IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.741 of 2017

A. Radhakrishnan ... Petitioner

Vs.

1.The Authority under Payment of Gratuity Act/
Assistant Commissioner of Labour (incharge),
Salem.

2.D.D.9 Uthangarai Agricultural
Producers Co-operative Marketing Society,
Rep. by its Managing Director,
Uthangarai Post, Krishnagiri District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the second respondent to pay the gratuity amount of Rs.4,30,364/- with 10% interest as ordered by the first respondent in P.G.No.11 of 2015 dated 31.08.2015.

For Petitioner : Mr.C.K. Chandrasekkar

For Respondents : Mr.T.M. Rajangam,
Government Advocate [R1]
Mr.L.P. Shanmugasundaram [R2]

ORDER

The petitioner herein, while serving under the second respondent/Society, reached the age of superannuation on 31.08.2012. Though he was permitted to retire on the date of superannuation, the Gratuity together with other retirement benefits, were not paid to the petitioner by the second respondent herein, on the ground that there were surcharge proceedings pending against the petitioner.

2. The denial of disbursement of the Gratuity and other retirement benefits to a retired employee on the ground that the surcharge proceedings are pending, is no more *res integra* and has been dealt with in various decisions of this Court, wherein, it was held that in view of Section 79 of the Tamil Nadu Co-operative Societies Act, such withholding of the Gratuity amount is impermissible in law.

3. This apart, the petitioner herein along with 2 others, had approached the authority under Sections 7(4)b and 10(1) of the Payment of Gratuity Act, 1972, seeking for computation of the gratuity amount and by an order dated 31.08.2015, the authority had determined the gratuity amount payable and had directed the second respondent to pay the sum within a period of 30 days, failing which, the amount shall be paid together with interest @ 10% p.a. This order of the authority under the Payment of Gratuity Act, has not been challenged by the second respondent herein and hence, has attained finality. On this ground also, the petitioner herein would be entitled for payment of the gratuity amount.

4. In the case of ***'N. Ravi Chandran Vs. The Registrar of Co-operative Societies (Housing)'*** an order dated 26.07.2021 in WP.No.25073 of 2019, came to be passed, wherein, the entitlement of the Co-operative Society to receive the Gratuity amount irrespective of the fact that the surcharge proceedings were pending on the date of superannuation, was dealt with and the society was directed to disburse the Gratuity, Employees Provident Fund, including interest @ 10% p.a., in the following manner:-

> **.....** *"3. In one such decision rendered by this Court in the case of* ***A.Sengodan vs. Registrar of Co-operative Societies*** *reported in* ***(2015) 6 MLJ 684,*** *such a proposition was laid down in the following manner:*
>
> > *"5. On the other hand, if the provisions of the Payment of Gratuity Act are not applicable to the case of the petitioner, the issue will be*

governed by Section 79 of the Tamil Nadu Co-operative Societies Act, which is extracted hereunder:

> *"Section 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-laws 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. A reading of the above extracted Section 79 makes it clear that the provisions of the Payment of Gratuity Act, are being incorporated therein, the gratuity earned by an employee for rendering service, cannot be with-held at the time of retirement.

7. It is also relevant to notice the fact that the third respondent-Society is a non-pensionable establishment and only retirement benefits like Gratuity are being paid to its employees.

8. Equally, it is also worthwhile to be noted that the Provident Fund cannot be with-held. While a certain amount is being deducted towards the PF contribution from the salary of employees like the *petitioner herein, matching contribution is made by the employer and disbursed at the time of retirement of an employee.*

9. If the establishment like the third respondent-Society is governed by the Employees' Provident Funds and Miscellaneous Provisions Act, then the petitioner shall be paid the contribution made by him at the time of retirement, and the petitioner is entitled to pension as provided under the scheme provided under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act.

10. If an employee is not governed by the Employees' Provident Funds and Miscellaneous Provisions Act, the same are not applicable to the employees like the petitioner working under the third respondent-Society, and in that case, Section 78 of the Tamil Nadu Co-operative Societies Act is applicable, which reads as follows:

> *"Section 78: Provident Fund: (1) A registered society not being an establishment to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Central Act XIX of 1952) applies, may establish a Provident Fund for the benefit of its employees to which shall be credited all contributions made by the employees and the society in accordance with the by-laws.*
>
> *(2) A Provident Fund 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."

11. In my view, unless there is a statutory provision for with-holding the Provident Fund (relating to contributions of employer and employees) / Gratuity, or other retiral benefits, the same cannot be with-held. The employer cannot with-hold the above retiral benefits of the employees under any circumstances, in the absence of power conferred on them or provided under the relevant statute."

4. The aforesaid decision in A.Sengodan's case supra, came to be affirmed by the Hon'ble Division Bench of this Court, through an order dated 08.02.2019, passed in W.A.No.1466 of 2015, whereby, the order of the learned Single Judge came to be affirmed in the following manner:

"6. We are in agreement with the reasoning of the Writ Court that in the absence of an enabling statutory provision, it would not be permissible for the employer to withhold the terminal benefits of a retired employee. This view is fortified by the decision of the Division Bench of this Court in Joint Registrar of Co-operative Societies vs. K.Ambarayan (Judgement dated 11.04.2018 in WA.Nos.663 and 668 of 2015), in which, one of us (K.K.Sasidharan,J) is a party. The eligible amount of terminal benefits shall be disbursed to the petitioner under written acknowledgement and a report of compliance shall be filed before the Registrar (Judicial) of this Court by 15.03.2019."

5. This proposition has been reiterated in several other judgements of this Court. As such, the reasoning adduced by the respondents in denying the petition of the gratuity and the provident fund amounts cannot be sustained.

6. In the result, the impugned order passed by the second respondent in Na.Ka.677/2019Ki.Vi.thi, dated .07.2016 is quashed. Consequently, there shall be a direction to the second and third respondents to disburse the Gratuity, Employees Provident Fund (EFP own), Employees Provident Fund (Society Contribution), Leave Salary and Security Deposit, payable to the petitioner, together with interest at the rate of 10% per annum from 31.07.2019 i.e., date of retirement, till the date of actual payment. The respondents shall endeavour to disburse the amount, within a period of eight weeks from the date of receipt of a copy of this order......"

5. The aforesaid extract is self-explanatory. In view of the fact that the authority under the Payment of Gratuity Act, 1972, has already determined the gratuity payable to the petitioner herein and in the light of the decision of this Court in ***N. Ravi Chandran*** *(supra)*, the petitioner would be entitled to receive his entire retirement benefits, including the Provident Fund and Gratuity. In view of the belated payment of the Gratuity, the petitioner would be entitled to receive the amount together with interest @ 10% p.a., as provided in the Payment of Gratuity Act, 1972.

6. In the light of the above observations, there shall be a direction to the second respondent herein, to disburse the Gratuity amount payable to the petitioner, together with interest at the rate of 10% per annum from 31.08.2012 i.e., the date of retirement, till the date of actual payment. The respondent shall endeavour to disburse the amount, within a period of four (4) weeks from the date of receipt of a copy of this order.

7. Accordingly, the Writ Petition stands allowed. No costs.

08.02.2023

Speaking/Non-speaking Order
Neutral Citation: Yes/No
Index: Yes/No
Internet: Yes/No
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To

1.The Authority under Payment of Gratuity Act/
Assistant Commissioner of Labour (incharge),
Salem.

2.Managing Director,
D.D.9 Uthangarai Agricultural Producers
Co-operative Marketing Society,
Uthangarai Post, Krishnagiri District.

M.S.RAMESH,J.

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