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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P. (MD)No.6104 of 2015

and

M.P. (MD)No.1 of 2015

C.Thiyagarajan

... Petitioner

Vs

1.The General Manager,
Virudhuangar District Central
Co-operative Bank Limited,
Virudhunagar.

2.The Branch Manager,
Virudhunagar District Central
Co-operative Bank Limited,
Puliyampatti Branch, Aruppukottai Taluk,
Virudhunagar District.

... Respondents

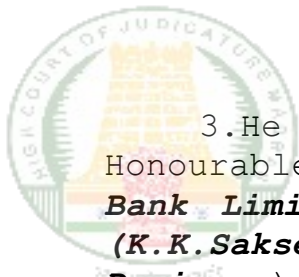
PRAYER: Petitions filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents herein to permit the petitioner to operate his Savings Bank Account No.4438 having with the second respondent Bank.

For Petitioner : Mr.I.Suthakaran
For Respondents : Mr.S.Seenivasan

ORDER

The writ petitioner was employed in the respondent Co-operative Bank. He reached the age of superannuation on 31.01.2011. The petitioner wanted to operate his petition mentioned SB Account, in which, his provident fund amount has been credited. The respondents, however, declined to permit him to do so, on the ground that he has suffered a surcharge order. Hence, the present writ petition came to be instituted.

2.The respondents / Bank filed a counter affidavit with a typed set of papers. The learned Counsel appearing for the respondents reiterated all the contentions set out in the counter. He would contend that the writ petition is not at all maintainable. The Respondent is only a Co-operative Bank. It has been held by a Larger Bench of this Court that a writ petition against the Co-Operative Societies is not maintainable. He would further point out that there is no public law element in this proceeding. The petitioner was an employee of the respondent bank. He is seeking to enforce a service-related right. Hence, he wanted this Court to dismiss this writ petition as not maintainable.



3.He would also place reliance on the decisions of the Honourable Supreme Court, reported in **2003 (4) CTC 418 (Federal Bank Limited vs Sagar Thomas and others)** and **2015 (3) CTC 554 (K.K.Saksena vs International Commission on Irrigation and Drainage)**.

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4.This Court was, initially, of the view that the present writ petition may not be maintainable. But, then a learned Judge of this Court vide order, dated 30.08.2016, in W.P.(MD)Nos.14737 of 2016 and batch, after referring to 97th Constitutional Amendment and also the decision of the Honourable Supreme Court reported in **2014 (7) SCC 663**, held that a writ petition against the Co-operative Societies is very much maintainable. It is relevant to note here that the learned Judge has considered the Larger Bench decision of this Court, reported in **2006 (6) CTC 689**.

5.The Honourable Division of this Court in W.A.(MD)No.537 of 2011, dated 01.09.2017, in P.Marichamy vs The Joint Registrar, Co-Operative Societies and another, has held that post 97th Constitutional amendment, in view of the conferment of Constitutional statutes, a writ petition against a co-operative Bank is very much maintainable. Therefore, I hold that this writ petition is very much maintainable.

6.The question is whether the petitioner's provident fund amount can be withheld on this account. In the decision, reported in **(2015) 6 MLJ 684**, a learned Judge of this Court held that unless there is statutory provision for withholding the provident fund / gratuity or other retiral benefits, they cannot be withheld. The employer cannot withhold the said benefit of the employee under any circumstance, in the absence of power conferred on them or provided under the relevant statute. In that case, the employee concerned had suffered a surcharge order and the first appeal was pending before the District Court concerned. The case on hand is absolutely similar.

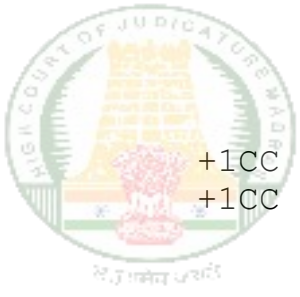
7.Therefore, respectfully, following the aforesaid decision reported in **(2015) 6 MLJ 684**, I allow this writ petition and the respondents are directed to permit the petitioner to operate the petition mentioned Savings Bank account, so as to enable him to withdraw the provident fund amount due to him.

8.Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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+1CC TO MR.S.SEENIVASAGAM, Advocate Sr. No.56486

+1CC TO MR.I.SUTHAAKARAN, Advocate Sr. No. 56369

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