. Even the said sum is not paid to the petitioner.

4.According to the fourth respondent, the Vigilance and Anti Corruption enquiry and the disciplinary action are not yet closed and the same are pending. The fourth respondent Society has also incurred huge loss because of the petitioner's husband and his colleagues had colluded and managed to make 18(1) settlement to raise their salary as per their wish. However, since the services of the petitioner is regularised and the monies that were withheld due to the audit objection for the period of 2001 to 2007 have also been released, the fourth respondent is to consider the case of the petitioner and disburse the entire retirement benefits including the arrears of salary.

5. The learned counsel for the petitioner also relied on the Judgment of this Court reported in **2015 (5) CTC 726 (A.SENGODAN v. THE REGISTRAR OF COOPERATIVE SOCIETIES)**, wherein it is held as follows:-

"11. ... unless there is a Statutory provision for withholding the Provident Fund (relating to contributions of Employer and Employees)/Gratuity, or other Retiral benefits, the same cannot be withheld. The Employer cannot withhold the above Retiral benefits of the Employees under any circumstances, in the absence of power conferred on them or provided under the relevant statute."

6. In view of the above Judgment also, the fourth respondent is directed to settle the entire retirement benefits to the petitioner including Provident Fund, Gratuity, leave salary and other benefits as early as possible, however, within a period of twelve weeks from the date of receipt of a copy of this order.



7. The writ petition is disposed of accordingly. No costs.
Sd/-

Assistant Registrar (RTI)

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/True Copy/

Sub Assistant Registrar

To

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+1cc to MR.P.GANAPATHI SUBRAMANIAN, Advocate SR.No.10934
+1cc to MR.T.S.MOHAMED MOHIDEEN, Advocate Sr.No.11130
+1cc to The Special Government Pleader SR.No.11287

akm/14.03.2016/3p-8c/AN/MP

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