

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 03-09-2020

Judgment pronounced on : 25-09-2020

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Writ Appeal No. 2727 of 2019

(Heard through Video Conferencing)

1. N. Velusamy (died)
2. Ponnammal
3. Alamelu
4. Abiramasundari
5. Swarnalakshmi

(Appellants 2 to 5 brought on record as legal heirs of deceased appellant per order dated 31.08.2020 made in CMP No. 236 of 2020 in W.A. No. 2727 of 2019) ... Appellants

Versus

1. The Deputy Registrar of Cooperative Societies (Housing)
Coimbatore Region
Coimbatore - 641 018.
2. No.CBE-HSG-21 The Udumalpet Taluk Co-operative
Housing Society Limited
rep. by its President
No.141, Srinivasa Street
Sri Muthu Towers Upstairs
Udumalpet - 642 126

.. Respondents

Appeal filed under Clause 15 of The Letters Patent against the Order dated 14.03.2019 passed in W.P. No. 5811 of 2014 on the file of this Court

WP.5811 of 2014 Prayer: Writ Petitions 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 orders passed by the First respondent in this proceedings Na.KA.No.1713/2007/Kisa dated 12.09.2013 along with the communication passed by the second respondent dated 22.10.2013 in so far it relates to the recovery of Rs.8,53,204/-

From the terminal benefits and quash the same and consequently direct the respondents to settle the Terminal benefits alongwith interest at the rate of 12% p.a. From the date of retirement on 30.09.2008 till its payment.

For Appellants : Mr. K. Premkumar
for Mr. R. Krishnamoorthy

For Respondents : Mr. L.P. Shanmuga Sundaram

JUDGMENT

R. SUBBIAH, J

This intra-court appeal is filed by the appellants aggrieved by the Order dated 14.03.2019 passed by the learned single Judge in W.P. No. 5811 of 2014. The said writ petition was filed by the deceased first appellant herein/Writ Petitioner challenging the proceedings dated 12.09.2013 of the first respondent and the consequential communication dated 22.10.2013 passed by the second respondent in so far as it relates to recovery of Rs.8,53,204/- from and out of the terminal benefits payable to him and for a direction to direct the respondents to settle the terminal benefits with interest at the rate of 12% per annum from the date of retirement of the deceased first appellant herein/writ petitioner on 30.09.2008 till the date of payment.

2. According to the deceased first appellant/writ petitioner, he was working as Secretary in the second respondent Society and he was permitted to retire from service on 30.09.2008 on attaining superannuation. However, the terminal benefits payable to him were withheld since certain parallel proceedings were pending against him. According to the deceased first appellant/writ petitioner, when he was allowed to retire from service, the respondents are not justified in withholding his terminal benefits on the ground that some other proceedings are pending against him. The deceased first appellant/writ petitioner also submitted representation on 04.02.2010 seeking to release the terminal benefits payable to him. On the basis of such representation, the first respondent herein directed the second respondent herein to disburse Rs.45,756/- out of Rs.8,98,960/- after deducting Rs.8,53,204/- payable by the deceased first appellant/writ petitioner. According to the deceased first appellant/writ petitioner, the order of recovery passed by the first respondent on 12.09.2013, which was communicated by the second respondent on 22.10.2013 are illegal and in violation of the fundamental rights guaranteed to him under Article 21 of The Constitution of India. Therefore, challenging the aforesaid orders, the deceased first

appellant/writ petitioner has filed the writ petition.

3. The writ petition was resisted by the respondents herein before the Writ Court by filing a counter affidavit. According to the respondents, the terminal benefits payable to the deceased first appellant/writ petitioner were withheld on the basis of audit objections. It was also stated that before passing the order of recovery, a notice dated 28.01.2011 was sent to the deceased first appellant/writ petitioner intimating him the objections raised by the audit and the proposal for recovering the amount payable to him from the terminal benefits. On receipt of the notice dated 28.01.2011, the deceased first appellant/writ petitioner did not send any reply. Therefore, it cannot be said that the order of recovery was passed in violation of principles of natural justice. Therefore, it was prayed by the respondents that the order of recovery was issued in accordance with law and prayed for dismissal of the writ petition.

4. The learned single Judge, on considering the rival submissions, concluded that before passing the order of recovery, a notice dated 28.01.2011 was issued to the deceased first appellant/writ petitioner, but he has not disclosed it in the affidavit filed in support of the writ petition. Therefore, it was concluded that the respondents have complied with principles of natural justice and intimated the deceased first appellant/writ petitioner about the objections raised by the audit as also the proposal to effect recovery of the amount. The learned single Judge, therefore, dismissed the writ petition filed by the deceased first appellant/writ petitioner.

5. Pending this appeal, the first appellant/writ petitioner died and therefore, his legal heirs were brought on record as appellants 2 to 5.

6. The learned counsel for the appellants would vehemently contend that when once the deceased first appellant/writ petitioner was permitted to retire from service, the respondents have no right to withhold his terminal benefits. The learned counsel for the appellants would further contend that even though it was stated in the counter affidavit filed before the Writ Court that a notice dated 28.01.2011 was issued to the deceased first appellant/writ petitioner, he has not received any such notice. In any event, if any amount is recoverable from the deceased first appellant/writ petitioner, the respondents ought to have taken steps to recover it when he was in service. However, after his retirement, the respondents have no right to pass an order of recovery, to recover the amount from and out of the terminal benefits payable to the deceased first appellant/writ petitioner. In support of his contention,

the learned counsel for the appellants placed reliance on the decision of the Honourable Supreme Court in the case of D.D. Tiwari (dead) through Legal representatives vs. Uttar Haryana Bijli Vitran Nigam Limited and others reported in (2014) 8 Supreme Court Cases 894 wherein it was held that after permitting the employee to retire from service, the employer has no right to withhold the terminal benefits on the alleged ground that some amount was due to the employer. According to the learned counsel for the appellants, the learned single Judge did not consider the aforesaid facts while dismissing the writ petition and he prayed for allowing this appeal.

7. On the above contentions of the counsel for the appellants, we have heard the learned counsel for the respondents, who justified the order passed by the learned single Judge and prayed for dismissal of the writ appeal.

8. Admittedly, the deceased first appellant/writ petitioner was permitted to retire from service on 30.09.2008. Soon after his retirement, the terminal benefits were not disbursed to him. It is stated that the deceased first appellant/writ petitioner submitted representations to the respondents for settlement of the terminal benefits. However, after five years of his retirement, the order dated 12.09.2013 was passed by the first appellant by stating that the terminal benefits were withheld in view of the objections raised by the audit. Even though in the counter affidavit it was stated that a notice dated 28.01.2011 was issued to the deceased first appellant/writ petitioner intimating him about the objections raised by the audit and the proposal to effect recovery of the amount, it was not referred to in the order dated 12.09.2013 passed by the first appellant. The deceased first appellant/writ petitioner also, in the memorandum of grounds of writ appeal, categorically denied having received any such notice dated 28.01.2011 from the respondents. Be that as it may, when once the deceased first appellant/writ petitioner was permitted to retire from service, without retaining his service beyond the age of his retirement, the respondents are estopped from effecting any amount from and out of the terminal benefits payable to him. The deceased first appellant/writ petitioner retired from service on 30.09.2008, however, only after he had sent representations seeking disbursement of the terminal benefits, the first appellant had passed the order dated 12.09.2013 for recovering the amount purportedly on the basis of objections raised by the audit. In this context, useful reference can be made to the decision of the Honourable Supreme Court in the case of D.D. Tiwari mentioned supra, relied on by the counsel for the appellants, wherein, in an identical case, it was held as follows:-

"3. The retiral benefits of the appellant were

withheld by the respondents on the alleged ground that some amount was due to the employer. The disciplinary proceedings were not pending against the appellant on the date of his retirement. Therefore, the appellant approached the High Court seeking for issuance of a direction to the respondents regarding payment of pension and release of the gratuity amount which are retiral benefits with an interest.

4. The learned single Judge has allowed the writ petition vide order dated 25.08.2020 (CWP No. 1048 of 2020 decided on 25.08.2020 (P&H), after setting aside the action of the respondents in withholding the amount of gratuity and directing the respondents to release the withheld amount of gratuity within three months without awarding interest as claimed by the appellant. The High Court has adverted to the judgments of this Court particularly in *State of Kerala vs. M. Padmanabhan Nair* (1985) 1 SCC 429: 1985 SCC (L&S) 278 wherein this Court reiterated its earlier view holding that : (SCC pp.429-430 para 1) "1 (the) pension and gratuity are no longer any bounty to be disbursed by the Government to its employees on their retirement, but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment (into the employees)."

9. In this case, the deceased first appellant/writ petitioner was permitted to retire from service on 30.09.2008. After five years, that too after receipt of representation from the deceased first appellant/writ petitioner seeking disbursement of the terminal benefits, the first respondent passed the order dated 12.09.2013 for recovering the amount on the basis of audit objection. Challenging the same, the writ petition was filed in the year 2014. Therefore, we are of the view that the respondents have unnecessarily withheld the terminal benefit payable to the deceased first appellant/writ petitioner, after permitting him to retire from service and it warrants payment of interest from the date of retirement of the deceased first appellant/writ petitioner till the date of actual disbursement.

10. For the reasons we have recorded hereinabove, we set aside the Order dated 14.03.2019 passed in W.P. No. 5811 of 2014. The Writ Appeal is allowed. The respondents are directed to settle the terminal benefits payable to the deceased first appellant/writ petitioners to his legal heirs/the appellants 2

to 5 herein, within a period of three months from the date of receipt of a copy of this judgment with interest at the rate of 12% per annum from the date of retirement of the deceased first appellant/writ petitioner on 30.09.2008 till the date of actual payment. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Rsh

TO

1.The Deputy Registrar of Co-Operative Societies,
(Housing), Coimbatore Region,
Coimbatore 641 018.

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No. 31762

+1cc to the Special Government Pleader, S.R.No. 31676

WA No. 2727 of 2019

LN (CO)
GN (08/10/2020)



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