Judgment

IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR

WRIT PETITION NO.4653 OF 2021

1. Sharad Balbhim Sawant,
Aged 40 years, occupation - labour.

2. Ku.Sharda Balbhim Sawant,
Aged 41 years, occupation – labour.

3. Sangram Balbhim Sawant,
Aged 32 years, occupation – labour.

4. Vikram Balbhim Sawant,
Aged 38 years, occupation – labour.

All r/o Kameti File, Near Satyavijay
Talkies, Akot district Akola. ….. Petitioners.

:: V E R S U S ::

1. Zilla Parishad, Akola,
Through its Chief Executive Officer,
Taluka and district Akola.

2. Block Development Officer,
Panchayat Samiti, Akot,
Taluka Akot, district Akola.

3. Liquidator Shri Sharad N.Wankhede,
Zilla Parishad Secondary Teacher
Cooperative Credit Society Ltd.,
Akola and Washim, Reg.No.143,
Kapileshwar Apartment,
Jawahar Nagar Chowk, Akola,
District Akola. ….. Respondents.

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Shri V.B.Bhise, Advocate for Petitioners.
Shri A.K.Dobade, Advocate for Respondent Nos.1 and 2.
Ms Aparna M.Telange, Advocate h/f Shri A.P.Tathod, Advocate for Respondent No.3.

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<u>CORAM</u> : **<u>A.S.CHANDURKAR & URMILA JOSHI-PHALKE, JJ</u>.**
<u>DATE</u> : **<u>29/09/2022</u>**

<u>ORAL JUDGMENT</u> (Per : Urmila Joshi-Phalke, J.)

1. Heard Shri V.B.Bhise, learned Advocate for petitioners, Shri A.K.Dobade, learned Advocate for respondent Nos.1 and 2 and Ms Aparna M.Telange, Advocate h/f Shri A.P.Tathod, learned Advocate for respondent No.3. **Rule**. Rule made returnable forthwith and heard finally.

2. By this petition, petitioners challenge demand notice dated 5.2.2020 recovering loan amount of Rs.4,63,811/- issued by respondent No.3 and communication dated 18.8.2020 issued by respondent No.2 withholding retiral benefits viz. gratuity, pay leave and insurance etc..

3. The petitioners' case in a nutshell is as under:

The petitioners' mother by name Smt.Narmadabai Balbhim Sawant was working as Peon on the establishment of respondent No.2 - Panchayat Samiti at Akot. She was appointed on compassionate ground after death of her husband in the year 1992-1993. While in service, she expired on 29.8.2018. The petitioners are the only legal heirs of Smt.Narmadabai. On 18.5.2013, said Smt.Narmadabai made a representation to respondent No.3 - Zilla Parishad Secondary Teacher Cooperative Credit Society Ltd., Akola that she had availed loan of Rs.40,000/- from the said respondent No.3 and had repaid the loan amount and, therefore, Monthly Account Statement of deducted amount of her loan be supplied to her. As she was not responded by respondent No.3, again she made two representations on 21.5.2013 and 2.3.2017. She had also availed loan of Rs.70,000/- on 20.4.1993 and her loan amount was deducted monthly from her salary. She was issued a demand notice claiming amount Rs.1,18,911/- is outstanding against her. Therefore, on 2.3.2017, she made a representation demanding repayment of loan amount by her. Considering repeated representations by her, respondent No.2 issued a communication on 27.6.2017 to respondent No.3 asking respondent No.3 to issue necessary information. It is informed that the loan amount had been regularly deducted from the salary of the petitioners' mother. Again, on 14.3.2017, respondent No.2 issued a communication directing respondent No.3 to provide information regarding account statement of outstanding loan against the petitioners' mother. In spite of the said communication, respondent No.3 had not provided the said information to the petitioners' mother. Therefore, again, on 19.6.2017, she made a representation to respondent No.2 requesting not to deduct amount of Rs.4,100/- from her salary. In pursuance to the said representation, respondent No.2 issued reminders on 10.7.2017, 17.7.2017 and 18.8.2017 to respondent

No.3 directing respondent No.3 to stop deductions of loan amount from the salary of the petitioners' mother.

4. In the meanwhile, on 7.8.2018, The District Deputy Registrar of Cooperative Societies at Akola issued a communication to respondent No.3 directing that since March 2017 there was no demand notice from respondent No.3 regarding loan deductions from the petitioners' mother and asked to take an appropriate decision according to law. Thereafter, the petitioners' mother died on 29.8.2018. The petitioners, on 16.9.2019, made a representation, since their mother died on 29.8.2018, to respondent No.2 asking for retiral benefits by supplying relevant documents. On 3.7.2019, respondent No.3 issued a communication to respondent No.2 informing that on 30.6.2019 the petitioners' mother was retired. In fact, she expired on 29.8.2018. Respondent No.3 further informed respondent No.2 that as on 30.6.2019 outstanding loan amount against the petitioners' mother was Rs.4,38,931/- and asked to deduct the said outstanding loan amount from retiral benefits of the petitioners' mother and deposit with the said respondent No.3. On 5.2.2020, under Section 105 of the Maharashtra Co-operative Societies Act, 1960 (for short, "the Societies Act"), respondent No.3 issued a demand notice to the petitioners' mother and demanded Rs.4,43,811/-. On 2.6.2020,

respondent No.2 issued a communication to respondent No.3 informing that the petitioners' mother expired on 29.8.2018, but in spite of repeated communications from respondent No.2 to respondent No.3, respondent No.3 did not issue any bank statement and, therefore, respondent No.2 withheld the retiral benefits of the petitioners' mother.

5. It is contention of the petitioners that after the death or retirement of an employee, recovery of loan amount is not permissible from employees. It is further contended by the petitioners that action on the part of respondent No.3, withholding the retiral benefits for recovery of loan amount, is contrary to the provisions of the Maharashtra Co-operative Societies Act, 1960. Thus, since the action of respondent No.3 is arbitrary, illegal and without application of legal provisions of the Maharashtra Co-operative Societies Act, 1960, the same is liable to be set aside.

6. In response to notice issued by this Court, respondent Nos.1 and 2 opposed the petition on the ground that date of retirement of the petitioners' mother Smt.Narmadabai was 30.6.2019 and, therefore, respondent No.2, under the provisions of the Maharashtra Civil Services Commutation Pension Rules, 1982, vide letter dated 23.5.2018, informed the petitioners' mother to obtain 'No Due Certificate' from the bank and institution. It is

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revealed that since the petitioners' mother had obtained loan of Rs.92,877/- and since interest of Rs.3,46,054/- is due against her, the demand notice was issued to her and the retiral benefits are withheld, as per law. As such, the petition is liable to be dismissed.

7. Respondent No.3 also opposed the petition on the ground that the retiral benefits are withheld as per legal provisions and as such there is no merit in the petition and the petition is liable to be dismissed.

8. Shri V.B.Bhise, learned Advocate for the petitioners, submitted that admittedly the petitioners' mother Smt.Narmadabai Balbhim Sawant was working as Peon on the establishment of respondent No.2 - Panchayat Samiti at Akot. She was appointed on compassionate ground after death of her husband in the year 1992-1993. She had availed loans of Rs.40,000/- and Rs.70,000/-. He admitted that the petitioners' mother had paid the amount time to time as loan instalments are deducted from her salary. Though the petitioners' mother had made several representations to respondent No.3, respondent No.3 had never issued any statement of account to her. Respondent No.2 issued various communications to respondent No.3 to issue statement of account to the petitioners' mother, however respondent No.3 never issued such statement. The petitioners' mother expired on expired on 29.8.2018 and,

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thereafter, her retiral benefits are withheld by respondent No.3 in view of Section 49(3) of the Maharashtra Co-operative Societies Act, 1960. He submitted that as per Section 49(3) of the Maharashtra Co-operative Societies Act, 1960, it is a duty of employer to deduct the amount specified in requisition from salary or wages payable to member concerned. The pensionery benefits or retiral benefits cannot be withheld for recovery of loan and, therefore, the action on the part of respondent No.3 is arbitrary and liable to be set aside.

9. On the contrary, Shri A.K.Dobade, learned Advocate for respondent Nos.1 and 2 and Ms Aparna M.Telange, Advocate h/f Shri A.P.Tathod, learned Advocate for respondent No.3 supporting communications dated 5.2.2020 recovering loan amount issued by respondent No.3 and 18.8.2020 issued by respondent No.2 withholding retiral benefits viz. gratuity, pay leave and insurance etc. submitted that in view of Section 49(3) of the Maharashtra Co-operative Societies Act, 1960, respondent No.3 has a right to recover the amount from the retiral benefits of the petitioners' mother. Thus, there is no merit in the petition and the petition deserves to be dismissed.

10. Having heard learned Advocates for respective parties and perused relevant materials available on record, it is not in dispute that the petitioners' mother Smt.Narmadabai Balbhim

Sawant was working as Peon on the establishment of respondent No.2 - Panchayat Samiti at Akot. She was appointed on compassionate ground after death of her husband in the year 1992-1993. While in service, she expired on 29.8.2018. The petitioners are the only legal heirs of Narmadabai. She had availed loans of Rs.40,000/- and Rs.70,000/- from respondent No.3 - Zilla Parishad Secondary Teacher Cooperative Credit Society Ltd., Akola on 15.11.1999 and 20.4.1993 respectively. It is the contention of the petitioners that though their mother had obtained loans, it is repaid by her as instalments were directly deducted from her salary. It is evident that on 18.5.2013 she made a representation to respondent No.3 that though instalments are deducted from her salary, no Monthly Account Statement of deducted amount of her loans was supplied to her. She had also made a representation to respondent No.2 - Block Development Officer, Panchayat Samiti, Akot. In pursuance to the said representation, respondent No.2 - Block Development Officer, Panchayat Samiti, Akot communicated to respondent No.3 directing respondent No.3 to issue a detailed statement regarding recovery of loan from the petitioners' mother. After the said communication by respondent No.2 to respondent No.3, no action was taken. Again, on 17.7.2017, respondent No.2 communicated to respondent No.3 that respondent No.3 to issue Bank Account Statement of deducted amount of loans either to the petitioners' mother or respondent No.2 - Block Development Officer, Panchayat Samiti, Akot. Again, on 19.6.2017, she made a representation to respondent No.2 requesting not to deduct amount of Rs.4,100/- from her salary. In pursuance to the said representation, respondent No.2 issued reminders on 17.7.20177 to respondent No.3 directing respondent No.3 to stop deductions of loan amount from the salary of the petitioners' mother.

11. It is revealed from the record that several communications were made by respondent No.2 to respondent No.3 seeking information regarding loan account of the petitioners' mother and recovery thereto, however neither such information was supplied to the petitioners' mother nor to respondent No.2. Thereafter, the petitioners' mother expired on 29.8.2018. Before her death, respondent No.3 had issued communication to respondent No.2 asking respondent No.2 to deduct the loan amount from retiral benefits of the petitioners' mother informing that she is retiring on 30.6.2019. It is evident that after her death, on 5.2.2020, under Section 105 of the Maharashtra Co-operative Societies Act, 1960, respondent No.3 issued a demand notice to the petitioners' mother and her retiral benefits were withheld. It is further evident that by communication dated 3.7.2018 respondent No.2 was asked by respondent No.3 to deduct the amount from her

retiral benefits. The said demand notice dated 5.2.2020 is challenged by the petitioners in the present petition. Respondent No.2 issued a communication dated 18.8.2020 informing the petitioners that loan outstanding amount of Rs.4,38,931/- is due against the petitioners' mother and they have to pay it, otherwise it will be deducted from retiral benefits of the petitioners' mother. The said communication dated 18.8.2020 is also challenged by the petitioners.

12. Shri V.B.Bhise, learned Advocate for the petitioners, submitted that respondents had no right to deduct the outstanding amount from the retiral benefits in view of Section 49(3) of the Maharashtra Co-operative Societies Act, 1960. In support of submissions, learned Advocate relied upon a decision of learned Single Judge of this Court in the case of Ashfaq Husain s/o Sk.Lal vs. Chief Executive Officer, Zilla Parishad, Washim and ors, reported at 2014(4) ABR 409 wherein it is held that "*recovery of the Government dues from retiral benefits and deduction of outstanding loan amount obtained by employee from employees' Credit Cooperative Society from his retirement gratuity are not permissible*."

Learned Advocate relied upon a decision of this Court in the case of Dhairyasheel A.Jadhav vs. Maharashtra Agro Industrial

Development Corporation Ltd., Mumbai, reported at [**2010(2) Mh.L.J. 618**] wherein it is held that "*only in the event that there is a provision for continuing the enquiry, the enquiry can be continued and in view of absence of such a provision the Corporation had no legal right to make any enquiry reductions in the retiral benefits of the appellant.*"

Learned Advocate further relied upon a decision of the Honourable Apex Court in the case of **D.V.Kapoor vs. Union of India and ors.**, reported at **(1990) 4 SCC 314**. The Honourable Apex Court held, "*Rule 9(1) of the Civil Services Pension Rules empowering the President to withhold pension in case of grave misconduct or negligence - the entire amount of pension as well as gratuity withheld on permanent basis on proved charge of wilful absence without authorization, the action illegal and invalid.*"

Shri A.K.Dobade, learned Advocate for respondent Nos.1 and 2, relied upon a decision of the Honourable Apex Court in the case of **Union of India vs. T.R.Varma**, reported at **AIR 1957 SC 882** wherein it is held that "*it is well settled that when an alternative and equally efficacious remedy is open to litigant, he should be required to pursue that remedy any not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the*

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jurisdiction of the Court to issue writ; but, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs."

13. It is submitted by Ms Aparna M.Telange, Advocate h/f Shri A.P.Tathod, Advocate for respondent No.3 that respondent No.3, in view of Section 49(3) of the Maharashtra Co-operative Societies Act, 1960, has a right to withhold/recover retiral benefits of employees to deduct loan amount outstanding against any employees.

14. Having considered the rival submissions, question arises for our consideration is, whether respondents had a right to withdraw/recover the retiral benefits to deduct loan amount outstanding against the said employee. While considering the issue raised before us, it has already been observed that there is no dispute that the petitioners mother Smt.Narmadabai had obtained loans. It is also not in dispute that she had made several representations seeking relevant documents regarding repayment of loans. It is also evident that no such information was given to her. Even, respondent No.2 issued a communication to respondent No.3 to supply bank statement to the petitioners' mother and also directed to stop deducts from her salary. Respondent No.3 neither

responded to representations by the petitioners' mother nor to communications by respondent No.2.

15. Learned Advocates for respondents submitted that in view of Section 49(2) of the Maharashtra Co-operative Societies Act, 1960, when an employer receives a copy of an agreement executed by a member of the Society agreeing that his employer would be competent to deduct from his salary or wages, amount of loan due from him to Society, the employer would be perfectly within the limits of law to issue a direction regarding deduction of loan amount from the retirement gratuity. Sub-section (3) of the said Section imposes a duty upon the employer to deduct the loan amount from the salary or wages of the employee and remit the same to the Society and keep on remitting the same as long as total loan amount stands repaid. This duty in the employer is created under sub-section (2) when he receives a copy of the agreement and written requisition of the society as contemplated under sub-sections (1) and (2) of Section 49. Sub-section (1) states that a member of a society may execute an agreement in favour of the society, providing that his employer shall be competent to deduct from the or wages payable to him by the employer, such total amount payable to the society and in such instalments as may be specified in the agreement and to pay to the society the amounts so

deducted in satisfaction of any debt or other demand of the society against the member. Sub-section (2) contemplates that after receipt of a copy of such agreement, the employer shall, if so required by the society by a requisition in writing, and so long as the total amount is repaid or deducted from the salary by the employer. Thus, as per the said sub-section, obligation is casted upon the employer to deduct the amount. Sub-section (3) states about consequences if the employer fails to deduct the amount. It states that if after the receipt of a requisition made under the foregoing sub-section, the employer at any time fails to deduct the amount specified in the requisition from the salary or wages payable to the member concerned, or makes default in remitting the amount deducted to the society, the employer shall be personally liable for the payment of such amount or where the employer has made deductions but the amount so deducted is not remitted to the society, then such amount together with interest thereon at one and half times the rate of interest charged by the society to the member for the period commencing on the date on which the amount was due to be paid to the society and ending on the date of actually remitting it to the society.

16. Thus, language of sub-sections (2) and (3) of Section 49 of the Maharashtra Co-operative Societies Act, 1960 is clear

about the duty of the employer. Once the employer receives copy of the agreement, and when the society requires him to deduct and remit to it the amount specified in the agreement, the employer has to deduct and pay the amount deducted to the society. Sub-section (3) states about consequences for failure to perform the duty under sub-section (2) by imposing personal responsibility upon the employer.

17. Now, question is, whether the employer is competent to recover amount from retiral benefits of employees.

18. The provisions of Section 49(1), (2) and (3) nowhere state such amount can be deducted from retiral benefits. Words 'salary' and 'wages' are used in the provisions. There is no agreement to recover the amount from the retiral benefits of petitioners' mother and, therefore, communications dated 5.2.2020 issued by respondent No.3 and 18.8.2020 issued by respondent No.2 directing deductions of amount of Rs.4,63,811/- from the retiral benefits viz. gratuity, pay leave and insurance etc. on account of death of the petitioners' mother was without any authority of law.

The said issue is already settled by a decision of learned Single Judge of this Court in the case of <u>Ashfaq Husain s/o Sk.Lal vs. Chief Executive Officer, Zilla Parishad, Washim and ors</u>, cited *supra* on which learned Advocate for the petitioners relied upon.

In another decision in the case of Dhairyasheel A.Jadhav vs. Maharashtra Agro Industrial Development Corporation Ltd., Mumbai, cited *supra* this Court observed that in view of absence of such a provision in the regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant.

The Honourable Apex Court in the case of D.V.Kapoor vs. Union of India and ors., cited *supra* has also held that withholding of pensionery benefits or gratuity is illegal.

In the light of this legal position, we are inclined to entertain the writ petition and there is no justifiable reason to ask the petitioners to resort to other statutory remedy. No disputed questions of fact arise for determination. Hence, the ratio of the decision Union of India vs. T.R.Varma cited *supra* cannot be made applicable in the present case.

19. Thus, it is settled that the respondents have no right to withhold pensionery benefits or to deduct loan amount from pensionery benefits of employees. We find no reason to take a contrary view in the light of the well settled legal position. We find

that the provisions of Section 49(1), (2) and (3) nowhere give power to respondents to deduct amount from retiral benefits of employees. In that view of the matter, since the action on the part of the respondents directing deductions of the amount from the retiral benefits payable to the petitioners on account of death of the petitioners' mother Smt.Narmadabai was without any authority of law, the writ petition deserves to be allowed and, therefore, we proceed to pass following order:

ORDER

(1) The writ petition is allowed.

(2) It is held that respondent Nos.1 and 2 were not justified in relying upon the provisions of Section 49(3) of the Maharashtra Co-operative Societies Act, 1960 for withholding the amount of gratuity payable to the petitioners' mother. Consequently, such action on the part of respondent Nos.1 and 2 is set aside.

(3) Respondent Nos.1 and 2 shall release the amount of gratuity in favour of the petitioners within a period of four weeks of receiving copy of the judgment.

(4) Respondent No.3 is free to proceed against the petitioners to recover the outstanding amounts by adopting appropriate proceedings in accordance with law.

Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.) **(A.S.CHANDURKAR, J.)**

!! BrWankhede !!

BHUSHAN RANA WANKHEDE

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