



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.8846 of 2021

and

W.M.P(MD)No.6651 of 2021

B.Illamaran

... Petitioner

Vs.

1.The Joint Registrar of Co-operative Societies,
Office of the Joint Registrar of
Co-operative Societies,
Ramnad.

2.The Deputy Registrar of Co-operative Societies,
Paramakudi Region,
Ramnad Division,
Ramnad.

3.The Managing Director,
Q 1102 Kamuthi Co-operative Urban Bank Ltd.,
Kamuthi-623 603.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to pay the petitioner's Earned Leave Salary, Gratuity and Provident Fund on the basis of the petitioner's representations, dated 06.06.2020 and 27.08.2020.

For Petitioner : Mr.C.Jeganathan

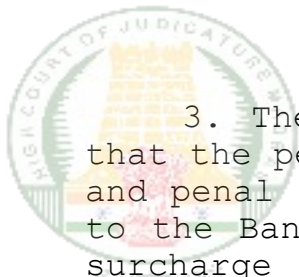
For Respondents : Mr.P.Subbaraj

Government Advocate

ORDER

The petitioner has filed the present writ petition for a direction to the respondents to pay the petitioner's Earned Leave Salary, Gratuity and Provident Fund, on the basis of the petitioner's representations, dated 06.06.2020 and 27.08.2020.

2. According to the petitioner, while he was working as Assistant Manager in the third respondent Bank, an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, was ordered and the Enquiry Officer reported that the petitioner and other persons have caused loss to the third respondent Bank to the tune of Rs.3,00,000/- (Rupees Three Lakhs only). A surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act was initiated against the petitioner and others.



3. The learned counsel appearing for the petitioner submitted that the petitioner and others paid the entire amount with interest and penal interest during the year 2016 and hence, there is no loss to the Bank. Based on the same, the second respondent dropped the surcharge proceedings by the proceedings, dated 05.10.2016. Based on the Enquiry Report, a criminal complaint was lodged against the petitioner and three others under Sections 406, 402 and 109 of IPC and the same is pending in C.C.No.267 of 2017, on the file of the Judicial Magistrate Court No.I, Ramanathapuram. While so, the petitioner was suspended on 28.04.2020 due to pendency of the criminal case. The petitioner attained the age of superannuation on 30.04.2020. He was not allowed to retire from service. The petitioner sent various representations, dated 12.05.2020, 06.06.2020, 23.07.2020 and 27.08.2020 respectively, to release his Gratuity, Earned Leave salary and Provident Fund amount. The respondents paid only the petitioner's contribution to the Provident Fund amount and failed to pay the other amounts. When there is no loss to the third respondent Bank, the petitioner is entitled to get Gratuity. The amounts lying to the credit of Provident Fund account, Leave salary and Gratuity cannot be withheld by the respondents even if he is suspended and not permitted to retire from service. The learned counsel appearing for the petitioner relied on the order of this Court, dated 13.12.2018 made in W.P(MD)No.22823 of 2018 [M.Raveendran vs. The Joint Registrar of Co-operative Societies, Sivagangai and another] and prayed for allowing the writ petition.

4. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the entire materials available on record.

5. In the present writ petition, the petitioner is seeking a direction to disburse the Earned Leave Salary, Gratuity and Provident Fund by considering his representation. The payment of encashment of leave salary, Provident Fund, Gratuity, cannot be withheld by the authority, even if the petitioner is suspended and not permitted to retire from service. This issue was considered by the Division Bench of the Principal Bench of this Court, dated 26.02.2016, made in ***W.A.No.207 of 2016 (TANGEDCO, The Chairman-cum-Managing Director and others Vs. P.K.Panchaksharam)***. The Division Bench of this Court upheld the order of the learned Single Judge that encashment of Earned Leave and Provident Fund are the properties of the employee and even if he is dismissed from service, he is entitled to recover the said amount.

6. As far as the payment of Gratuity is concerned, if the petitioner caused any financial loss to the respondents, the respondents are entitled to deduct the said amount and to pay the balance amount to the petitioner. In the present case, it was held that the petitioner and others caused loss to the third respondent



Bank to the tune of Rs.3,00,000/- (Rupees Three Lakhs Only) and the petitioner and others paid the said amount together with interest and penal interest to the third respondent. In view of the said payment, there is no loss to the third respondent Bank. The ratio laid down in the judgment, dated 26.02.2016 made in W.ANo.207 of 2016 is squarely applicable to the facts of the present case. Therefore, the respondents are directed to calculate the amounts payable to the petitioner towards Earned Leave Salary, Provident Fund and Gratuity and paid the same within a period of four weeks from the date of receipt of a copy of this order.

7. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSII)

// 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

- 1.The Joint Registrar of Co-operative Societies,
Office of the Joint Registrar of
Co-operative Societies,
Ramnad.
- 2.The Deputy Registrar of Co-operative Societies,
Paramakudi Region,
Ramnad Division,
Ramnad.
- 3.The Managing Director,
Q 1102 Kamuthi Co-operative Urban Bank Ltd.,
Kamuthi-623 603.

+1 CC to M/s.SPL GP (SR-20450[F] dated 28/06/2021)

W.P. (MD)No.8846 of 2021
25.06.2021

KB(06.07.2021) 3P 5C