IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

W.P.No.9737 of 2020
and WMP.No.11861 of 2020

J. Gunaselvi ... Petitioner

Vs.

1. The Block Educational Officer – II
   Kilpennathur
   Tiruvannamalai District.

2. The Additional Assistant Elementary Educational Officer
   Kilpennathur,
   Tiruvannamalai District.

3. The Branch Manager
   The Tiruvannamalai District Central Co-operative Bank Ltd
   No.9, 6th Street, Gandhi Nagar,
   Tiruvannamalai 606 602. ... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus to call for the records relating to the impugned notice in Na.Ka.No.956/A1/2018 dated 19.06.2020 on the file of the 1st respondent and quash the same and direct the 1st respondent herein to disburse the petitioner's pending dues within the stipulated time as prescribed by this Court.

For Petitioner : Mr.S. Kumaradevan

For Respondents : Mr.A.M.Ayyadurai
Government Advocate for R1 & R2
Mr.L.P.Shanmugasundaram for R3

O R D E R

This writ petition has been filed seeking to call for the records relating to the impugned notice in Na.Ka.No.956/A1/2018 dated 19.06.2020 on the file of the 1st respondent and quash the same and direct the 1st respondent herein to disburse the petitioner's pending dues.

2. The learned counsel for the petitioner submitted that in the year 1985 the petitioner joined as an Elementary School Teacher in the 1st respondent 's office and completed her service without any blemish records. In the year 2018, she attained the age of superannuation and the respondents 1 & 2 herein have permitted her to retire and she also received all her retirement benefits from the respondents 1 and 2 except her earned leave salary amount. In the year 2002, the petitioner obtained a personal loan of Rs.60,000/- vide loan No.212051885 from the 3rd respondent Co-operative Bank and she repaid the same along with interest within the prescribed period as per the loan agreement. Based on her salary certificate the 3rd respondent herein granted the above said

loan and the 3rd respondent herein periodically collected the loan dues along with the interest. The petitioner went to the 3rd respondent's office and requested him to provide the no due certificate to her pertaining to the closure of the above said personal loan. But the officials of the 3rd respondent obtained her loan Pass Book and put a seal with an endorsement that “Closed” and kept the same with them and at that time the petitioner requested the officials to return the said loan pass book to her but they refused to do the same and informed that their usual procedure is after closing the loan account they retain the original loan pass book by putting a seal of cancellation. Thereafter to her shock and surprise received a notice dated 06.02.2018 from the 3rd respondent herein stating that she had obtained a personal loan of Rs.70,000/- and till date not paid the capital loan amount to the sum of Rs.51,000/- and till 06.02.2018, the interest for the said due amount was fixed as Rs.1,05,623/-. Further in the said notice the 3rd respondent herein directed the petitioner to pay a total sum of Rs.1,56,823/- within 7 days from the date of receipt of said notice and it is pertinent to note that she obtained the personal loan of Rs.60,000/- and repaid the same to the 3rd respondent herein.

3. The learned counsel for the petitioner further submitted that the

third respondent sent another notice dated 06.02.2018 to the Head Master, Danish Mission Elementary School, Kanalapadi Village and Post, Kilpennathur Taluk, Tiruvannamalai District, where she was working as an Elementary Teacher and requested the Head Master, Danish Mission Elementary School to take appropriate action as against the petitioner for recovery of the same. Thereafter the petitioner sent a legal notice on 14.02.2018 to the 3rd respondent herein stating all the facts that she had repaid the entire loan as per the loan agreement and requested him to provide loan closure certificate within a period of 7 days from the date of receipt of a copy of the said legal notice. But there was no response from the 3rd respondent, hence on 23.02.2018, again she sent another legal notice to the 3rd respondent herein to provide the loan closure certificate to her, but there was no reply for the same till date.

4. The learned counsel for the petitioner further submitted that in the meantime, the petitioner received a copy of the letter sent to the Chief Educational Officer, Tiruvannamalai District by the 3rd respondent dated 10.04.2018 and in the said letter it is stated that the petitioner had obtained a personal loan of Rs.70,000/- and till date she had not paid the capital loan amount to a sum of Rs.51,200/- and till 09.04.2018 the interest for the said due

amount was fixed as Rs.1,10,403/- total Rs.1,61,603/-. Further in the said letter the 3rd respondent has stated that the petitioner is going to retire on superannuation on 30.04.2018 and requested to demand her to provide no pending loan certificate from the 3rd respondent branch before sanctioning of all her pension and other retirement benefits payable to the petitioner.

5. The learned counsel for the petitioner further more submitted that after receiving the said notice on 05.06.2018, the petitioner sent another legal notice to the 3rd respondent stating that as per the Co-operative Bank rules, the Co-operative banks only have a right to file a suit for recovery of any due amount if payable by the petitioner and further stated that the 3rd respondent herein has no locus to send notice to the Chief Educational Officer, Tiruvannamalai or Head Master, Danish Mission Elementary School where the petitioner was working as an Elementary School Teacher and retired after the age of superannuation. Thereafter, the 3rd respondent herein not sent any notice to the petitioner. On 30.04.2018, the petitioner has retired from her service and in the meantime she received a letter from the 2nd respondent herein vide Na.Ka.No.956/A1/2018 dated 30.05.2018 directing the petitioner to pay the pending loan amount to the 3rd respondent herein. Thereafter, she went to the 2nd

respondent's office and stated all the facts to him and on 10.07.2018 the 1st respondent herein vide Na.Ka.No.3557 A1/2018, dated 10.07.2018 issued a letter to the petitioner that the petitioner has not obtained any interim pension and having no criminal proceedings as against her and have no due payable to the Government. Thereafter, the petitioner received her retirement benefits from the respondents 1 and 2 herein, except the earned leave salary and salary for the on duty days and the petitioner demanded the same from the respondents 1 & 2 herein and they have shown the letter received from the 3rd respondent herein and direct her to obtain the loan closure report from the 3rd respondent herein.

6. The learned counsel for the petitioner further submitted that the 1st respondent sent an impugned notice vide Na.Ka.No.956/A1/2018 dated 19.06.2020 directing the petitioner to pay the pending loan amount of Rs.1,83,230/- (Capital Rs.51,200/- and interest Rs.1,32,030/-) to the 3rd respondent herein and provide the acknowledgement receipt to his office and after the same only they can able to sanction the earned leave salary and salary for the on duty days and the petitioner send a representation to the 1st respondent on 02.07.2020 but till date there was no action on the same. Aggrieved by the above order passed by the 1st respondent the petitioner has

come forward with the present writ petition.

7. The counter affidavit dated 20.07.2023 has been filed by the 1st respondent and it is relevant to extract paragraph nos.5 & 6 of the counter affidavit and the same are extracted as below:-

> ***5. It is humbly submitted that subsequently, the petitioner filed above writ petition in this Hon'ble Court with a prayer to quash the 1st respondent proceedings made in Na.Ka.No.956/A1/2018, dated 19.06.2020. Subsequently, this Hon'ble Court in its interim order dated 27.07.2020 in WMP.No.11861 of 2020 in W.P.No.9737 of 2020 inter alia ordered as follows:***
>
> ***"...2. There shall be a interim order to the effect that the respondents are directed to release the amount due to petitioner by retaining a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with them. The amount so retained shall be deposited by the 1st and 2nd respondents in the 3rd respondent/Bank. In case, the petitioner succeeds in the writ petition, the said amount so retained shall be refunded to the petitioner together with Bank's rate of interest prevalent as on date or 6% per annum, whichever is more...."***
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> ***6. It is humbly submitted that subsequently to comply with the above said interim order the 1st and 2nd respondents opened an Saving Bank Account on 27.10.2020 and obtained consent from the petitioner to deposit the said amount in the 3rd respondent Bank vide consent letter dated 12.11.2020 and after scrutinising Service Record of the petitioner Bill was prepared for encashment of Earned Leave***

and Unearned Leave on Private affairs and the same was submitted in the Treasury and encashed on 02.02.2021 and the Deposit was made on 04.02.2021 for 2 years (Deposit Receipt No.711888237) which still lies in the 3rd respondent's Bank.

8. The learned Government Advocate appearing for the 1st respondent submitted that this Court by an interim order dated 27.07.2020 in WMP.No.11861 of 2020 in W.P.No.9737 of 2020 passed the following order:-

the amount payable to the Bank is by the petitioner is a sum of Rs.2,26,824/- after deducting a sum of Rs.27,850/- which has been already paid by the petitioner and the same has been admitted and not disputed by the third respondent Bank. This Court by way of interim order has directed the respondents to retain a sum of Rs.2,00,000/- and to be deposited by the 1st & 2nd respondents in the 3rd respondent Bank at the time of adjournment. This Court by order dated 27.07.2020 in WMP.No.11861/2020. which is exactly three years back and by this time interest would have been agreed for the said sum of Rs.2,00,000/- . The amount of Rs.2,00,000/-

9. Counter affidavit dated 02.11.2020 has been filed by the 3rd respondent and it is relevant to extract paragraph No.4 of the counter affidavit and the same is extracted as below:-

4. As regards to the averments made in para No.2, I humbly submit that

the petitioner submitted with relevant regards for getting the Government employees salary loan application and hence she was sanctioned for Rs.70,000/- as salary loan on the condition that the pay drawing officer should recover the amount as per the monthly demand in 60 monthly instalments with effect from 30.04.2003, with interest at the rate of 14.5% as per the loan sanction order of the Tiruvannamalai District Central Co-operative Bank Ltd., in the RC.No.147/Pa.Sa.Ka./2002 dated 21.03.2003 (Xerox copy enclosed No.1). According to the loan sanction order of the bank the conditions were fulfilled by the petitioner, the petitioner was disbursed the salary loan of Rs.70,000/- in the loan No.61 and then coverted to CBS loan No.212051885 on the date 26.03.2003 that the demand period was upt 60 months at Rs.1200/- per month with rate of interest at 14.5% on the remaining principal balance. The petitioner while getting the salary loan she had assured to repay the loan in her letter dated 26.03.2008 that is in Tamil as below:-

"நான் திருவண்ணாமலை மாவட்ட மத்திய கூட்டுறவு வங்கி, காந்தி நகர் கிளையில் பெற்றுள்ள அரசு ஊரியர்களுக்கான வங்கி கடன் ரூ.70,000./ (ரூபாய் எழுபதாயிரம் மட்டும்) ஐ பிரதிமாதம் தவணை தவறாமல் செலுத்தி விடுகிறேன் என்றும், அவ்வாறு செலுத்தாதபட்சத்தில் மேற்படி வங்கியின் சட்டத்திட்டங்களுக்கு உட்பட்டு எடுக்கும் நடவடிக்கைகளுக்கு கட்டுப்படுகிறேன் என்றும் உறுதி கூறகிறேன" ***(xerox copy enclosed No.2). I further humbly submit that the petitioner did not follow according to her above statement. According to the available loan records of the petitioner, the petitioner did not come forward to remit back the loan dues in every month, but she remitted in occasionally at her own decision as below (xerox copy of the loan ledger enclosed No.3).***

Date of Remittance	***Amount Remitted***	***Proportionate of Remitted Amount***		***Balance Principal outstanding***
		Principal	Interest	
31.03.2004	-	-	-	56800
1.6.2004	2085	-	2085	56800
1.10.2004	8500	5600	2900	51200
12.4.2006	1875	-	1875	51200

The petitioner along with the other tow sureties namely (1) Thiru.R.George Washington, Danish Mission School, Mathanpoondi and (2) Thirumathi D.Bhuvaneswari, Danish Mission School, Thokkavadi were given the arbitration notices under Section 90 of the Tamil Nadu Co-operative Societies Act of 1983, on the dated 22.02.2003 and 25.09.2004. Consequent of these notices the petitioner had remitted mere amount on the dated 01.06.2004; 01.10.2004 and 12.04.2006 as narrated in this para above. Default of the remittances due to the petitioner's salary loan the arbitration claim petition in ARC.No.72/2007-2008 was filed before the Deputy Registrar of Co-operative Societies, Tiruvannamalai Circle, Tiruvannamalai, the statutory arbitrator and thereby the petitioner's salary loan was foreclosed by awarding the decree in ARC No.72/2007-2008 on 28.09.2007 to the outstanding principal amount Rs.51,200/- with interest Rs.13,308/- in aggregated to Rs.64,508/- for which further interest at the rate of 17.5% with effect from 28.09.2007 till the date of closure of the loan. After the decree of the salary loan the petitioner had remitted on the dated 07.11.2007; 12.04.2008 and 24.11.2011 respectively of Rs.2850/-; Rs.5000/- and Rs.20,000/- which mere amounts were proportionate to the further interest itself. Thereafter the last remittance date of 24.11.2011, the petitioner did not remit any amount to the loan till the date. If the petitioner's salary loan No.212051885 supposed to be closed on the date of 15.09.2020, the calculation of the computerised system shows due as below:-

Principal	***Rs.51,200.00***
Accrued Interest	***Rs.1,40,831.00***
Penal interest	***Rs.2,133.00***
Charges	***Rs.225.00***

Total	***Rs.1,94,389.00***

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the copy of the computerised account statement enclosed herewith (copy enclosed No.4). I humbly submit that the further interest shall be accrued till the date of closer of the loan.

10. The learned counsel appearing for the 3rd respondent submitted that the 3rd respondent Bank in its written instructions dated 14.08.2023 addressed to the learned Standing Counsel has stated that the petitioner and her husband Thiru.Yesupatham have availed salary loans of Rs.70,000/- each from the 3rd respondent Bank Gandhi Nagar Branch during the year 2003 which were to be repaid in 60 monthly instalments. **Thiru.Yesupatham husband of the petitioner closed his loan account on 27.09.2007, whereas the petitioner namely Gunaselvi has not closed her salary loan account and defaulted in repayment, the loan outstanding has become overdue and has become Non Performing Asset (NPA)**. Since the petitioner has not responded to the reminders of the 3rd respondent requesting her to repay the loan, the Bank was forced to initiate statutory action of Arbitration proceedings under Section 90 of Tamil Nadu Cooperative Societies Act, 1983. The arbitrator has passed the Award No.ARC.72/2007-2008 on 28.09.2007 for Rs.64,508/- which comprised the following items

Principal Balance	Rs.	51,200.00
Interest	Rs.	10,882.00
Penal Interest	Rs.	2,251.00
Expenditures incurred	Rs.	175.00
Total	Rs.	64,508.00

11. It is further stated that the award amount of Rs.64,508/- will attract interest @ 17.5% p.a and as on date 11.08.2023 as per the award conditions the petitioner has to pay Rs.2,26,824/- which comprises of the principle amount of Rs.51,200/-, interest Rs.1,70,263/-, Penal interest Rs.5,111/- and other charges Rs.250/- towards her loan account.

12. The learned counsel further submitted that the petitioner has repaid only a sum of Rs.27,850/- and if the petitioner is aggrieved by the award passed by the arbitrator under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983, **the petitioner has appeal remedy under Section 152 of the said Act before the Cooperative Tribunal and the petitioner has not availed the appeal remedy till now.**

13. Heard both sides and perused the materials available on record.

14. On perusal of the records, it can be seen that the petitioner has availed a salary loan of Rs.70,000/- from the Gandhi Nagar Branch of the third respondent Bank during the year 2003 and the same is repayable in 60 monthly instalments and the petitioner has defaulted in the repayment and not closed her salary loan account, due to which the pending benefits to which the petitioner is entitled was not paid by the third respondent. The petitioner was asked to submit No Pending Loan Certificate from the third respondent Bank for sanctioning the pension and other retirement benefits payable to the petitioner. Since the loan amount was not repaid by the petitioner the first respondent issued an impugned notice vide Na.Ka.No.956/A1/2018 dated 19.06.2020 directing the petitioner to pay the pending loan amount of Rs.1,83,230/- (Rs.51,200/- capital) and interest Rs.1,32,030/- to the third respondent and to provide acknowledgement receipt to his office and the above said notice is under challenge in the present writ petition.

15. According to the third respondent/Cooperative Bank the loan was **availed by the petitioner way back in the year 2003 i.e., 20 years back and since the petitioner has not responded to the reminders and notices send by**

the third respondent requesting her to repay the loan amount the third respondent Bank initiated statutory action under Section 90 of the Tamil Nadu Cooperative Societies Act, 1983 initiating arbitration proceedings to recover the loan amount along with interest. It is an admitted fact that the petitioner has already paid a sum of Rs.27,850/-. The arbitrator has passed an award No.ARC 72/2007-2008 on 28.09.2007 for Rs.64,508/- which was not challenged by the petitioner under Section 152 of Tamil Nadu Cooperative Societies Act, 1983 before the Cooperative Tribunal and without exhausting the appeal remedy the petitioner has approached this Court by way of filing the present writ petition. The arbitration award dated 28.09.2007 for Rs.64,508/- and the 1st respondent has issued the impugned notice on 19.06.2020 asking the petitioner to pay the principle balance amount of Rs.51,200/- along with interest of **Rs.1,32,030/- for 13 years**. When the matter was taken up for final hearing, the learned counsel appearing for the 3rd respondent Bank submitted that though the award amount of Rs.64,508/- was **awarded on 28.09.2007** the petitioner has not come forward to settle the same and as on date the award amount will attract interest @ 17.5% p.a. and as on 11.08.2023 the petitioner has to pay a sum of Rs.2,26,824/- which comprising the principal amount of Rs.51,200/-, interest Rs.1,70,263/-, Penal interest

Rs.5,111/- and other charges Rs.250/- towards loan amount of the petitioner. **A copy of the arbitration award dated 28.09.2007 was also submitted before this Court by the learned counsel appearing for the 3rd respondent**. The aim and objective of the Co-operative Bank is to help the general public, Government servants by granting small loan, jewel loan, agricultural loan etc., which are repayable in monthly equal instalments according to the amount sanctioned by the bank. The petitioner being a school teacher and having obtained the loan from the 3rd respondent Co-operative Bank ought to have repaid the amount without any default as stipulated in the loan agreement in 60 monthly instalments without any default and without causing any loss to the Bank by committing default in payment and as a teacher she is expected to repay the loan promptly and she must be an example to others. The impugned notice dated 19.06.2020 issued by the first respondent is under challenge in the present writ petition and this Court at the time of admission passed an interim order. At this juncture, it is relevant to extract para 5 & 6 of the counter affidavit dated 21.07.2023 filed by the first respondent.

> ***5. It is humbly submitted that subsequently, the petitioner filed above writ petition in this Hon'ble Court with a prayer to quash the 1st respondent proceedings made in Na.Ka.No.956/A1/2018, dated 19.06.2020. Subsequently, this Hon'ble Court in its interim order dated***

27.07.2020 in WMP.No.11861 of 2020 in W.P.No.9737 of 2020 inter alia ordered as follows:

"...2. There shall be a interim order to the effect that the respondents are directed to release the amount due to petitioner by retaining a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with them. The amount so retained shall be deposited by the 1st and 2nd respondents in the 3rd respondent/Bank. In case, the petitioner succeeds in the writ petition, the said amount so retained shall be refunded to the petitioner together with Bank's rate of interest prevalent as on date or 6% per annum, whichever is more...."

6. It is humbly submitted that subsequently to comply with the above said interim order the 1st and 2nd respondents opened an Saving Bank Account on 27.10.2020 and obtained consent from the petitioner to deposit the said amount in the 3rd respondent Bank vide consent letter dated 12.11.2020 and after scrutinising Service Record of the petitioner Bill was prepared for encashment of Earned Leave and Unearned Leave on Private affairs and the same was submitted in the Treasury and encashed on 02.02.2021 and the Deposit was made on 04.02.2021 for 2 years (Deposit Receipt No.711888237) which still lies in the 3rd respondent's Bank.

16. According to the 3rd respondent as on 11.08.2023 the amount payable to the Bank by the petitioner is a sum of Rs.2,26,824/- after deducting a sum of Rs.27,850/- which has been already paid by the petitioner and the same has been admitted and not disputed by the 3rd respondent Bank. **At the time of**

admission, this Court by way of interim order dated 27.07.2020 in WMP.No.11861 of 2020 in W.P.No.9797 of 2020 has directed the respondents to retain a sum of Rs.2,00,000/- and to be deposited by the 1st & 2nd respondents in the 3rd respondent Bank which is exactly three years back and by this time interest would have been accrued for the said sum of Rs.2,00,000/-. The amount of Rs.2,00,000/- along with accrued interest would be exceeding the amount of Rs.2,26,824/- and the amount to be repaid by the petitioner for the Home loan availed from the Bank in the year 2003. The Cooperative Bank serves the marginal, middle class of the society by providing them loan mainly for agricultural purposes and jewel loan, small loan and loans for other emergency needs and if borrowers are defaulting in paying the amount borrowed from the Bank no doubt the Bank would be at loss and in the present case on hand the loan amount has become overdue and the same has become Non Performing Asset (NPA). **In this case the petitioner/borrower is a school teacher who is expected to be punctual, prompt in repaying the amount as a teacher she teaches punctuality, discipline to the students in the school.** The person like the petitioner should stand as an example to others rather than being a defaulter and the same amounts to cheating which is unfortunate and to be highly deprecated by this

Court. This Court is not inclined to direct the petitioner at this stage to approach the Co-operative Tribunal by way of an appeal under Section 152 of the Tamil Nadu Co-operative Societies Act, 1983 challenging **the arbitration award which was passed as early as in the year 2007 i.e., 16 years back**.

17. In view of the above factual matrix of the case, this Court is of the considered view that the impugned notice passed by the 1st respondent has to be confirmed and the same is hereby confirmed. The third respondent is directed to deduct a sum of Rs.2,26,824/- which is payable by the petitioner to the Bank as on 11.08.2023 along with the interest up to date of realisation and settle the remaining amount if any available with the bank to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

18. In the result, the writ petition stands dismissed with the above direction. No costs. Consequently connected miscellaneous petition is also closed.

29.09.2023

dpq
Index : Yes/No
Speaking Order : Yes/No

To

1. The Block Educational Officer – II
   Kilpennathur
   Tiruvannamalai District.

2. The Additional Assistant Elementary Educational Officer
   Kilpennathur,
   Tiruvannamalai District.

3. The Branch Manager
   The Tiruvannamalai District Central Co-operative Bank Ltd
   No.9, 6th Street, Gandhi Nagar,
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J. SATHYA NARAYANA PRASAD, J.

dpq

W.P.No.9737 of 2020

29.09.2023