IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM

**THE HONOURABLE Ms.JUSTICE R.N.MANJULA**

W.P. No.11501 of 2021
and W.M.P.Nos.12241 of 2021

K.Kumar ... Petitioner

/vs/

1. The Government of Tamil Nadu,
   represented by its Secretary to Government,
   Transport Department,
   Fort St. George,
   Chennai – 600 009.

2. The Managing Director,
   Metropolitan Transport Corporation,
   Pallavan Salai, Anna Salai,
   Chennai – 600 002.

3. The Transport Corporation Employees
   Co-operative Credits & Threft Society Ltd.,
   X-367, No.10, Rathina Teynampet,
   Chennai – 600 018.

4. E.Varghese ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus to direct the respondents 2 and 3 to deduct the amount along with interest to the tune of Rs.2,46,400/- from the retirement benefits of the fourth respondent and refund the same to the petitioner within the time stipulated by this Court.

For Petitioner ... Ms.K.Velangkanni

For Respondents ... Mr.T.Arunkumar
Additional Govt. Pleader for R1 & R3
Mr.C.Gauthamaraj for R2 (MTC)

**ORDER**

This Writ Petition has been filed to direct the respondents 2 and 3 to deduct the amount along with interest to the tune of Rs.2,46,400/- from the retirement benefits of the fourth respondent and refund the same to the petitioner within the time stipulated by this Court.

2. Ms.K.Velangkanni, the learned counsel for the petitioner submitted that while the petitioner was in service he obtained a sum of Rs.35,000/- from the third respondent society and the fourth respondent signed as surety for the loan availed by the petitioner; the fourth respondent

also availed a loan of Rs.1,00,000/- in the year 2003 from the third respondent; so far as the petitioner is concerned, the petitioner paid the loan availed by him with interest to the third respondent; however the respondents 2 & 3 withheld the retirement benefits of the petitioner by stating that he is the surety for the fourth respondent, who had committed default in making the payment; even though the petitioner is a surety for the loan availed by the fourth respondent, the second and third respondents can withhold the amounts payable to the petitioner only after exhausting all the efforts to recover the loan amount from the actual borrower who is the fourth respondent herein.

3. As per the submission made by the respondents 1, 2 and 3, they themselves are not able to trace the loan document pertaining to the fourth respondent and the fourth respondent has been dismissed from service by an order dated 16.02.2005 in view of his unauthorized absence. Even without having the loan documents, the second and third respondents proceeded to withhold the retirement benefits of the petitioner, in view of his admission that he stood as the guarantor for the fourth respondent.

4. If the petitioner is the reason for the non-availability of the loan documents of the fourth respondents, the respondents 2 and 3 can claim that it is the petitioner who has to pay the loan on behalf of the fourth respondent who defaulted to repay. The respondents 2 and 3 themselves have lost the track of the fourth respondent, without knowing his whereabouts and without keeping the loan documents of the fourth respondents safely.

5. It is the submission of the respondents 2 and 3 that only if more particulars are provided by the petitioner, they will be able to trace the loan documents or even the identity of the four respondents. Any surety given by the individual cannot go beyond the extent for which he had undertaken a stand as a surety. In the case on hand, the second and third respondent who have to keep the relevant particulars of the fourth respondent, is making the petitioner responsible to procure the details of the fourth respondent, as though the petitioner stood as a surety for releasing the fourth respondent on bail in any of the criminal case.

6. Since the respondents 2 and 3 have lost track of the fourth respondent, the petitioner cannot be held liable for whatever consequences that might arise due to the above lapse. It is up to the respondents 2 and 3 to take whatever possible efforts to trace the details of the fourth respondents with whatever possible efforts they can make. The second and third respondents cannot continue to claim lien over the retiral benefits that has to be settled in favour of the petitioner.

7. Since the petitioner has paid back the loan obtained by him and he is not the reason for loosing track of the fourth respondents by the second and third respondents, the respondents 1 to 3 are liable to release the retiral benefits due to the petitioner.

8. At this juncture, it is reliably learnt that the petitioner has already been paid with his retiral benefits. However, the petitioner has paid the loan amount along with interest due by the fourth respondent to the third respondent. Hence, it is the claim of the petitioner that the respondents 2 and 3 should deduct the amount from the retirement benefits of the fourth

respondent as against the loan availed by him and refund the same to the petitioner.

9. The petitioner also stand on par with respondents 2 and 3 and only if any concerted efforts the fourth respondent whereabouts are traced, any further steps can be taken by the second and third respondent either to recover the amount due by the fourth respondent or to settle back the amount that has been paid by the petitioner on behalf of the fourth respondent.

10. With the above observation, this Writ Petition is disposed. No costs. Connected miscellaneous petition is closed.

**12.12.2023**

Index: Yes / No
Speaking order / Non-speaking order
bkn

To:

1. The Secretary to Government,
   Transport Department,
   Fort St. George,
   Chennai – 600 009.

2. The Transport Corporation Employees
   Co-operative Credits & Threft Society Ltd.,
   X-367, No.10, Rathina Teynampet,
   Chennai – 600 018.

**R.N.MANJULA ,J.**

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