BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.02.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.1326 of 2021

and W.M.P.(MD)No.1104 of 2021

P.Muniyasamy ... Petitioner

Vs.

1.The Managing Director/Joint Registrar,
Dindigul Central Co-operative Bank Ltd.,
Dindigul.

2.The Deputy Registrar Co-operative Societies,
Dindigul.

3.Branch Manager,
Dindigul Central Co-operative Bank,
Dindigul Main Branch, Dindigul. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent in connection with the impugned prohibitory order passed by him in R.C.No.1560/2017/tha.ka dated 21.05.2020 and the consequential impugned rejection order passed by him in his proceedings in Na.Ka.182/2018/A.Po dated 02.11.2020 and quash the both as illegal, ultravires and unconstitutional and thereby direct the respondents 1 and 2 to disburse the provident fund with interest and within the time limit that may be stipulated by this Court.

For Petitioner : Mr.Wilson.S

For Respondents : Mr.C.Ramar,
Additional Govt. Pleader for R2.
Mr.S.Seenivasagem for R1 & R3

ORDER

Heard the learned counsel on either side.

2.The writ petitioner/P.Muniyasamy was employed in Dindigul Central Co-operative Bank as Assistant Manager. He was accused of having indulged in certain irregularities and acts of misappropriation. He had been subsequently dismissed from service with effect from 18.05.2018. Surcharge proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983, were initiated and final order has also been passed. The petitioner along with several others have been fastened with liability to pay a sum of Rs.1,27,00,547/-. It is stated that while the petitioner had already challenged the order of dismissal, he is still taking steps to question surcharge order before the Cooperative Tribunal.

3.In the meanwhile, to enforce the order of surcharge, steps were taken. The Deputy Registrar of Cooperative Societies, Dindigul, in exercise of his power in Section 167 of the Tamil Nadu Cooperative Societies Act, r/w. Rule 125 of the Tamil Nadu Cooperative Societies Rules, effected attachment of the writ petitioner's savings bank account vide order dated 21.05.2020. The petitioner's employer in the meanwhile transferred the provident fund amount payable to the petitioner to the said savings bank account.

4.The petitioner is unable to withdraw the provident fund amount from the savings bank account, since it has been attached by the second respondent. The order of the attachment is questioned in this writ petition.

5.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and wanted this Court to quash the impugned attachment and permit the petitioner to withdraw the provident fund amount standing to his credit in the said savings bank account.

6.The writ prayer is strongly opposed by the respondents. The petitioner's erstwhile employer has filed a detailed counter affidavit and the learned standing counsel for respondent-Bank reiterated all the averments set out therein. His first contention is that the impugned order of attachment is amenable to challenge by way of statutory appeal under Section 152 of the Tamil Nadu Cooperative Societies Act, 1983. The learned counsel would further contend that when an effective alternative remedy of appeal is available, it is not open to the petitioner to maintain this writ petition under Article 226 of the Constitution of India. Coming to the merits of the matter, the learned standing counsel would state that the employer cannot be faulted in any manner. All that the employer had done is to transfer the provident fund amount standing to the credit of the petitioner to the petition mentioned savings bank account of the writ petitioner.

7.The learned standing counsel would point out that the respondent/bank has been exempted under Section 16 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and permitted to maintain its own independent provident fund trust. The provident fund amount was transferred by the trustee of the said trust to the petitioner's savings bank account. The said trust is not a respondent in this writ petition and therefore, it is not fair on the part of the petitioner to blame the employer. He would further contend that the second respondent is a statutory authority and he had been called upon to enforce surcharge order passed against petitioner. The second respondent was therefore statutorily entitled to attach the petitioner's savings bank account. The second respondent is not concerned with the character of the amounts lying in the savings bank account of the petitioner. The learned standing counsel would further point out that the petitioner cannot claim any protection under Section 78 of the Tamil Nadu Cooperative Societies Act, 1983, because the provident fund in question is maintained by a trust under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, and therefore, only the provisions of the Central Act No.19 of 1952 will apply and not Section 78 of the Tamil Nadu Cooperative Societies Act, 1983.

8.I carefully considered the rival contentions and went through the materials on record. The basic facts are not in dispute. The petitioner was an employee of Dindigul Central Cooperative Bank, Dindigul. A certain sum of money had accrued to his provident fund account. Of course, the provident fund account of the petitioner was maintained not by the Employees' Provident Funds Organization (EPFO) but by a trust established by the Dindigul Central Cooperative Bank, Dindigul, under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Though the learned counsel for the respondent/bank would strongly urge that Section 78 of the Tamil Nadu Cooperative Societies Act, 1983 will have no application, I am of the view that Section 78 of the Act will very much come into play. Even if I assume for a moment that Section 78 of the Act will not have any application and that only Section 10 of the Central Act No.19 of 1952, will be applicable, still it does not make any difference to the factual situation. Both under Section 10 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and under Section 78 of Tamil Nadu Cooperative Societies Act, 1983, protection against attachment is accorded for the provident fund.

9.Section 10 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, reads as follows:-

> *"**10. Protection against attachment.**—(1) The amount standing to the credit of any member in the Fund or of any exempted employee in a provident fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member or the exempted employee and neither the official assignee appointed under the Presidency-towns Insolvency Act, 1909 (3 of 1909), nor any receiver appointed under the Provincial Insolvency Act, 1920 (5 of 1920), shall be entitled to, or have any claim on, any such amount.*

(2) Any amount standing to the credit of a member in the Fund or of an exempted employee in a provident fund at the time of his death and payable to his nominee under the Scheme or the rules of the provident fund shall, subject to any deduction authorised by the said Scheme or rules, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member of the exempted employee and shall also not be liable to attachment under any decree or order of any court.

(3) The provisions of sub-section (1) and sub-section (2) shall, so far as may be, apply in relation to the family pension or any other amount payable under the Pension Scheme and also in relation to any amount payable under the Insurance Scheme, as they apply in relation to any amount payable out of the Fund."

10.Section 78 of the Tamil Nadu Cooperative Societies Act, 1983, reads as follows:-

"***78. Provident Fund.-*** *(1) A registered society not being an establishment to which the Employees' Provident Funds and Miscellaneous Provision 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 of other authority."

11.I entertained a doubt as to whether this protection will hold only so long as the amount is lying in the provident fund account and whether the protection will stand withdrawn the moment the fund is transferred from the said account.

12.The learned counsel for the petitioner draws my attention to the decision of the Supreme Court reported in ***AIR 1976 SC 1163 (Union of India vs Jyoti Chit Fund and Finance and Others)***, which held as follows:-

"*We may state without fear of contradiction that provident fund amounts, pensions and other compulsory deposits covered by the provisions we have referred to, retain their character until they reach the hands of the* *employee. The reality of the protection is reduced to illusory formality if we accept the interpretation sought. We take a contrary view which means that attachment is possible and lawful only after such amounts are received by the employee. If doubts may possible be entertained on this question, the decision in Union of India v. Radha Kissen Agarwala & Anr., erases them. Indeed our case is an afortiori one, on the facts. A bare reading of Radha Kissen makes the proposition fool-proof that so long as the amounts are Provident Fund dues them, till they are actually paid to the government servant who is entitled to it on retirement or otherwise the nature of the dues is not altered. What is more, that case is also authority for the benignant view that the government is a trustee for those sums and has an interest in maintaining the objection in court to attachment. We follow that ruling and over-rule the contention."*

13.In the decision reported in ***2004 (2) CTC 129 (Sathiyabama And Others vs M.Palanisamy And Others)***, it was held as follows:-

"*9. It is therefore clear that these amounts which are payable to employees, so that they would not be left resourceless at the time of retirement are exempted for attachment, whether they are payable to the employee or to his legal representatives. The various decisions referred to above also indicate that whether the employee has retired, or has become insolvent or has died the character of these amounts do not change so long as they are in the hands of the employer. The immunity from attachment is complete. The object of the provisions are to see that the employee gets these amounts after his retirement or his heirs get them after the employee's 'death' since the scheme is a beneficial one, the authority viz.: the employer is a trustee for those sums and is bound to object to the attachment. The second respondent has rightly maintained its stand against the attachment. There can be no legal justification for classifying or describing such deposits or amounts differently after the employee's death or retirement, so long as they are with the employees, there is protection from attachments. Provident Fund amounts, pension and other compulsory deposit retain their character until they reach the hands of the employee, any other view cannot be taken considering the conditions in which such exemption provisions operate and the class of persons they were intended to benefit. In one of the decisions, even the pay order had been made out but it had not left the hands of the employer, the plea of the person seeking* *attachment on the ground that, really nothing further was required, was in vain. It still had not reached the employee and as the learned Judge picturesquely put it, "A miss is as good as a mile.""*

14.In the case on hand, the savings bank account is maintained not by any other bank but by the petitioner's erstwhile employer. The employer had initiated surcharge proceedings against the petitioner and at their instance, the petition mentioned savings bank account has also been attached by the second respondent. As rightly pointed by the petitioner's counsel, even though the petitioner was dismissed from service in the year 2018, the said account was not attached immediately. The attachment order was passed only on 03.08.2020 and the transfer of provident fund amount of the petitioner from the provident fund account to the savings bank account took place on the same date. What cannot be done directly cannot be done indirectly also. Though the attachment effected by the second respondent on the petitioner's savings bank account is sustainable otherwise, it will not hold as against the petitioner's provident fund. Therefore, the impugned prohibitory order is interfered with to this limited extent. The petitioner is permitted to withdraw the provident fund amount lying to his credit in the savings bank account.

15.The writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Deputy Registrar Co-operative Societies,
Dindigul.

+1 CC to M/s.K.GURUNATHAN, Advocate (SR-4687[F] dated 12/02/2021)

+1 CC to M/s.S.SEENIVASAGAM, Advocate (SR-4697[F] dated 12/02/2021)

+1 CC to M/s.GP (SR-4980[F] dated 15/02/2021)

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