



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) .No.7034 of 2014

and

M.P. (MD) .No.1 of 2014

Murugappan

...Petitioner

Vs.

1. The Assistant Manager,
The Tamil Nadu State Transport Corporation,
Kumbakonam Division,
Pudukottai Zonal Office,
Thirumayam Road,
Pudukottai District.

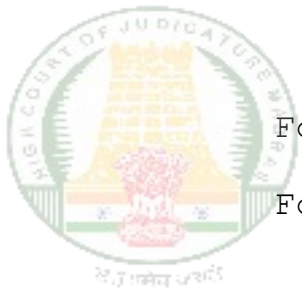
2. The Deputy Manager,
The Tamil Nadu State Transport Corporation,
Kumbakonam Limited,
Pudukottai Region,
Pudukottai.

3. The Branch Manager,
Canara Bank,
Karaikudi Branch,
Sivagangai District.

4. The Secretary,
RD 115, Tamil Nadu State Transport
Corporation Employees Co-operative,
Thrift & Credit Society,
No.446, Anna Nagar,
Kovilur, Karaikudi,
Sivagangai 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 relating to the impugned notice of the first respondent in ref. Tha.A.Po.Ka./Kumba/Pu.Ma/Sapapi-1/2508/2012 dated 20.06.2012 and the consequent impugned order of the second respondent in ref. Tha.Apo.Ka/Pu.Ma/PF1/55/14 dated 05.01.2014 and to quash the same and consequently direct the respondents 1 & 2 herein to disburse the sum of Rs.3,66,063/- illegally deducted from the terminal benefits and gratuity payable to the petitioner together with interest at 6% p.a., from 30.12.2013 the date of deduction, within a reasonable time.



For Petitioner : Mrs.R.Shiva Shankari
For Mr.S.Srinivasa Raghavan
For Respondents : Mr.D.Sivaraman for R1 & R2
: Mr.C.Jawahar Ravindran for R3
: Mr.S.Mohandass for R4

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ORDER

Heard the learned counsel on either side.

2.The petitioner is a retired employee of the first respondent / Corporation. He retired on 31.03.2012. During his service, he availed loan from the third respondent / Bank as well as the fourth respondent / Society. While disbursing the retirement benefits payable to the petitioner, the employer withheld a sum of Rs.3,66,063/- on the ground that the said amount represents the liabilities of the petitioner towards the third respondent / Bank and fourth respondent / Society. When the petitioner made a demand to the said amount, the first respondent passed the impugned order dated 05.01.2014 informing the petitioner that a sum of Rs.1,10,404/- was paid to the third respondent / Bank and a sum of Rs.2,55,659/- was paid to the fourth respondent / Society, in order to liquidate the petitioner's liabilities towards institution. The said proceedings are under challenge in this Writ petition.

3.The learned counsel for the fourth respondent drew the attention of this Court to Section 48 (1) (a), (b) & 2(a) of the Tamil Nadu Co-operative Societies Act, 1983. In the present case, the petitioner had executed an agreement as early as on 09.03.2002 in favour of the fourth respondent/Society. In this Case, the employer withheld a sum of Rs.2,55,659/- and paid the same to the fourth respondent only in terms of the agreement dated 09.03.2002 executed by the petitioner. Tamil Nadu Co-operative Societies Act, being a special law, will prevail over any other general law that is in force. Therefore, the action of the first respondent insofar as it paid the amount payable to the petitioner to the fourth respondent cannot be faulted.

4.The learned counsel appearing for the petitioner would however contend that there is a dispute between the petitioner and the fourth respondent as regards the quantum of liability. The learned counsel for the fourth respondent would respond by saying that a sum of Rs.1,00,000/- was availed by the petitioner as loan, which took place way back in the year 2002. The petitioner has also executed a bond in favour of the fourth respondent and the same has been enclosed in the typed set of papers. If the petitioner really had a dispute with regard to the calculation of



the demand raised by the fourth respondent, the petitioner ought to have raised the dispute under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983. The petitioner does not even appear to have sent a notice to the fourth respondent. Therefore, the contention of the petitioner has to be rejected. The action of the employer in withholding the gratuity amount to the tune of Rs.2,55,659/- and paying the same to the fourth respondent cannot be faulted.

5. Coming to the amount of Rs.1,10,404/- paid by the employer to the third respondent, it must be noted that the third respondent/Bank filed O.S.No.98 of 2011, on the file of the Sub Court, Devakottai against the petitioner herein. It is now submitted that the said suit was withdrawn by the Bank, following the remittance of a sum of Rs.1,10,404/-. The question is as to whether the employer was justified in remitting the said amount directly to the third respondent. In this regard, the learned counsel for the petitioner placed reliance on the decision reported in **AIR 2001 SCC 2433**, wherein, the learned Judge referring to the judgment reported in **(2009 (2) T.N.C.J. 302 (Mad)) - K. Murugesan Vs. E. Ulaganathan and another** held that the retirement benefits of the employee are not liable to be attached. In the present case, it is true that the Bank had initiated several proceedings against the petitioner, but then no garnishee order was obtained. In fact the suit was only pending during the relevant time. The employer on his own has chosen to deduct the said amount of Rs.1,10,404/- and remit the same directly to the third respondent. Mr. D. Sivaraman, learned Standing Counsel, would point out that there is a practice of insisting on no dues certificate. In this case, on verification, it was seen that the employee did really owe the said amount to the third respondent/Bank. But then it is for the creditor to take steps for recovery. The employer ought to have waited till the proceedings initiated by the third respondent/Bank got concluded. Instead, the employer has chosen to oblige the Bank. This is not correct. Therefore, the orders impugned in the Writ Petition are quashed insofar as the amount paid to the third respondent is concerned. The first respondent is directed to disburse a sum of Rs.1,10,404/- to the petitioner without any further delay. It is open to the first respondent to work out their right with the third respondent in the manner known to law.

6. With these observations, the Writ Petition is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/



+1cc to Mr.Mr.S.Srinivasa Raghavan, Advocate Sr.No.47131

+1cc to Mr.S.Mohandass, Advocate Sr.No.47076

+1cc to Mr.D.Sivaraman, Advocate Sr.No.47082

+1cc to Mr.C.Jawahar Ravindran, Advocate Sr.No.47568

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VB/SKN/RSK/SAR2/05.06.2018/4P/5C

ORDER MADE IN
W.P. (MD) .No.7034 of 2014
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