

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.08.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.5051 of 2017

K.Padmanathasamy

..Petitioner

vs

- 1.The Registrar,
The Registrar of Co-operative Societies,
NVN Maligai,
No.170, Periyar EVR High Road,
Chennai - 600 010.
- 2.The Joint Registrar of Co-operative Societies,
Tirupur Region,
Tirupur Co-Operative Sales Society Campus,
Palladam Road, Tirupur City.
- 3.The Deputy Registrar of Co-Operative Societies,
Tirupur Circle,
Tirupur Co-Operative Sales Society Campus,
Palladam Road, Tirupur City.
- 4.The President,
No.3386, Kattumadhappur Primary
Agricultural Co-Operative Credit Society,
Madhappur & Post,
Palladam Taluk, Tirupur District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus, calling for the records of the 3rd respondent herein pertaining to the order dated 10.04.2015 made in Na.Ka.No.764/2010/ sa.pa and as well as the consequential Reply Notice dated 11.05.2015 sent to the petitioner and quash the same and further direct the 2nd respondent herein to settle the petitioner's terminal benefits with accrued interests from 31.05.2008, based on the petitioner's representation dated 18.05.2015.

For Petitioners : Mr.P.M.Duraiswamy
For Respondents : Mr.L.P.Shanmugasundaram
Special Government Pleader
(Co-operative Societies)

O R D E R

The order passed by the third respondent in proceedings dated 10.4.2015 and the consequential reply given by the third respondent to the legal notice sent by the counsel on 11.5.2015 are under challenge in this writ petition.

2. The writ petitioner was employed as a Secretary of the fourth respondent's Co-Operative Society and retired from service on attaining the age of superannuation on 31.5.2008. The grievance of the writ petitioner is that the gratuity as applicable in accordance with the terms of the scheme has not been paid to him.

3. The learned counsel appearing on behalf of the writ petitioner states that the benefits were granted to the similarly placed Secretaries who served in the other Co-operative Societies. Thus, the writ petitioner alone has been discriminated in respect of the payment of gratuity in accordance with the terms and conditions of the scheme. This apart, the leave encashment benefit has also not been disbursed in favour of the writ petitioner. At the outset, the terminal benefits are not been paid to the writ petitioner and the balance dues are also not paid as per the Rules in force.

4. The learned Special Government Pleader appearing on behalf of the respondents 1 to 3 opposing the contention, by stating that the gratuity and the other benefits are paid in accordance with the Government Orders and Rules in force. If at all the writ petitioner is aggrieved from and out of the settlement of the terminal benefits, he has to approach the competent authority under the provisions of the Tamil Nadu Co-operative Societies Act. Thus, the benefits as applicable would be paid to the writ petitioner in accordance with the Acts and Rules.

5. This Court is of an opinion that under Section 78 of the Tamil Nadu Co-operative Societies Act stipulates a provision for Provident Fund. A registered Society not being an establishment to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 applies may establish a Provident Fund for the benefit of its employees to which shall be credited all contributions made by the employees and the societies in accordance with the bye-laws. Section 79 of the Act denotes the Gratuity Fund and the said provisions states that a registered

Society not being an establishment to which the Payment of Gratuity Act, 1972 applies, may provide in its bye-laws for payment of gratuity to the employees at such rates and on such conditions as may be specified in the bye-laws and such society may establish a Gratuity Fund or make other arrangements for the purpose.

6. The Co-operative Societies are maintaining the funds for the payment of Provident Fund and Gratuity in the respective Central Co-operative Banks of the concerned District and the Gratuity amount is released from and out of the said funds by the Central Co-Operative Banks concerned. In view of the fact that the Provident Fund and the Gratuity are governed under the Special Act, the General Act cannot be applied in respect of the employees' of the Co-Operative Societies, wherein a separate fund has been created for the purpose of settlement of provident fund and gratuity. The legal principles in this regard is settled that whenever there is a special provision under the Special Act for payment of certain benefits are provided, then the General Act would not be applicable and the employees' are entitled to get the benefits in accordance with the provisions of the Special Act. Only if the provisions stipulated in Special Act is repugnant or in violation of the constitution of India or the Central Act then they are at liberty to challenge the same otherwise the provisions of the Special Act ought to be followed in respect of settlement of terminal and pensionary benefits to the employees of the Co-operative Societies, which is already stipulated under the provisions of the Tamil Nadu Co-operative Societies Act, 1983.

7. This being the legal principles to be followed and if the writ petitioner is of an opinion that the gratuity due to him has not been settled in accordance with terms and conditions and the bye-laws, then, it is left open to him to approach the competent authority under the provisions of the said Act. More specifically Section 153 of the Tamil Nadu Co-operative Societies Act provides revision before the Registrar and the Government by way of a notification delegated the powers to the Joint Registrar of Co-Operative Societies. Thus, the Joint Registrar of the Co-operative Societies is the competent authority to deal with the revision petition, if any submitted under Section 153 of the Tamil Nadu Co-operative Society Act.

8. In the present writ petition on hand, the Deputy Registrar has dealt with the case of the writ petitioner on merits and furnished reply. However, the Deputy Registrar is incompetent to arrive a finding and pass orders on merits in respect of the terminal benefits of the employees of the Co-Operative Societies. Thus, the writ petitioner has to approach the competent authority Under Section 153 of the Tamil Nadu Co-Operative Societies Act, by submitting proper application in a prescribed format and by paying the necessary

fee as prescribed. In this regard, the writ petitioner is at liberty to submit the revision petition before the competent authority viz., Joint Registrar of the Co-Operative Societies concerned, within a period of two weeks from the date of receipt of a copy of this order. In the event of receiving any such revision petition from the writ petitioner, the second respondent/ Joint-Registrar is directed to consider the same and pass orders on merits and in accordance with law, by affording reasonable opportunity to all the parties concerned and pass orders within a period of twelve weeks thereafter.

9. With the above direction, the writ petition stands disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ms

To

- 1.The Registrar,
The Registrar of Co-operative Societies,
NVN Maligai,
No.170, Periyar EVR High Road,
Chennai - 600 010.
- 2.The Joint Registrar of Co-operative Societies,
Tirupur Region,
Tirupur Co-Operative Sales Society Campus,
Palladam Road, Tirupur City.
- 3.The Deputy Registrar of Co-Operative Societies,
Tirupur Circle,
Tirupur Co-Operative Sales Society Campus,
Palladam Road, Tirupur City.
- 4.The President,
No.3386, Kattumadhappur Primary
Agricultural Co-Operative Credit Society,
Madhappur & Post,
Palladam Taluk, Tirupur District.

+1cc to Mr.P.M.Duraiswamy, Advocate, S.R.No.56176

+1cc to the Government Pleader, S.R.No.56905

W.P.No.5051 of 2017

GJII(CO)

GSP(11/09/2018)