



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

WRIT APPEAL NO.2908 OF 2021

1. The Registrar of Co-operative Societies,
N.V.N.Maligai,
Kilpauk, Chennai - 10.
2. The Joint Registrar of Co-operative Societies,
Namakkal Region,
District Collectorate Buildings,
Namakkal District.
3. The Deputy Registrar/Managing Director,
Tiruchengode Co-operative Urban Bank Limited,
Tiruchengode,
Namakkal District.

... Appellants

vs.

A.Venkatachalam

... Respondent

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 26.07.2021 passed by this Court in W.P.No.38109 of 2016.

Prayer in W.P.No.38109 of 2016:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the order passed by the 2nd respondent in Na.Ka.193/16/ma.va(1) dated 14.07.2016 quash the same and direct the respondents to pay the petitioner retirement benefits provident fund and Gratuity totally of Rs.16,45,114/- with 12% interest from the date of retirement till the payment.

For Appellants : Mr.A.Selvendran

For Respondent : Mr.M.S.Palaniswamy



J U D G M E N T

(Judgment of the Court delivered by S.VAIDYANATHAN,J.)

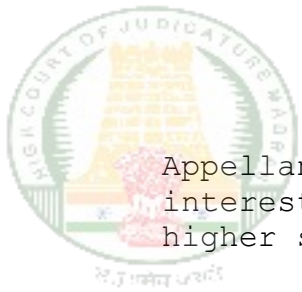
WEB COPY This Writ Appeal has been preferred challenging the order dated 26.07.2021 passed by the learned Single Judge in W.P.No.38109 of 2016, granting the benefit of Gratuity and Provident Fund together with interest to the Respondent/Writ Petitioner, after quashing the order dated 14.07.2016 impugned in the Writ Petition.

2. The Respondent/Writ Petitioner, while serving as an Assistant Manager in the 3rd Appellant/Co-operative Urban Bank Limited, was subjected to surcharge proceedings under Section 87 of the Tamilnadu Co-operative Societies Act. On the strength of the surcharge proceedings, criminal action was also initiated against the Writ Petitioner in C.C.No.71 of 2006, before the Judicial Magistrate, Tiruchengode. In the meantime, the Writ Petitioner attained the age of superannuation on 31.05.2012 and the Society, vide impugned order dated 14.07.2016, deprived all the retirement benefits to the Writ Petitioner, including Provident Fund and Gratuity.

3. The issue in question is whether the Society is empowered to withhold retirement benefits to the Writ Petitioner on the ground that, criminal proceedings were initiated against him, based on the surcharge proceedings.

4. It is stated by the learned counsel appearing for the Respondent/Writ Petitioner that, surcharge proceedings initiated against the Writ Petitioner, have been subsequently dropped. In such case, the impugned order dated 14.07.2016 passed by the Joint Registrar of Co-operative Societies, Nammakkal does not have legs to stand, and it was rightly interfered with by the learned Single Judge. Learned counsel went on to state that, once surcharge proceedings have been dropped, consequential criminal proceedings cannot go on. That apart, even departmental proceedings cannot be initiated against the employee. Hence, according to the learned counsel, when surcharge proceedings initiated against the Writ Petitioner have been dropped, the Society has no reason to withhold the terminal benefits due to him.

5. Learned counsel for the Appellant/Society admitted that, surcharge proceedings against the Writ Petitioner were dropped and consequential proceedings cannot go on against him. He submitted that, the amount payable to the Respondent/Writ Petitioner has been deposited in Central Co-operative Bank and the same fetches interest at 6% per annum. He stated that, the



Appellant/Society is mainly aggrieved with regard to the rate of interest ordered by the learned Single Judge, as it is on the higher side.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. A reading of the provisions of the Payment of Gratuity Act, 1972 and the Employees' Provident Fund Act, 1952 makes it clear that, the employee will be entitled to interest as per the Statute. In terms of Section 7(3A) of the Payment of Gratuity Act, 1972, arrears of Gratuity shall fetch interest at 10% per annum and in terms of the Employees' Provident Fund Act, 1952, the rate of interest is 12% per annum. However, the learned Single Judge has ordered payment of Provident Fund and Gratuity to the Writ Petitioner at 10% per annum from 31.05.2012, i.e. from the date of retirement till the date of actual payment.

8. Almost, ten years have gone by from the date of retirement of the Writ Petitioner and the terminal benefits due to him under the heads 'Gratuity' and 'Provident Fund' have not yet been disbursed to him. Hence, we find that, there is no error in the order passed by the learned Single Judge, as, surcharge proceedings pending against the Writ Petitioner were dropped and no other proceedings are pending against him, for withholding of terminal benefits due to him.

9. It is made clear that, terminal benefits due to the Respondent/Writ Petitioner shall be extended to him within a period of six weeks from the date of receipt of a copy of this judgment. It is further made clear that, if any amount had already been paid to the Writ Petitioner, the same can be adjusted and the remaining amount shall be paid to him together with interest, as ordered by the learned Single Judge.

10. In case of default in payment of terminal benefits due to the Respondent/Writ Petitioner within the time stipulated, the gratuity amount due will fetch interest at 15% per annum in terms of Notification under Section 8 of the Payment of Gratuity Act, 1972, which reads as under:

"S.O.1032(E). - In exercise of the powers conferred by Section 8 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies 15 per cent per annum as the rate of compound interest, recoverable by the Collector for the time being, along with the amount of gratuity and payable to the person entitled thereto."



In fine, the Writ Appeal stands dismissed with the above direction. No costs. Consequently, connected C.M.P.No.19655 of 2021 is closed.

WEB COPY

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Registrar of Co-operative Societies,
N.V.N.Maligai,
Kilpauk, Chennai - 10.
2. The Joint Registrar of Co-operative Societies,
Namakkal Region,
District Collectorate Buildings,
Namakkal District.
3. The Deputy Registrar/Managing Director,
Tiruchengode Co-operative Urban Bank Limited,
Tiruchengode,
Namakkal District.

+2ccs to M/s.M.S.Palaniswamy, Advocate, S.R.Nos.10351, 9832

W.A.No.2908 of 2021

RGN(CO)
RLP(24/03/2022)