



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

WP(MD)No.13329 of 2014

P.Subramaniapillai

... Petitioner

Vs.

1.The Joint Registrar of Co-operative Societies,
Kanyakumari Region,
At Nagercoil,
Kanyakumari District.

2.The Special Officer,
The Peoples Co-operative Bank Limited,
Cape Road, Nagercoil - 629 001,
Kanyakumari District.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the first respondent in Na.Ka.No.4799/2012 Sa.Pa dated 28.04.2014 and quash the same and direct the second respondent herein to repay the amount of Rs.3,02,434/- illegally collected from the petitioner to the petitioner with interest.

For Petitioner : Mr.R.Murugan

For Respondents : Mr.M.Lingadurai
Government Advocate for R1

Mr.G.Prabhu Raja Durai for R2

ORDER

This writ petition is filed for issuance of Writ of Certiorarified Mandamus to quash the impugned order passed by the first respondent dated 28.04.2014 in Na.Ka.No.4799/2012 Sa.Pa and direct the second respondent to repay the amount of Rs.3,02,434/- collected from the petitioner together with interest.

2. The brief facts that are necessary to the disposal of this writ petition are as follows.



2.1. The petitioner is a retired Secretary of Society known as Peoples Co-operative Bank Limited, Nagercoil, which is under the control of the second respondent, the Special Officer. It is not in dispute that the petitioner retired on 30.04.2010.

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2.2. The employees of the second respondent Co-operative Bank joined the pension and group gratuity scheme and originally the ceiling was fixed at Rs.3,50,000/-. As per section 4(3) of the Payment of Gratuity Act, 1977, the amount payable to any employee of the second respondent cannot exceed Rs.3,50,000/-. It is admitted that the said provision was amended by the Payment of Gratuity (Amendment) Act, 2010, increasing the said limit to Rs.10,00,000/-. It is also admitted that the amendment was notified in the Government Gazette on 24.05.2010. It is admitted by the petitioner that he retired from service on 30.04.2010 ie., before the amendment was introduced and came into effect.

2.3. It is stated by the petitioner that as a measure of providing increase in gratuity benefits to the employees, the amendment came into force and that the second respondent has passed a resolution even on 30.01.2010, increasing the gratuity ceiling from Rs.3,50,000/- to Rs.10,00,000/-. It is further stated that the petitioner paid excess premium while he was in service and that the petitioner was also sent a cheque for a sum of Rs.5,90,564/- and another cheque for a sum of Rs.61,870/-. Hence the petitioner was entitled to Rs.6,52,435/- towards gratuity in total.

2.4. It is the further case of the petitioner that he was paid only a sum of Rs.5,90,564/- and that the second respondent, however, recovered a sum of Rs.2,40,564/- on the ground that the said sum was paid in excess of the amount payable by the second respondent to the petitioner towards gratuity. After paying the amount of Rs.2,40,564/-, the petitioner submitted representations to the second respondent to re-pay the amount collected from him with interest. The second respondent sent a reply on 07.02.2012 explaining how the sum of Rs.2,40,564/- was not payable to the petitioner. Thereafter, the petitioner submitted a representation before the first respondent under Section 153 of Tamil Nadu Co-operative Societies Act. The first respondent passed the impugned order on 03.10.2012. Challenging the order of the first respondent, the above writ petition is filed.

3. As rightly pointed out by the learned counsels appearing for the respondents 1 and 2, the gratuity payable to the employees cannot be more than Rs.3,50,000/-. Further, no specific provisions under the amendment act was brought to the notice of this Court to show that the amendment can also protect anyone who



retire from service before 24.05.2010. Though it is the case of the petitioner's counsel that several others who retired after the petitioner was given enhanced gratuity, the counsel has not produced any material to support his argument. It is well settled that there can be no plea of estoppel against the statute.

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4. In the present case, the petitioner seeks enhancement of pension on the ground that he has paid higher premium to LIC on the basis of the resolution passed by the second respondent on 30.01.2010. May be, the second respondent also, with a wrong understanding with regard to the date on which the amendment would come into effect could have acted. As a matter of fact, the resolution dated 30.01.2010, does not indicate a decision contrary to statute. Expecting amendment, a resolution was passed to enter into a new agreement with M/s.LIC. However, the petitioner cannot take advantage of a mere proposal to claim statutory benefit. As pointed out earlier, the statutory right alone is enforceable. Since the petitioner cannot be granted the benefit without statutory backing, this Court is unable to grant the relief on legally untenable grounds. The first respondent has rightly decided the issue. Hence, this Court finds no reason to interfere with the order passed by the first respondent on 28.04.2014.

5. Accordingly, this writ petition is dismissed as devoid of merits. No costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Mbi

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,
Kanyakumari Region, Nagercoil,
Kanyakumari District.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Special Officer/President
The Peoples Co-operative Bank Limited,
Cape Road, Nagercoil - 629 001,
Kanyakumari District.

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+1 CC to M/s.SPL.GP (SR-33344[F] dated 01/11/2021)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-33589[F] dated
02/11/2021)

+1 CC to M/s.R.MURUGAN, Advocate (SR-33301[F] dated 29/10/2021)

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