

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :10.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 15115 OF 2013

S.Kumaresan

..Petitioner

- Vs -

1. The Special Officer,
Medavakkam Primary Agricultural cooperative
Credit
society (J.J.221)
Mambakkam Road,
Medavakkam, Chennai 600 100.
2. The Deputy Registrar of Cooperative Societies,
Chingelpet Region,
Alagesan Nagar,
Opp. to Chingelpet Govt. Hospital,
Chingelpet.
3. The Joint Registrar of Cooperative Societies,
Vanavil Nagar,
Opp. to Collector's Office,
Kancheepurm 631 501.
4. The Registrar of Cooperative Societies,
Chennai 600 005.
5. The Secretary to Government,
Cooperation and Consumer Affairs,
Civil Supplies Department, Fort St. George,
Chennai 600 009.
6. The Assistant Commissioner for
Employees Provident Fund,
Rajaji Salai, Tambaram,
chennai 600 045.
7. The Commissioner,
Employees Provident Fund,
Royapettah, Chennai 600 014.

...Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Mandamus, directing the 1st Respondent to deposit the entire provident fund amount of the Petitioner subscription recovered from his salary as also the entire employer contribution as required under law along with the prescribed rate for the period from date of the Petitioner first recovery to till 03.04.2011 last recovery prior to his superannuation in the office of the 6th Respondent to open an Account Number in his name and consequently direct the 6th Respondent to sanction monthly Provident Fund Pension Scheme.

For Petitioner : M/S.S.Arunachalam Associates
For Respondents : Mr. T.Girija, A.G.P. For RR1 to 5
: Kishu.R for Mr.K.Ramesh for R6

ORDER

The writ petition has been filed by the petitioner to direct the 1st Respondent to deposit the entire provident fund amount of the Petitioner subscription recovered from his salary as also the entire employer contribution as required under law along with the prescribed rate for the period from date of the Petitioner first recovery to till 03.04.2011 last recovery prior to his superannuation in the office of the 6th Respondent to open an Account Number in his name and consequently direct the 6th Respondent to sanction monthly Provident Fund Pension Scheme.

2.The case of the petitioner is that he joined the service as a salesman in the year 1998 in the 1st respondent society, which runs a Fair Price Shop for supply and distribution of subsidised food and consumable and also Agri and other articles to the families residing under its jurisdiction. The 1st respondent is the immediate supervising officer who controls and manages the society and the staff. He is also the officer entrusted with the responsibilities of disbursement of salary and deduction of the recoveries from salaries and overall maintenance of withdrawal and deposit of cash and upkeep of accounts, records, etc. According to the petitioner, throughout his employment his salary was disbursed by the 1st respondent till his superannuation on 30.4.2011. However the 1st respondent made deduction towards subscription of his Employees Provident Fund and also deducted other festival advance, employee loan repayment to the cooperative societies, Group insurance, LIC premium etc., However the 1st respondent has not deposited the EPF contribution towards the Provident Fund account and the Provident Fund authority has not settled the benefits in favour of the petitioner, even after his retirement. Hence the present writ petition.

3. Learned counsel appearing for the petitioner submitted that as per Section 2A of the Employees Provident Fund, the 1st respondent society is also coming under the purview of the 2nd respondent society; it is having a strength of more than 50 members; it is the duty of the 1st respondent to deposit the entire amount which was deducted from the salary with the 7th respondent; however the 1st respondent without complying with the statutory duty, unilaterally invested the amount in LIC premium and one premium was handed over to the petitioner and the entire amount was not deposited as per provisions of the Employees Provident Fund Act.

4. Learned Additional Government Pleader appearing for the official respondent No.1 submitted that the petitioner entered service in the year 1998 and his appointment itself is irregular one. However on humanitarian grounds, he was allowed to continue the job and also retired from service as on 30/4/2011. However, it is submitted that only establishments, such as the petitioner, having a strength of more than 50 members will be covered under the Employees Provident Fund Act and the amount deducted from the salary would be deposited with the EPF authority. In the case of the petitioner's employer, since the strength was less than 50, contributions were not made with the EPF authority. Only at the fag end of the retirement of the petitioner, the employer of the petitioner reached fifty plus employees on and from which date contribution has been deposited. At that time of superannuation, the benefits to which the petitioner is entitled works out to Rs.96,000/- + accumulated annual interest and the same is available with the 1st respondent and the 1st respondent is ready to disburse the said amount in favour of the petitioner. Accordingly she prays for dismissal of the petition.

5. Learned counsel appearing for the 6th respondent submitted that section 2A is not applicable to the 1st respondent society and the 1st respondent society is a single society and only if the number of employees is more than 50, the 1st respondent has to deposit the amount of provident fund to the 6th respondent organization. However the said organization is coming under the purview of the provident fund act only from January 2011 onwards. In the present case the 1st respondent filed the returns only for the months of January, February, March and April of 2011, but the amounts deducted were not transferred to the provident fund account. Therefore, it is prayed that appropriate directions be issued to the 1st respondent to transfer the entire amount deducted from the petitioner's salary right from his entry into service along with interest to the 6th respondent organisation, whereinafter, the 6th respondent shall conduct adjudication and dispose of the benefits.

6. Heard the arguments advanced on behalf of the parties and perused the materials available on record.

7. On a consideration of the entire submissions, it is evident that the issue involves certain disputed questions of fact. However, admittedly, the petitioner entered service in the 1st respondent society and he has allowed to retire from his service in the year 2011. Though the 1st respondent society filed the returns as per the EPF Act only upto April 2011, however the amount was not transferred to the 6th respondent organization. It is also relevant to note that some of the amount, which was deducted from the petitioner and other persons, were invested in LIC Policy along with the management contribution. The 1st respondent has taken LIC policy only in the name of the petitioner and the management has been extending the service to all the employees. However, it is clear that the said act of taking LIC policy on the contribution of the petitioner is without the consent of the petitioner. However, it is not disputed that one of the policy which was taken was handed over to the petitioner and the rest of the policies were not handed over to the petitioner.

8. However, in view of the disputed question of fact involved herein, while this Court is not in a position to issue a positive direction, however, this Court is inclined to issue a direction to the 1st respondent to transfer the entire amount which was deducted from the petitioner along with the contribution of the management with interest as per the Act and, thereafter, the 6th respondent shall conduct adjudication within one month from the date of receipt of the amount between the petitioner and the 1st respondent and dispose of the amount in accordance with law within a period of 3 months thereafter.

9. With the above direction, this writ petition is disposed of. There shall be no order as to costs.

-s/d-
Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

jrs

To

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