IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.3385 OF 2017

C.Ramanathan ... Petitioner

vs.

1) The Assistant Commissioner
for Labour-Gratuity,
Office of the Assistant Commissioner for Labour,
Trichirapalli -20

2) The Deputy Registrar of
Co-operative Societies, Perambalur Region,
Office of the Deputy Registrar of Co-operative Societies,
Perambalur.

3) The President,
R-1057, Vasishtapuram Primary
Agricultural Co-operative Credit Society,
Vasishtapuram, Kunnam Taluk,
Perambalur District. ... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records 1st respondent in his proceedings in Pa.Ko. No.340/16 dated 15.4.2016 and consequential letter of the 3rd respondent dated 2.7.2016 and to quash the same and to direct the 3rd respondent to disburse the service benefits in accordance with law with interest at the rate of 9 1/2% from the date of due till the date of realization within a time frame fixed by this Court.

For Petitioner : Mr.G.Ilamurugu

For RR 1 & 2 : Mr.K.Surendran,
Additional Government Pleader.
(Co-operative Societies)

For R-3 : Mr.V.Selvaraj,
Additional Government Pleader.

O R D E R

Aggrieved against the non-payment of the Gratuity amount and other monetary benefits, the petitioner herein, who had retired from service on 30.11.2009 from the post of Secretary, had filed an application under Section 4(1) of the Payment for Gratuity Act, 1972 for payment of his gratuity amount.

2. By the impugned order dated 15.04.2016, his claim was rejected on the ground that there were several financial irregularities against the petitioner, when he was employed with the third respondent Society. The learned counsel for the petitioner placed reliance on the information provided to him by the third respondent under the Right to Information Act and submitted that in the report filed under Section 81 of the Tamil Nadu Cooperative Societies Act, he was not found guilty for the alleged financial irregularities and also in the letter dated 02.07.2016 passed by the third respondent herein, which evidences that the petitioner was entitled for payment of the retirement and monetary benefits to the tune of Rs.3,10,295/- and therefore, the order of the Authority is factually incorrect.

3. The learned Government Advocate on the other hand would submit that the petitioner herein had failed to substantiate his case before the Authority and therefore, there was no infirmity in the order of the second respondent herein.

4. The information obtained by the petitioner on 19.05.2014 from the second respondent herein, evidences that in the report filed by the concerned Authority, under Section 81 of the Tamil Nadu Cooperative Societies Act 1983, it is categorically stated that the petitioner was not involved or held responsible for the financial irregularities of the third respondent Society. Such a statement is ratified by the third respondent also in the letter dated 02.07.2016 wherein they have admitted that the petitioner was entitled for the monetary benefits to the tune of Rs.3,10,295/-. The only reason assigned by the third respondent is that the Society is at a financial trouble and therefore, they have sought for disbursing the monetary benefits in a meagre monthly instalment of Rs.15,000/- per month.

5. In the light of the above observations, the Authority, under the Payment of Gratuity Act, may not be correct in rejecting the petitioner's claim for the Payment of Gratuity on

the ground of his involvement in the financial irregularities. As a matter of fact, the impugned order also does not justify as to how the Authorities had come to a conclusion about the petitioner's involvement in the irregularities. In the absence of such reasoning and by taking into account all the information supplied to this Court by the petitioner, the order itself cannot be sustained.

6. Insofar as the letter, dated 02.07.2016 of the third respondent is concerned, I am not in agreement with their offer to pay the outstanding retirement benefits in monthly instalments of Rs.15,000/-. The petitioner herein had put in his service from the year 1974 onwards till his retirement and the gratuity, not being an gracious payment, but rather, is an amount which the petitioner would be rightly entitled to, immediately on his date of retirement.

7. This Court in the case of A.Sengodan vs. the Registrar of Cooperative Societies reported in 2015 (5) CTC 726, had placed reliance on Sections 78 & 79 of the Tamil Nadu Cooperative Societies Act and held that when there is no statutory provision for withholding the provident fund due to the employees of the Society, any action taken by the Society for withholding such payment, is improper. The relevant portion of the order reads as follows:-

> "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 bylaws 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."

8. By applying the aforesaid ratio to the present case, the stand taken by the third respondent Society to disburse the monetary benefits in instalments in view of the financial crisis of the Society, is not only unjustifiable but also illegal.

9. Since the entire amount has been withheld from 30.11.2009, on which date the petitioner was permitted to retire and such an action of withholding the same has been held to be illegal, the petitioner would be entitled to interest on the outstanding dues. This Court is of the view that payment of simple interest at the rate of 10% per annum on the dues, would be just and reasonable.

10. In the light of the above observations, the impugned order in Pa.Ko.No.340/16 dated 15.4.2016 and the consequential letter of the 3rd respondent dated 2.7.2016 are quashed. Consequently, there shall be a direction to the third respondent herein to disburse the monetary benefits due to the petitioner owing to his retirement, as expeditiously as possible, in any event within a period of four(04) weeks from the date of receipt of a copy of this order, together with 10% simple interest per annum on the entire outstanding dues, from his date of retirement, till the date of actual payment.

11. The Writ Petition stands Allowed accordingly. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To:

1) The Assistant Commissioner
for Labour-Gratuity,
Office of the Assistant Commissioner for Labour,
Trichirapalli -20

2) The Deputy Registrar of
Co-operative Societies,Perambalur Region,
Office of the Deputy Registrar of Co-operative Societies,
Perambalur.

+1cc to Mr.G.Ilamurugu, Advocate, S.R.No.67566
+1cc to the Government Pleader, S.R.No.67899

W.P.No.3385 of 2017

EV(CO)
PM/22/12/2021