

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **11.04.2018**

CORAM:

THE HON'BLE MR.JUSTICE **K.K.SASIDHARAN**
AND
THE HON'BLE MR.JUSTICE **R.SUBRAMANIAN**

W.A.Nos.663 and 668 of 2015 and
M.P.Nos.1 and 1 of 2015

- 1.The Joint Registrar of Co-operative Societies,
Namakkal Region, Namakkal District.
 - 2.The Deputy Registrar of Co-operative Societies,
Vellore Road, Thiruchengodu,
Namakkal District.
 - 3.The President
No.4091, Mallasamudram Primary Agricultural
Co-operative Credit Society,
Mallasamudram, Tiruchengode Taluk,
Namakkal District.
- ...Appellants in both Appeals

सत्यमेव जयते
Vs

K.Ambarayan ...Respondent in W.A.No.663/2015
K.Kathirvelu ...Respondent in W.A.No.668/2015

Prayer:- Writ Appeals filed under Clause 15 of Letters Patent Act, to set aside the order passed by this Court in W.P.Nos.27398 and 27399 of 2014 dated 28 October 2014.

For Appellants : Mr.L.P.Shanmugasundaram
Special Govt.Pleader

For Respondents : Mr.R.Arun Dattan

COMMON JUDGMENT

(Judgment of the Court was delivered by
K.K.SASIDHARAN, J.)

These two intra court appeals are directed against the common order dated 28 October 2014 in W.P.Nos.27398 and 27399 of 2014, whereby and where under, the learned single Judge issued a Writ and more particularly, in the nature of a Writ of Mandamus, directing the appellants to disburse the Provident Fund, Gratuity and Leave Salary to the respondents in the respective appeals taking into account their retirement from service on attaining the age of superannuation.

2. The respondent in the respective appeals (hereinafter referred to as the "respondents") were employees of the Mallasamudram Primary Agricultural Co-operative Credit Society. The respondent viz., K.Ambarayan in W.A.No.663 of 2015 retired from service on 30 April 2014 and the respondent viz., K.Kathirvelu in W.A.No.668 of 2015 retired from service on 31 August 2013. Since surcharge proceedings were pending, the appellants were not inclined to grant them service benefits. The respondents therefore filed individual writ petitions claiming Provident Fund, Gratuity and Leave Salary.

3. The learned single Judge allowed the writ petitions primarily on the ground that it would not be legally correct to retain the benefits on account of mere pendency of surcharge proceedings. Feeling aggrieved, the appellants have come up with these intra court appeals.

4. The learned Special Government Pleader contended that the learned single Judge was not justified in issuing a Mandamus to pay the benefits to the employees during the currency of the surcharge proceedings.

5. We have also heard the learned counsel for the respondents.

6. The respondents were the employees of the Society. The respondents retired from service on attaining the age of superannuation. However, their service benefits were not paid on the ground that surcharge proceedings were pending.

7. The appellants kept the surcharge pending for years together. Nothing prevented the appellants from taking early action for disposal of the surcharge proceedings. The learned single Judge allowed the writ

petition by a common order dated 28 October 2014. The appeal was filed in 2015. Even though more than three years have passed since passing the order by the learned single Judge, still, there is no progress in the surcharge proceedings. Even now the proceedings are stated to be in the notice stage.

8. The employee must be in a position to enjoy the benefits consequent to his retirement. The payment of Gratuity is not a matter of charity. It is the entitlement of the employee to receive the gratuity. There should be a valid reason to detain the payment of statutory benefits. We are therefore of the view that the appellants were not justified in keeping the benefits under the pretext that surcharge proceedings were pending. We therefore confirm the order passed by the learned single Judge.

9. The intra court appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

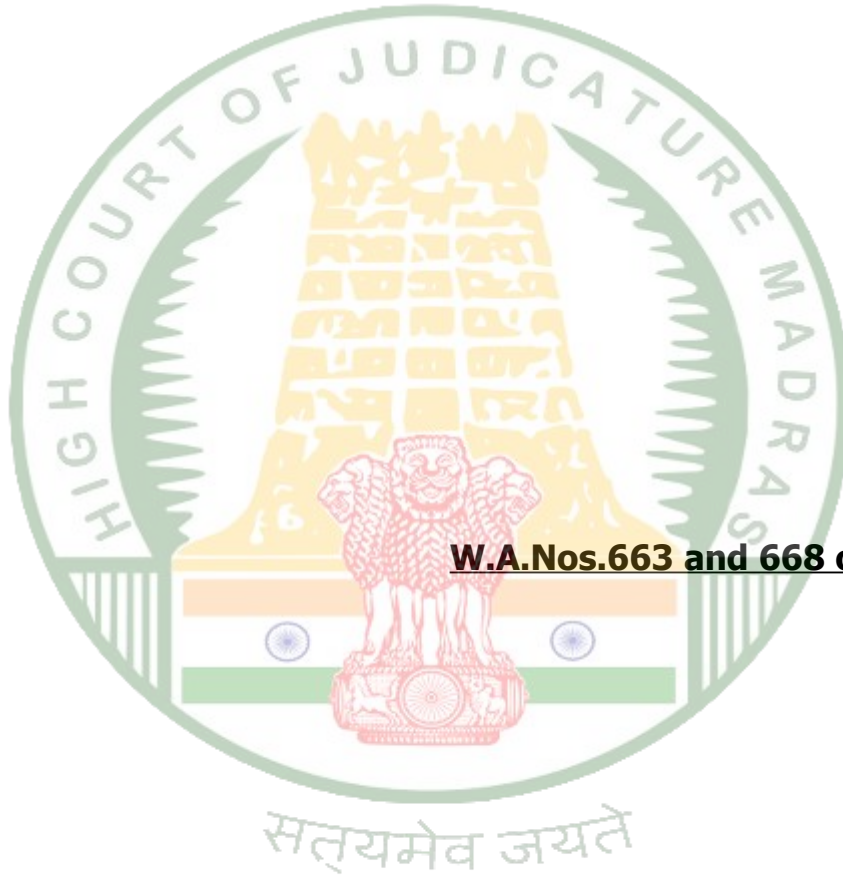
(K.K.SASIDHARAN.,J.) (R.SUBRAMANIAN,J.)

11 April 2018

Index : Yes/No

**K.K.SASIDHARAN, J.
AND
R.SUBRAMANIAN, J.**

(svki)



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