



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.30263 of 2016
and
W.M.P.No.26251 of 2016

(Through Video Conference)

R.Thamizhvanan

.. Petitioner

-Vs-

1. The Joint Registrar of Cooperative Societies,
Salem Region,
Salem District.
2. The Deputy Registrar of Co-operative Societies,
Salem Circle,
Salem District.
3. The Managing Director,
Tamil Nadu Cooperative Marketing
Federation Limited (TANFED),
91, St.Mary's Road,
Chennai 600 018
4. The Regional Manager,
Tamil Nadu Cooperative Marketing
Federation Limited (TANFED),
Salem.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the third respondent in his proceedings in No.0055/EM/10 dated 31.03.2016 and to quash the rider clause empowering the 3rd respondent to recover the dues if any from the petitioner consequently direct the 3rd respondent to release the Gratuity to the tune of Rs.9,16,000/- and the encashment of earned leave salary to a tune of Rs.3,86,000/- thus aggregating to a tune of Rs.13,02,000/- in all, along with an interest of 13% from the date of superannuation viz. 31.03.2016 to till date.



WEB COPY

For Petitioner : Mr.R.Jayaprakash

For RR-1 & 2 : Mr.P.Ganesan,
Additional Government Pleader

For RR 3 & 4 : Mr.L.P.Shanmugasundaram

O R D E R

For the failure to include the V.A.T. (Value Added Tax) in the invoice raised against two Mills, the respondents 3 and 4 had withheld the retirement benefits of the petitioner stating that subsequent payment made by them in this regard amounted to a loss. Though the petitioner herein was permitted to retire, the right to recover these alleged loss were reserved in the impugned order, dated 13.03.2016. Aggrieved against the non-disbursement of the retirement benefits, including Gratuity and Leave Encashment, the present writ petition has been filed.

2. The issue as to whether the first respondent is entitled to withhold the Gratuity amount due to a retired Government employee came up for consideration before this Court in the case of Ramasamy and another vs. the Managing Director and another in W.P.(MD) Nos.15875 and 15926 of 2013 and by order dated 2.12.2013, wherein this Court held that such withholding of retirement benefits is 'impermissible under law'. The relevant portion of the order reads thus:-

"3. It is well known fact that the amount of gratuity and leave encashment due to the petitioners cannot be denied to the petitioners, even assuming that the petitioners are found guilty. Similarly, leave encashment is a right, that is available to the petitioners for the period, they had worked. In such view of the matter, this Court is inclined to direct the respondents to make the payment of gratuity and leave encashment, amount due to the petitioners, within a period of twelve weeks from the date of receipt of a copy of this order."

3. The aforesaid extract is self-explanatory. Even assuming that the petitioner had caused loss to the respondents 3 & 4, withholding of the Gratuity amount or other benefits directly amount due to the petitioner, is impermissible in view of the aforesaid decision. As such, the impugned order withholding



these monetary benefits cannot be sustained.

4. Accordingly, the impugned order in No.0055/EM/10 dated 31.03.2016 is quashed. There shall be a direction to the respondents herein to forthwith pass appropriate orders for the disbursement of the retirement benefits including the Gratuity, Earned Leave Salary and attendant benefits, within a period of four(04) weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition stands Allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:

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Salem District.
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Salem.

+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.807

+1cc to the Government Pleader, S.R.No.1144

W.P.No.30263 of 2016

BP(CO)
SU(23/02/2022)