



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.14702 of 2014

S.Sethu

... Petitioner

Vs.

1. The Deputy Registrar of
Co-operative Societies,
Aruppukkottai,
Virudhunagar District.

2. The President,
SP.SPL, 107, Kalkurichi Primary Agricultural
Co-operative Credit Society Ltd,
Kalkurichi, Virudhunagar District.

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari and Mandamus, to call for the records relating to the proceedings of the first respondent vide Na.Ka.No.2790/201/Sa.Pa dated 11.08.2014 and quash the same as illegal and unconstitutional, consequently direct the respondents to disburse the balance amount of Rs.1,10,439/- which retained by the second respondent from the gratuity payment due to the petitioner along with statutory interest at the rate of 12%.

For Petitioner : Mr.S.Balamurugan

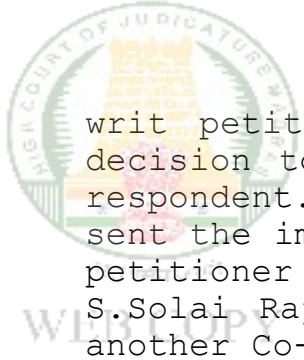
For Respondent 1 : Mr.S.Kumar,
Addl. Government Pleader

For Respondent 2 : M/S.S.Bharathi

O R D E R

The writ petitioner was employed in the second respondent Co-operative society. He retired from service on 31.05.2010. His grievance is that a portion of the gratuity amount payable to him continues to be withheld by the second respondent. He therefore submitted a representation to the first respondent seeking disbursement of the withheld amount.

<https://hcservices.courtservice.org/> was not considered, he filed WP(MD)No.8694 of 2014 and this Court by order dated 19.06.2014 directed the first respondent to dispose of the said representation submitted by the



writ petitioner. It appears that the second respondent took a decision to withhold the said amount at the instance of the first respondent. Following the order of this Court, the first respondent sent the impugned communication dated 11.08.2014 informing the writ petitioner that the writ petitioner had stood as a guarantor for one S.Solai Raj and that a decree had been passed at the instance of another Co-operative society against the writ petitioner.

3.It appears that execution proceedings have also been instituted. In view of the same, according to the respondents, the withheld amount is not liable to be released. The learned counsel appearing for the writ petitioner would point out that gratuity amount is not liable to attachment in execution of any decree or order of any Civil or Revenue or Criminal Court. In this case, even such an order of attachment was not passed in execution proceedings. The respondent appears to have taken cognizance of the passing of an arbitral award against the writ petitioner and the pendency of the execution proceedings for enforcing the same. There is absolutely no authority for the respondents to withhold the gratuity amount of the writ petitioner.

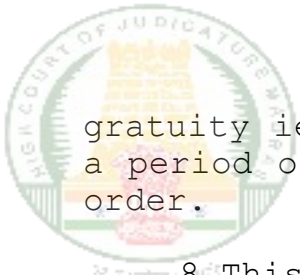
4.It is not the case of the respondents that the writ petitioner is in arrears of any amount to the second respondent. Even in the impugned communication, it is only mentioned that one Anna Co-operative Thrift and Credit Society had levied execution proceedings against the writ petitioner in his capacity as guarantor of the loan amount availed by one Solai Raj.

5.In view of the 97th constitutional amendment, it is idle to contend that writ petition would not lie against a Co-operative Society. In this case, this Court had already entertained a writ petition on the same cause of action and given a direction to the first respondent. In fact, the impugned order was passed only pursuant to the direction issued by this Court on 19.06.2014 in WP (MD)No.8694 of 2014. The writ petitioner had served with the second respondent as an employee for almost 34 years. He has by dint of his service obtained a right to receive the gratuity. It is not open to the respondents to withhold the said gratuity amount. It is clearly illegal.

6.The learned counsel appearing for the writ petitioner placing reliance on the decision of the Hon'ble Supreme Court reported in **(2007) 1 SCC 663 (Jaswant Singh Gill Vs. Bharat Coking Coal Ltd, and others)** to press his contention that the rule of forfeiture cannot be invoked in this case. It is not the case of the respondents that this amount is liable to be forfeited. On the other hand, the respondents are seeking to enforce the claim of some other society.

7.The impugned order is patently unsustainable. The respondents have no authority in law to withhold the gratuity amount payable to the writ petitioner. The impugned order is set aside. The respondents are directed to disburse the balance amount of

<https://hcservices.ecourts.gov.in/hcservices/>



gratuity ie., Rs.1,10,439/- with interest at the rate of 12% within a period of eight weeks from the date of receipt of a copy of this order.

8. This writ petition is allowed accordingly. No costs.

WEB COPY

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Deputy Registrar of
Co-operative Societies,
Aruppukkottai,
Virudhunagar District.

2. The President,
SP.SPL, 107, Kalkurichi Primary Agricultural
Co-operative Credit Society Ltd,
Kalkurichi, Virudhunagar District.

+ 1 cc TO Mr.S.Balamurugan , Advocate in SR No. 40026
+ 1 cc TO The Special Government Pleader in SR No. 40124

Skm

AE/SKN RSK/SAR4/08.01.2018/3P/5C

W.P (MD) No.14702 of 2014
02.01.2018