IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.35095 of 2003

S.Anasthasmarie ... Petitioner

Vs.

1.The President,
Kallakuruchi Taluk Co.op
Housing Society Limited S.A.Hgg 50.
Kallakuruchi
Tamilnadu 606 202.

2.The District Registrar of Co.op Societies,
Villupuram District,
Tamilnadu. ... Respondents

Prayer:
Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the first respondent to grant the wages of petitioner's husband from 02.10.1996 to 14.09.1998 Provident Fund, Gratuity, and other service benefits with 12% interest from 14.09.1998 till the date of payment.

For Petitioner : Mr.V.Ajaya Kumar

For Respondents : Mr.Balan Haridoss for R1
Mr.L.P.Shanmugasundaram for R2
Special Government Pleader (Co-op.)

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Mandamus directing the first respondent to grant the wages of the petitioner's husband from 02.10.1996 to 14.09.1998, Provident Fund, Gratuity, and other service benefits with 12% interest from 14.09.1998 till the date of payment.

2.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents.

3.The case of the petitioner is that her husband joined the first respondent society as Clerk on 01.11.1980 and was drawing a monthly salary of Rs.4033/- and due to mental illness, he could not attend the duty and he was asked by the respondent board to appear before the medical board orally and since no written orders were issued, he could not appear before the medical board. Thereafter, due to illness and poverty, he died on 14.09.1998.

4.The facts are not disputed by the learned counsel appearing for the respondents. The learned counsel appearing for the first respondent would submit that the petitioner's husband was granted vehicle loan, staff consumer loan, staff EPF loan, staff paddy loan and other advance. Accordingly, the said dues were payable by the deceased employee. The said calculation is as follows:

Vehicle Loan with interest	-	31348
Staff Consumer Loan	-	9172
Staff EPF Loan with interest	-	10998
Staff Paddy Loan with interest	-	3358
Staff other advance	-	3581
Total	-	60702

Accordingly, after deducting the dues, the first respondent demanded a sum of Rs.3216/- from the petitioner.

5.The learned counsel appearing for the petitioner would submit that the above issue is squarely covered by the decision of the Hon'ble Supreme Court reported in 1976 3 SCC 607 (Union of India Vs. Jyoti Chit Fund Finance and Others), wherein, the authority was prevented from attaching the PF and EPF and if the said ratio is applied, the order of the respondent is not sustainable and prayed for allowing the writ petition.

6.The learned counsel appearing for the first respondent would submit that writ petition is not maintainable against the Co-operative society in view of the decision of the Hon'ble Full Bench reported in

2006 (4) CTC 689 (K.Marappan Vs. The Deputy Registrar of Co-operative Societies, Namakkal) and prayed for dismissal of the writ petition.

7.The decision relied upon by the learned counsel appearing for the first respondent would not apply to the present case on hand since the petitioner's terminal benefits were not settled even after 19 years from his death.

8.It is useful to extract hereunder the relevant portion of the decision of the Hon'ble Supreme Court reported in 1976 3 SCC 607 (Union of India Vs. Jyoti Chit Fund Finance and Others):

> “We may state without fear of contradiction that provident fund amounts, pensions and other compulsory deposits covered by the provisions we have referred to, retain their character until they reach the hands of the employee. The reality of the protection is reduced to illusory formality if we accept the interpretation sought. We take a contrary view which means that attachment is possible and lawful only after such amounts are received by the employee. If doubts may possible be entertained on this question, the decision in Union of India v. Radha Kissen Agarwala & Anr. reported in (1969) 1 SCC 225 erases them. Indeed our case is an afortiori one, on the facts. A bare reading of Radha Kissen makes the proposition fool-proof that so long as the amounts are Provident Fund dues to them, till they are actually paid to the government servant who is entitled to it on retirement or otherwise the nature of the dues is not altered. What is more, that case is also authority for the benignant view that the government is a trustee for those sums and has an interest in maintaining the objection in court to attachment. We follow that ruling and over-rule the contention."

9.In view of the above, statutory duty enforces and cast upon the respondents to pay the terminal benefits in favour of the petitioner. The first respondent is directed to settle the EPF and Gratuity amount of Rs.57,486/- without interest, within a period of three months from the date of receipt of a copy of this order.

10.The writ petition is accordingly disposed of. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1.The President,
Kallakuruchi Taluk Co.op
Housing Society Limited S.A.Hgg 50.
Kallakuruchi
Tamilnadu 606 202.

2.The District Registrar of Co.op Societies,
Villupuram District,
Tamilnadu.

+1cc to Mr.V.Ajayakumar, Advocate sr.68894

+1cc to Balan Haridass, Advocate sr.68449

+1cc to Government Pleader sr.69397

W.P.No.35095 of 2003

ss(26/10/2017)