IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.20180 of 2013
and
W.M.P.No.20716 of 2021

Poongothai Subramaniam ...Petitioner

-Vs-

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Animal Husbandry and Diary Development,
Fort St. George, Chennai - 600 009.

2.The General Manager,
Tamil Nadu Co-operative Milk
Producer's Federation Ltd.,
"AvinIllam",
Madhavaram Milk Colony,
Chennai - 600 051.

3.The Managing Director,
Coimbatore District Milk Producer
Union Ltd.,
Coimbatore - 10. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to pay the gratuity, pension, arrears of pension and other terminal benefits with interest at the rate of 24% per annum as claimed in the representations of the petitioner dated 14.11.2007, 15.04.2008, 06.06.2009, 24.09.2010, 25.05.2011 and 04.02.2013.

For Petitioner : Mr.Kandhan Duraisami

For R1 : Mr.P.Ganesan, Government Advocate

For R2 & R3 : Mr.R.Bala Ramesh

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner herein is the wife of late Dr.A.Subramaniam, who was employed as a Managing Director in Coimbatore District Milk Producer Union Limited, Coimbatore and who died in harness on 17.12.2004. The present writ petition is one seeking for disbursement of the death-cum-retirement gratuity benefits of the petitioner's husband.

3. The respondents 2 and 3, in their counter affidavit, have stated that, owing to certain audit objections and in view of the pending surcharge proceedings, a sum of Rs.3,71,482/- requires to be recovered from the terminal benefits of the petitioner's husband and therefore, had withheld the entire benefits.

4. The power of the respondents to withhold such terminal benefits including gratuity, has come up for consideration in various decisions and in one such decision of this Court in the case of K.Anbarayan and another Vs. The Joint Registrar of Co-operative Societies, Namakkal and others passed in W.P.Nos.27398 & 27399 of 2014, dated 28.10.2014, it was held that such withholding of the terminal benefits is impermissible. The relevant portion of the order reads as follows:-

> "4. The payment of retiral benefits such as gratuity, provident fund and leave encashment is one of right. Unless there is statutory bar, the retired employee cannot be denied of those benefits. Considering the scope and ambit of Section 79 of the Tamil Nadu Cooperative Societies Act, 1983, which deals with the payment of gratuity, this Court in the decision referred supra was pleased to hold as follows:
>
> > ''5. In my view, the gratuity fund shall be established by the Society, whenever the Payment of Gratuity Act, 1972, is not applicable to the Society, as per Section 79 of the Tamil Nadu Co-operative Societies Act, 1983. Gratuity payable from the said fund is protected under Section 79 of the Act as the gratuity is protected under Section 13 of the Payment of Gratuity Act. Section 79 of the Tamil Nadu Co-operative Societies Act, 1983 is extracted hereunder:
> >
> > "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 by- aws 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. Section 79(2) of the Tamil Nadu Co-operative Societies Act, 1983, makes it clear that similar protection is given to the gratuity payable to an employee of the Co-operative Society, which is not governed by the Payment of Gratuity Act, as provided under the Payment of Gratuity Act.

7. In fact, today I have considered Section 13 of the Payment of Gratuity Act, 1972, in W.P.No.27296 of 2013 and I have held that the gratuity amount shall not be denied to an employee, on the ground of pendency of surcharge proceeding. In the similar way, pendency of a criminal proceeding cannot be a reason to deny payment of gratuity, for the service rendered by the employee.

8. Therefore, the second respondent Society is liable to pay a sum of Rs.4,54,348/- towards the gratuity amount payable to the petitioner, from the gratuity fund. In fact, the audited statement, produced by the learned counsel for the Society, also reflects that the petitioner rendered 36 years of service and he received a sum of Rs.9,470/- as Basic Pay and Rs.12,406/- as Dearness Allowance and a sum of

Rs.4,54,348/- is lying in his gratuity fund account.''

5. The ratio laid down in the said decision is squarely applicable to the facts of the case. Coming to the payment of provident fund, Section 78 of the Enactment deals with the same. A reading of Section 78 of the Act would show that it is pari materia with Section 79. Therefore, the ratio laid down by this Court with respect of the payment of gratuity would apply to the payment of provident fund as well. The payment of earned leave encashment is the duty of the employer to be payable to the employee for the period for which he has worked. Therefore, even the said amount cannot be denied.

6. Furthermore, a mere pendency of the proceedings by itself cannot be a bar. In other words, the proceedings are yet to be concluded against the petitioners. Though the 3rd respondent is not an authority under Article 12, taking into consideration of the public duty imposed upon the said authority, this Court is of the view that the petitioners are entitled to succeed. Furthermore, a duty is also imposed upon respondents 1 and 2 to see to it that the 3rd respondent acts in accordance with law. Accordingly the writ petitions stand allowed. Consequently, the respondents are directed to pay the terminal benefits due to the petitioners within a period of eight weeks from the date of receipt of copy of this order. In view of the facts and circumstances of the case, this Court is not inclined to award any interest on the said terminal benefits payable by the respondents to the petitioners. No costs."

5. In the instant case, admittedly, the surcharge proceedings had not concluded before the death of the employee and therefore, the proceedings itself has become redundant. In the absence of any orders passed in the surcharge proceedings, there is not justification on the part of the respondent to claim that some amount is recoverable from the petitioner's husband's terminal benefits. Even otherwise, such withholding is illegal, in view of the decision of this Court cited above.

6. Under these circumstances, there shall be a direction to the second respondent herein to forthwith pass orders disbursing the death-cum-retirement gratuity benefits to the petitioner,

who is the wife of late Dr.A.Subramaniam, together with interest at the rate of 12% per annum. Such disbursement shall be done within a period of 6 weeks from the date of receipt of a copy of this order.

7. The Writ Petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

hvk

To

1.The Secretary,
Animal Husbandry and Diary Development,
Fort St. George, Chennai - 600 009.

2.The General Manager,
Tamil Nadu Co-operative Milk
Producer's Federation Ltd.,
"AvinIllam",
Madhavaram Milk Colony,
Chennai - 600 051.

3.The Managing Director,
Coimbatore District Milk Producer
Union Ltd.,
Coimbatore – 10.

+1cc to Mr.R.Bala Ramesh, Advocate SR.No.24864

+1cc to Mr.Muthumani Doraisami, Advocate SR.No.24720

+1cc to Government Pleader SR.No.25764

W.P.No.20180 of 2013
and
W.M.P.No.20716 of 2021

BS(CO)
GMY(27/04/2022)