



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

**W.A. (MD) No.1423 of 2017
and
C.M.P. (MD) No.10670 of 2017**

K.Sundaram

: Appellant

Vs.

1. The District Collector,
Sivagangai District,
Sivagangai.
2. The District Revenue Officer,
Sivagangai District,
Sivagangai.
3. The Revenue Divisional Officer,
Sivagangai District,
Sivagangai.
4. The Tahsildar,
Sivagangai Taluk,
Sivagangai District.

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, praying to set aside the order dated 06.07.2017 made in W.P. (MD) No.5261 of 2017.

Prayer in WP(MD). 5261/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus directing the respondents herein to settle the retirement and other monetary attendant benefits payable by the respondents 1 to 4 herein on the basis of the petitioner's representation dated 06.03.2017 within the time stipulated by this Honble Court.

For Appellant

: Mr.K.P.Ramesh

For Respondents

: Mr.VR.Shanmuganathan,

Special Government Pleader

**JUDGMENT**

[Judgment of the Court was delivered by **M.VENUGOPAL, J.**]

This Writ Appeal is directed against the order of Writ Court dated 06.07.2017, made in W.P.(MD)No.5261 of 2017.

2. Heard both sides.

3. According to the Learned Counsel for the Appellant/Writ Petitioner, he had filed W.P.(MD)No.5261 of 2017, seeking the relief of passing of an order by this Court in directing the Respondents to settle the retirement benefits and other monetary benefits payable to him, based on his representation dated 06.03.2017.

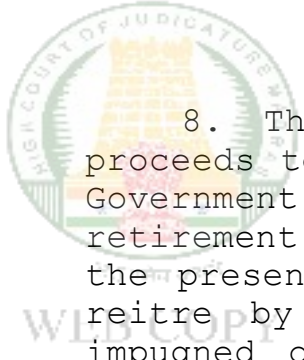
4. The Learned Counsel for the Appellant/Writ Petitioner takes a plea that the Learned Single Judge had passed the impugned order dated 06.07.2017, dismissing the Writ Petition, which is opposed to Law, weight of evidence and probabilities of the case.

5. The prime plea advanced on behalf of the Appellant/Writ Petitioner is that the Learned Single Judge had failed to appreciate the ingredients of Rule 70(2) [Note (2)] of the Tamil Nadu Pension Rules, 1978, wherein it is stated that Gratuity shall not be liable to attachment in accordance with the provision of Clause (g) of the Proviso to Sub-Section (1) of Section 60 of the Code of Civil Procedure, 1908.

6. The Learned Counsel for the Appellant/Writ Petitioner seeks-in-aid of Section 60(1) of the Code of Civil Procedure to the effect that the following shall not be liable for attachment or sale, viz.,

"(g) stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf, and political pensions."

7. The Learned Counsel for the Appellant/Writ Petitioner projects an argument that the Appellant/Writ Petitioner was permitted to retire from service on 24.10.2016 and in terms of the ingredients of Rule 69(1) of the Tamil Nadu Pension Rules, 1978, as per G.O.Ms.No.286, Finance (Pension) Department, dated 07.04.1995, vide SRO-B-151/1995, with effect from 04.07.1988, no such gratuity shall be withheld in respect of a Government servant who has been permitted to retire without prejudice to the ~~separate civil or judicial~~ proceedings pending against him. As such, Rule 70(1) is inapplicable.



8. The Learned Counsel for the Appellant/Writ Petitioner proceeds to point out that it shall be the duty of every retiring Government servant to clear all the Government dues before his retirement and not after the date of his service or retirement. In the present case, the Appellant/Writ Petitioner was permitted to retire by the third and fourth Respondents and as such, the impugned order of the Learned Single Judge dated 06.07.2017 in dismissing the Writ Petition is *per se* not maintainable in the eye of law.

9. Advancing his arguments, the Learned Counsel for the Appellant/Writ Petitioner takes an emphatic stand that the third and fourth Respondents cannot retain or keep the retirement benefits of the Appellant/Writ Petitioner under their custody and this act is certainly impermissible in Law.

10. The Learned Counsel for the Appellant/Writ Petitioner brings it to the notice of this Court that the Appellant/Writ Petitioner borrowed a sum of Rs.3,70,000/- on 31.03.2010 from Sivagangai Regional Village Administrative Officers and Village Assistants Co-operative Thrift Society and further, the Appellant/Writ Petitioner had already settled the aforesaid loan amount and also the Appellant's share capital is lying with the Society and the same has to be adjusted towards the said loan amount.

11. The Learned Counsel for the Appellant/Writ Petitioner comes out with a plea that the Society had not issued any notice to him and even without sending any notice to him, the Society cannot claim the loan amount in question.

12. The Learned Counsel for the Appellant/Writ Petitioner points out that after permitting the Appellant/Writ Petitioner to retire from service, there is no contractual relationship between the parties and viewed from that angle also, the impugned order of the Learned Single Judge dated 06.07.2017 in dismissing the Writ Petition is not correct in the eye of Law. Further, it is represented on behalf of the Appellant/Writ Petitioner that the Appellant/Writ Petitioner borrowed the loan amount of Rs.3,70,000/- and after the share capital and adjustment of the first loan, he had received only Rs.2,80,000/-. However, the Society is now claiming a sum of Rs.7,25,766/- more than three times of the original loan amount, which *ex facie* points out that the Society is claiming an excessive interest/exorbitant interest from the Appellant/Writ Petitioner. On this score also, the impugned order of the Learned Single Judge passed in the Writ Petition is liable to be set aside.

13. Lastly, it is the submission of the Learned Counsel for the Appellant/Writ Petitioner that Section 11 of the Pension Act, 1971, speaks of 'exemption of pension from attachment' and the same runs as under:



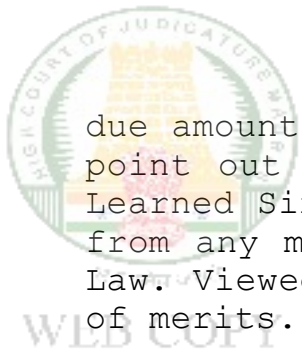
"Exemption of Pension from Attachment.- No pension granted or continued by Government on political considerations or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any Court at the instance of a creditor, for any demand against the pensioner or in satisfaction of a decree or order of any such Court.

This section applies also to pensions granted or continued, after the separation of Burma from India, by the Government of Burma."

14. As far as the present case is concerned, it cannot be disputed that the Appellant has an obligation even as per Rule 70 (1) of the Tamil Nadu Pension Rules, 1978, to re-pay the loan amount borrowed by him from the Sivagangai Regional Village Administrative Officers and Village Assistants Co-operative Thrift Society. Apart from that, the Respondents, in terms of the ingredients of Rule 70 of the Tamil Nadu Pension Rules, 1978, are bound to adjust the outstanding loan amount together with interest, if any. As such, the Respondents, after adjusting the loan amount together with interest (the outstanding amount) to be paid by the Appellant to the Sivagangai Regional Village Administrative Officers and Village Assistants Co-operative Thrift Society from the retirement and monetary benefits payable to the Appellant, shall pay the remaining amount, if any, to the Appellant, in full, complete and comprehensive manner.

15. As regards the plea taken on behalf of the Appellant/Writ Petitioner that he was permitted to retire and, therefore, after his retirement, there is a severance relationship of employee and employer between the parties concerned. It is to be pointed out that for the omission/dereliction of duty, the Learned Single Judge, while dismissing the Writ Petition, had rightly directed the first Respondent/District Collector, to initiate suitable action against the fourth Respondent/Tahsildar, Sivagangai Taluk, who relieved him from service even without finding out the outstanding due amount to be paid by the Appellant, while he was in service.

16. In the upshot of detailed discussions and in view of the foregoing reasons, this Court, on an over-all assessment of the facts and circumstances of the instant case, in an integral manner, comes to a resultant conclusion that once the Appellant had availed the loan of Rs.3,70,000/- on 31.03.2010 from the Sivagangai Regional Village Administrative Officers and Village Assistants Co-operative Thrift Society and that too, with open eyes/wide open, then it is no longer open to him to come out with a plea that after his retirement, he shall not pay the outstanding



due amount to the Society concerned. Suffice it for this Court to point out that this Court, on perusing the impugned order of the Learned Single Judge, is of the view that the same does not suffer from any material irregularity or patent illegality in the eye of Law. Viewed in that perspective, the present Writ Appeal is devoid of merits.

17. In fine, the Writ Appeal is dismissed leaving the parties to bear their own costs. Consequently, the impugned order dated 06.07.2017 in W.P.(MD)No.5261 of 2017 passed by the Learned Single Judge is affirmed by this Court for the reasons assigned in this Writ Appeal. Consequently, the connected Miscellaneous Petition is closed.

18. Before parting with the case, this Court makes it quite clear that it is open to the Appellant/Writ Petitioner to present a representation/petition before the concerned authority claiming provisional pension, so as to keep his body and soul together for the purpose of his livelihood and living and the concerned authority, on receipt of the same, shall forward all the relevant papers to the Accountant General, Madras, for onward transmission.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Sivagangai District, Sivagangai.
2. The District Revenue Officer,
Sivagangai District, Sivagangai.
3. The Revenue Divisional Officer,
Sivagangai District, Sivagangai.
4. The Tahsildar,
Sivagangai Taluk, Sivagangai District.

+ 1 cc TO Mr.K.P.Ramesh , Advocate in SR No. 88759
+ 1 cc TO The Special Government Pleader in SR No. 88641

SML

AE/KK/SAR2/05.12.2017/5P/7C