

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.06.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.No.25411 of 2018
and
WMP.No.29570 of 2018

S.C.Kannan

...Petitioner

Vs

1. The Joint Registrar of Co-operative Societies
Erode Region
Surrampatti - 638 009

2. The Deputy Registrar of Co-operative Societies
Gobichettipalayam Circle
Nallagoundenpalayam Post - 638 452
Gobichettipalayam
Erode District

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the 2nd respondent in his proceedings Na.Ka.452/2018/Tho.Vae.Sa(3), dated 02.07.2018 and quash the same and consequently direct the respondents to disburse the petitioner's gratuity arrears to the tune of Rs.1,66,388/- to the petitioner.

For Petitioner : Mr.C.Prakasam

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

WEB COPY
O R D E R

The Writ Petitioner was working as Assistant Secretary at Sathyamangalam Primary Agricultural Co-operative Credit Society Ltd, Sathyamangalam, Erode District. The Writ Petitioner was relieved from the said Society on 03.01.2018 and the petitioner joined duty as Assistant in the Madras High Court Co-operative Society Ltd., and he is presently working in the said capacity.

2. While the petitioner relieved from his erst-while Society, the gratuity amount payable to him was withheld to the tune of Rs.1,66,388/-, on the ground that he stood surety in respect of the loan taken by one P.K.Subramaniam. Since the loan amount could not be recovered by him, the gratuity payable to the petitioner came to be withheld. The order to withhold the gratuity amount passed by the 2nd respondent is under challenge in the present Writ Petition.

3. Mr.C.Prakasam, learned counsel appearing for the Writ Petitioner would at the outset, submit that the gratuity amount payable, under no circumstances can be attached in terms of Section 79 2(c) of the Tamil Nadu Co-operative Societies Act, 1983. Section 79 2(c) reads as follows:-

79.Gratitude Fund - (1) A registered Society not being an Establishment to which the Payment of Gratitude Act, 1972 (Central Act 39 of 1972) applies, may provide in its Bylaws for payment of gratitude to the employees at such rates and on such conditions as may be specified in the Bylaws and such Society may establish a Gratitude fund or make other arrangements for the purpose.

(2) A Gratitude Fund, if any established by a registered Society under sub-section (1) shall be invested in the Financing Bank, but shall not

- (a) be used in the business of the Society;
- (b) form part of the assets of the Society;
- (c) be liable to attachment or be subject to any other process of any Court or other Authority.

4. In view of the Statutory bar, the impugned order is liable to be set aside. Even otherwise, the Society had not taken any action against the borrower, towards the recovery of the amount from him, but instead the 1st respondent Co-operative Society had withheld the gratuity amount payable by the Surety namely, the petitioner herein.

5. After notice in the Writ Petition, Mr.L.P.Shanmugasundaram, Special Government Pleader, (Co-operative Societies) has entered appearance and filed Counter Affidavit. According to the Counter Affidavit, the petitioner stood as Guarantor to one P.K.Subramaniam, worked as Manager in the said erstwhile Society, who had obtained loan, but was dismissed from service. Therefore, as a Guarantor, the petitioner herein is liable to make good the loan amount borrowed from the principal borrower. However, as regards the legal objection raised by the

learned Counsel for the petitioner, the learned Counsel appearing for the respondents would have no answer, since the legal provisions namely Section 79 of the Act is very clear.

6. Upon consideration of the submissions and provisions of the Tamil Nadu Co-operative Societies Act, 1983, this Court has to necessarily agree with the submission made by the learned Counsel appearing for the petitioner. In view of the clear provision as extracted above, the action taken by the respondents in withholding the gratuity amount cannot be countenanced in law as the same is contrary to the specific provision of the Statute.

7. In view of the above discussions, the impugned order passed by the 2nd respondent in proceedings in Na.Ka.452/2018/Tho.Vae.Sa(3), dated 02.07.2018 is hereby set aside and the respondents are directed to release the withheld gratuity amount forthwith to the petitioner. The direction shall be complied with by the respondents within a period of two weeks from the date of receipt of a copy of this order.

8. With the above directions, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.
vrn/pns

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Joint Registrar of Co-operative Societies
Erode Region
Surrampatti - 638 009

2. The Deputy Registrar of Co-operative Societies
Gobichettipalayam Circle
Nallagoundenpalayam Post - 638 452
Gobichettipalayam
Erode District

+1cc to Mr.C.Prakasam, Advocate, SR.No.48252

+1cc to the Special Government Pleader, (Co-op)

High Court, Madras, Vide Sr.No.47991

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and
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Kak(19/06/2019)