IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.07.2021

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

W.P.No.28012 of 2019
and
W.M.P.No.27625 of 2019

R.Panneerselvam .. Petitioner

-vs-

1. The Registrar of Co-operative
   Societies (Housing),
   Veppery, Chennai-600 007.

2. The Additional Registrar/Managing Director,
   Taminadu Co-operative Housing Federation,
   Chennai-7.

3. The Deputy Registrar of Co-operative
   Societies (Housing), Cuddalore.

4. SA HSG, 84 Chidambaram Taluk,
   Co-operative Housing Society Ltd.,
   Rep., by its President,
   No.186, Deen Building,
   Mela Street, Chidambaram-608 001. .. Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents to pay the retirement benefits viz., Provident Fund of Rs.9,12,185/-, Gratuity of Rs.9,24,473/-, arrears of salary of Rs.7,51,948/-, EPF of Rs.4,31,792/- and Security Deposit of Rs.863/- totally of Rs.30,21,261/- with 12% interest from the date of retirement to till payment to the petitioner in the light of the decision of this Court reported in 2015 (6) MLJ 684.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents : Mr.K.V.Sanjeev Kumar,
Government Advocate for R1 to R3

Mrs.T.Girija,
Government Advocate for R4

ORDER

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

2. The petitioner herein, is aggrieved against non-disbursement of his retirement benefits and the inactions on the part of the respondents in considering his request through various representations.

3. The learned counsel for the respondents would submit that the surcharge proceedings, have been initiated against the petitioner and therefore, the benefits have not been disbursed.

4. The petitioner herein, had attained the age of superannuation on 30.06.2018 and the respondents have denied all the retirement benefits to the petitioner, which include provident fund, gratuity, arrears of salary, EPF. 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.

5. 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."

6. 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."

7. From the aforesaid discussions, it is quite clear that the authorities of the Co-operative Department, cannot hold the retirement benefits of it employees. As such, the reasoning adduced by the respondents in denying the petition of the gratuity and the provident fund amounts cannot be sustained.

8. It is the case of the petitioner that he has been making several representations to them, seeking for disbursement of the retirement benefits, which has not been acted upon. Whenever, the representation of this nature duty cast on the Official Authorities to consider the representation in accordance with law and non-consideration of the same would amount to dereliction of duties and therefore, this Court would be justified in involving its extraordinary powers, under Article 226 of the Constitution of India, to direct them to consider the representation, within a stipulated time.

9. It is seen that among the various representations made by the petitioner, a representation dated 15.07.2019, is said to be pending, before the respondents. Accordingly, the first and third respondents are called upon to consider the petitioner's representation dated 15.07.2019.

10. In the light of the above observations and findings made by this Court in the preceding paragraphs, pass a suitable order, within a period of eight weeks from the date of receipt of a copy of this order.

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

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Pns

To

1. The Registrar of Co-operative
   Societies (Housing),
   Veppery, Chennai-600 007.

2. The Additional Registrar/Managing Director,
   Taminadu Co-operative Housing Federation,
   Chennai-7.

3. The Deputy Registrar of Co-operative
   Societies (Housing), Cuddalore.

4. The President,
   SA HSG, 84 Chidambaram Taluk,
   Co-operative Housing Society Ltd.,
   No.186, Deen Building,
   Mela Street, Chidambaram-608 001.

+1cc to Mr.M.S.Palaniswamy, Advocate, S.R.No.35539
+1cc to Mrs.T.Girija, Advocate, S.R.No.35652

W.P.No.28012 of 2019 and
W.M.P.No.27625 of 2019

RSV(CO)
HS(13/08/2021)