IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :26.07.2021

CORAM

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.38109 of 2016
and
W.M.P.No.32665 of 2016

A.Venkatachalam ..Petitioner

Vs.

1.The Registrar of Co-operative Societies,
N.V.N.Maligai,
Kilpauk, Chennai - 10.

2.The Joint Registrar of Co-operative Societies,
Namakkal Region,
District Collectorate Buildings,
Namakkal District.

3.The Deputy Registrar / Managing Director,
Tiruchengode Co-operative Urban Bank Limited,
Tiruchengode,
Namakkal 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 of the order passed by the 2nd respondent in Na.Ka.193/16/ma.va (1) dated 14.07.2016 quash the same and direct the respondents to pay the petitioner retirement benefits Provident Fund and Gratuity totally of Rs.16,45,114/- with 12% interest from the date of retirement till the payment.

For Petitioner : Mr.V.Ravichandran

***For R1 & R2 : Mr.K.V.Sajeev Kumar**
Government Counsel
For R3 : Mr.L.P.Shanmuga Sundaram

O R D E R

By consent of both the parties, this writ petition is taken up for final disposal.

2. The Petitioner herein, while serving as the Assistant Manager in the third respondent / Cooperative Urban Bank Ltd., was subjected to surcharge proceedings under Section 87 of Tamil Nadu Co-operative Societies Act. On the strength of the surcharge proceedings, criminal action was also initiated against petitioner herein, culminating into frame charges in C.C.No.71 of 2006, before the Judicial Magistrate, Tiruchengode.

3. The petitioner herein, had attained the age of superannuation on 31.05.2012 and the second respondent had denied all the retirement benefits to the petitioner, which include provident fund and gratuity, through his impugned order dated 14.07.2016. The issue as to whether the respondents hold the authority to withhold the retirement benefits on the ground that the criminal proceedings, based on the surcharge proceedings, are pending, is justifiable or not, has come up for consideration in various judgements of this Court, whereby, it was categorically held that such benefits are not a charity given by the employer, but is a right of the employee to receive them at the time of retirement.

4. In one such decision rendered by this Court in the case of A.Sengodan vs. Registrar of Co-operative Societies reported in (2015) 6 MLJ 684, such a proposition was laid down in the following manner:

> "5. On the other hand, if the provisions of the Payment of Gratuity Act are not applicable to the case of the petitioner, the issue will be governed by Section 79 of the Tamil Nadu Co-operative Societies Act, which is extracted hereunder:
>
> > "Section 79: Gratuity Fund--(1) A registered society not being an establishment to which the Payment of Gratuity Act, 1972 (Central Act 39 of 1972) applies, may provide in its by-laws for payment of gratuity to the employees at such rates and on such conditions as may be specified in the by-laws and such society may establish a Gratuity Fund or make other arrangements for the purpose.
> >
> > (2) A Gratuity 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."

6. A reading of the above extracted Section 79 makes it clear that the provisions of the Payment of Gratuity Act, are being incorporated therein, the gratuity earned by an employee for rendering service, cannot be with-held at the time of retirement.

7. It is also relevant to notice the fact that the third respondent-Society is a non-pensionable establishment and only retirement benefits like Gratuity are being paid to its employees.

8. Equally, it is also worthwhile to be noted that the Provident Fund cannot be with-held. While a certain amount is being deducted towards the PF contribution from the salary of employees like the petitioner herein, matching contribution is made by the employer and disbursed at the time of retirement of an employee.

9. If the establishment like the third respondent-Society is governed by the Employees' Provident Funds and Miscellaneous Provisions Act, then the petitioner shall be paid the contribution made by him at the time of retirement, and the petitioner is entitled to pension as provided under the scheme provided under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act.

10. If an employee is not governed by the Employees' Provident Funds and Miscellaneous Provisions Act, the same are not applicable to the employees like the petitioner working under the third respondent-Society, and in that case, Section 78 of the Tamil Nadu Co-operative Societies Act is applicable, which reads as follows:

> "Section 78: Provident Fund: (1) A registered society not being an establishment to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Central Act XIX of 1952) applies, may establish a Provident Fund for the benefit of its employees to which shall be credited all contributions made by the employees and the society in accordance with the by-laws.
>
> (2) A Provident Fund 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."

11. In my view, unless there is a statutory provision for with-holding the Provident Fund (relating to contributions of employer and employees) / Gratuity, or other retiral benefits, the same cannot be with-held. The employer cannot with-hold the above retiral benefits of the employees under any circumstances, in the absence of power conferred on them or provided under the relevant statute.”

5. The aforesaid decision in A.Sengodan's case supra, came to be affirmed by the Hon'ble Division Bench of this Court, through an order dated 08.02.2019, passed in W.A.No.1466 of 2015, whereby the order of the learned Single Judge came to be affirmed in the following manner:

> “6. We are in agreement with the reasoning of the Writ Court that in the absence of an enabling statutory provision, it would not be permissible for the employer to withhold the terminal benefits of a retired employee. This view is fortified by the decision of the Division Bench of this Court in Joint Registrar of Co-operative Societies vs. K.Ambarayan (Judgement dated 11.04.2018 in WA.Nos.663 and 668 of 2015), in which, one of us (K.K.Sasidharan,J) is a party. The eligible amount of terminal benefits shall be disbursed to the petitioner under written acknowledgement and a report of compliance shall be filed before the Registrar (Judicial) of this Court by 15.03.2019.”

6. This proposition has been reiterated in several other judgements of this Court. As such, the reasoning adduced by the respondents in denying the petition of the gratuity and the provident fund amounts cannot be sustained.

7. In the result, the impugned order passed by the second respondent in Na.Ka.193/16/ma.va(1), dated 14.07.2016 is quashed. Consequently, there shall be a direction to the second and third respondents to disburse the provident fund and the gratuity amount payable to the petitioner, together with interest at the rate of 10% per annum from 31.05.2012 i.e., date of retirement, till the date of actual payment. The respondents shall endeavour to disburse the amount, within a period of eight weeks from the date of receipt of a copy of this order.

7. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

***to be substituted to the earlier order modified as per order of this Court dated 23.08.2021**
-s/d-
Assistant Registrar(CSIII)
dt 27/09/2021

//True Copy//

Sub Assistant Registrar

Pns
To

1.The Registrar of Co-operative Societies,
N.V.N.Maligai,
Kilpauk, Chennai – 10.

2.The Joint Registrar of Co-operative Societies,
Namakkal Region,
District Collectorate Buildings,
Namakkal District.

3.The Deputy Registrar /
Managing Director,

Tiruchengode Co-operative
Urban Bank Limited,
Tiruchengode, Namakkal District.

to be substituted for the order already despatched on **16.08.2021**

+1 cc to Government Pleader Sr.No. 36265

W.P.No.38109 of 2016
and
W.M.P.No.32665 of 2016

RSV (CO)
A.SK(29.09.2021)