

**THE HONOURABLE SRI JUSTICE M. SATYANARAYANA
MURTHY**

WRIT PETITION No.18059 OF 2014

ORDER:

This writ petition is filed challenging the action of the respondents in recovery of debt dues of the deceased employee from the petitioners' monthly salary without prior notice and without obtaining no objection certificate from the deceased family, while settling the retirement benefits of the deceased employee, and declare the same as illegal, arbitrary and contrary to the Circular issued by the 3rd respondent.

02. It is the case of the petitioners that they stood as guarantors, for the loan obtained by the borrower-D.R.Anjaneyulu from APSRTC Employees Co-operative Society Limited on 28.04.2010 executed necessary documents, undertaking to repay the debt due in the event of failure to pay the debt, due by the original borrower/principal debtor. The original borrower was removed from service and later died, but without recovery of the amount due to the Society from the death benefits of the deceased-D.R.Anjaneyulu, the respondents resorted to recover the amount from the salary of the petitioner without any prior notice and without obtaining any certificate from the Society as per the circular instructions dated 09.06.2011 issued by the first respondent and reiterated in Circular dated 25.06.2014 and thereby the action of the third respondent is illegal and arbitrary.

03. The 5th respondent filed counter admitting recovery of amount, since, the deceased-D.R.Anjaneyulu was removed from service on the ground of misconduct i.e. absenteeism and the said Anjaneyulu indebted to the Society to a tune of Rs.74,806/- towards short term loan and Rs.78,046/- towards educational loan. So far the 5th respondent recovered Rs.42,437/- from the first petitioner's salary and recovered

Rs.34,558/- from the second petitioner's salary in view of undertaking given by the petitioners to pay the amount due by Anjaneyulu, in the event of failure of the original borrower, thereby the third respondent is competent to recover the amount and still an amount of Rs.42,437/- and Rs.34,558/- to be recovered under two loans.

04. There is no dispute regarding the relationship of debtor and creditor between D.R.Anjaneyulu and the Society and signing on the documents by the petitioners 1 and 2 as sureties 1 and 2 for debt due by original borrower-D.R.Anjaneyulu by executing agreement of guarantee in favour of the Society on 21.04.2010. Thus, the liability of the petitioners 1 and 2 as guarantors is not in dispute.

05. According to Section 128 of the Indian Contract Act, 1872, the liability of the Surety is co-extensive with that of the principal debtor, unless otherwise provided by the contract. In the present case, the contract of guarantee did not provide anything except to make sureties responsible for payment of debt due and therefore the liability of the petitioners being surety is coextensive with that of the liability of the principal borrower i.e. B.R.Anjaneyulu. Thus, both the principal debtor and the sureties are jointly liable for payment of debt due.

06. The only contention before this Court is that in violation of Circular dated 09.06.2011, the third respondent started recovery of the amount since the original borrower, principal debtor was removed from service. According to the fourth paragraph of the circular issued by the first respondent, amount due to the Societies shall be deducted from settlement dues in cases of voluntary retirement, retirement on medical grounds, resignation, removal etc. and repay to the Societies.

07. Here the original borrower- B.R.Anjaneyulu was removed from service, undisputedly, on the ground of absenteeism after initiating necessary proceedings and later died. At the time of payment of dues to the principal debtor-Anjaneyulu, the third respondent is under

obligation to deduct the dues from the retirement benefits of the deceased/removed employee-B.R.Anjaneyulu after obtaining necessary certificate from the Society. Instead of adopting such procedure as contemplated in the Circular dated 09.06.2011 and reiterated in Circular dated 25.06.2014, straight away, the third respondent proceeded to recover the amount. No doubt, the Circular issued by the APSRTC to the Depot Managers is binding on the third respondent, however, the Circular will not over ride the law of Contract i.e. Section 128 of the Indian Contract Act, 1872.

08. In any view of the matter, the learned counsel for the petitioners submitted that the third respondent can obtain recovery certificate from the Society and then proceed in accordance with the Circular. Therefore, in view of the Circulars referred to supra, the third respondent is directed to obtain certificate of recovery from the Society and proceed in accordance with law for recovery, if any amount is due then and start recovery of the amount after following necessary procedure.

09. Accordingly, the recovery of amount without notice to the petitioners and without obtaining recovery certificate from the Society is set aside, while giving liberty to the third respondent to recover the amount in accordance with the Circular dated 09.06.2011.

10. In the result, the writ petition is allowed with the above direction. No costs.

11. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M. SATYANARAYANA MURTHY, J

28.04.2016

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