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Writ Petition No.11391 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2024

CORAM

THE HON'BLE DR. JUSTICE D.NAGARJUN

Writ Petition No.11391 of 2015
and MP.No.1 of 2015

P.G.No.30, Sathya General Employees
Co-Operative Thrift & Credit Society Ltd.
Rep. by its Secretary
Bhavani Sankari
38A,Thimmaiyanpudhur, 2nd Street,
Sathyamangalam
Erode District.

...Petitioner

Versus

- 1.The Headmaster
Corporation High School
Rangasamudram
Sathyamangalam,
Erode District
- 2.The Accounts Officer/Pen 34
Principal Accountant General (Accounts and Entitlements)
No.361,Anna Salai,
Chennai.
- 3.The Chief Administrative Officer
The Office of the Principal District Judge
District Court Complex, Erode District.
- 4.Thiru Anandbutt
Senior Bailiff
Principal Sub Court



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Erode District.

5.The Commissioner

Sathyamangalam Municipality Sathyamangalam

Erode - 638 402 .

6.The Chief Education Office

Erode District Erode.(R5 and 6 are impleaded

as per order dated 29.11.2023 in WMP No.

33588/2023 in WP.No.11391/2015 BY DNRJ)

...Respondents

Prayer: This writ petition is filed under Article 226 of the Constitution of India, with a prayer to issue a writ of Mandamus directing the respondents 1 to 3 to consider the representation of the petitioner dated 07.10.2014 and 11.02.2015 to settle the dues to the petitioner from the terminal benefits of the deceased Tmt.S.Sasikala or from the fourth respondent who succeeds the estate of the deceased S.Sasikala.

For Petitioner :Mr.M.Nandkumar
for M/s.S.Ramesh Kumar

For Respondents : Mr.V.Vijay Shankar
Standing Counsel – R2.
: Mr.I.C.Vasudevan – R4.
: Notice Served, No Appearance – R1 & R3
: Mr.R.U.Dinesh Raj Kumar
Additional Government Pleader – R5 and R6



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ORDER

This Writ Petition is filed with a prayer to issue a writ of Mandamus directing the respondents 1 to 3 to consider the representation of the petitioner dated 07.10.2014 and 11.02.2015 to settle the dues to the petitioner from the terminal benefits of the deceased Tmt.S.Sasikala or from the fourth respondent who succeeds the estate of the deceased S.Sasikala.

2. It is submitted by the learned counsel for the petitioner that Tmt.S.Sasikala the wife of the 4th respondent was working as a PG Assistant in the Municipal High School, Sathyamangalam from 06.09.2010, and she retired from service on 28.02.1931. Tmt.S.Sasikala during her service has approached the Petitioner Co-Operative Society for granting of loan by filing an application dated 21.09.2011. She has enclosed her salary certificate to show that she was earning a sum of Rs.27,797/- per month. She has submitted her Loan Application as *Application No.A.M 1885* by completing all the formalities and thereby her Loan Application was approved for a loan amount of Rs.1,50,000/-. She also had given instructions to the Drawing Officer to deduct monthly installments from her salary for a sum of Rs.27,797/- per month.



Accordingly the Drawing Officer/Respondent Nos.1 to 3 was deducting the monthly installments, towards loan amount borrowed by her.

3. On 14.07.2013, the borrower S.Sasikala died by leaving behind her husband/4th respondent. The unpaid loan amount advanced to her was to the tune of Rs.1,08,983/-. The petitioner society has requested the 1st respondent on 18.01.2014 by way of representation to deduct the balance amount of Rs.1,08,983/- from the terminal benefits of S.Sasikala, and forward the same to the society of the petitioner. It is submitted that the fourth respondent/ husband of the borrower is working as Senior Bailif in the Principal Sub-Court, Erode District, and he has been influencing in not deducting the installment by the Respondent No.1. It is further submitted by the learned counsel for the petitioner that the 4th respondent is challenging the petitioner society that they can never recover the loan amount and the 4th respondent being the legal heir is bound to pay the remaining loan amount of his wife as he has succeeded to the estate of the deceased.

4. Mr.V.Vijay Shankar, learned standing counsel for the 2nd respondent submitted that they have received the communication from the petitioner society and that the petitioner society was advised to approach to the 1st respondent/The employer of the deceased borrower. The 4th



respondent though represented by Mr.R.C.Vasudevan, no counter affidavit is filed.

5. Heard both sides and perused all the available materials on record.

6. Wife of the 4th respondent by name S.Sasikala has become member of the petitioner society on 21.09.2011, and borrowed loan to the tune of Rs.1,50,000/- by giving instructions to her Drawing Officer/1st respondent to deduct installment towards the loan amount from her salary. The wife of the 4th respondent has given authorization after the loan agreement for deduction of monthly installments, the relevant portion of the loan Agreement is extracted hereunder:

“ I further agree that in case of my transfer to places outside the limits of the society or in case of new dispersing officer “ I agree that I will submit this agreement to the new dispersing officer to enable him to make deduction on my monthly salary payable to the society” I further agree that in case of myself going out of service from my job either yourself or your successor are entitle to put it into writing to deduct the dues payable to the society from and out of arrears of salary, allowance, and other benefits.”

7. The learned counsel appearing for the 4th respondent has submitted a judgment of this Court dated 18.07.2017 in **T.Rathikala Vs. The Chief Engineer and Ors.** in W.P(MD)No.4043 of 2017, the relevant portion of the judgment is extracted hereunder:



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"8. But this Court is unable to countenance the contention made by the respondents. The reason is, the law is well settled that gratuity, leave salary, family benefit fund are all immuned from attachment. While dealing with a question whether the amount due as provident fund, leave salary, gratuity etc., to the deceased employee can be attached in the hands of the employer pending the suit for recovery of money filed against the legal representatives of such employee for amounts borrowed by him, this Court in Sathiyabama and others vs. M.Palanisamy and others reported in 2004-1-L.W.125, has held as follows:-

"9. It is therefore clear that these amounts which are payable to employees, so that they would not be left resourceless at the time of retirement are exempted for attachment, whether they are payable to the employee or to his legal representatives. The various decisions referred to above also indicate that whether the employee has retired, or has become insolvent or has died the character of these amounts do not change so long as they are in the hands of the employer. The immunity from attachment is complete. The object of the provisions are to see that the employee gets these amounts after his retirement or his heirs get them after the employee's 'death' since the scheme is a beneficial one, the authority viz.: the employer is a trustee for those sums and is bound to object to the attachment. The second respondent has rightly maintained its stand against the attachment. There can be no legal justification for classifying or describing such deposits or amounts differently after the employee's death or retirement, so long as they are with the employees, there is protection from attachments. Provident Fund amounts, pension and other compulsory deposit retain their character until they reach the hands of the employee, any other view cannot be taken considering the conditions in which such exemption provisions operate and the class of persons they were intended to benefit."

9. As this Court after referring to various judgments of the Apex Court has held that neither the gratuity nor the leave salary and provident fund can be attached, the 3rd



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respondent herein cannot recover the aforementioned benefits for non payment of loan borrowed by the petitioner's husband during his life time. Secondly, when the petitioner's husband died on 23.08.2016 while in service, the petitioner/wife and children who are the legal heirs of the deceased employee are entitled to the monetary benefits payable to Late.Thirupathy Venkadachalam.”

8. However, the learned counsel appearing for the petitioner Mr.M.Nandkumar for M/s.S.Ramesh Kumar submits that the judgment cited above by the learned counsel is not applicable to the facts of the case and has drawn attention of this Court to Section 48 of the Tamil Nadu Co-Operative Societies Act, the relevant para runs as under:

“48. Deduction from salary, wages or gratuity – (1).
A member of a registered society may execute an agreement in favour of that society providing that-

(a) his employer or the officer disbursing his salary or wages shall be competent, on a requisition in writing from the society to deduct every month from the salary or wages payable to him such amount as may be specified in the requisition towards the amount; and

(b) if he ceases to be an employee, his employer shall be competent on a requisition in writing from the society to deduct from the gratuity payable to such employee such amount as may be specified in the requisition towards the entire balance, due by him to the society in respect of any debt or other demand owing by the member to the society.”

9. Therefore, considering the above it is clear that the dues to be



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paid by an employer can be deducted by the employer from the gratuity payable to such employee. Be that as it may, the petitioner has sent representations to the first and fourth respondents on 07.10.2014 and to the third respondent on 11.02.2015. However these representations were not disposed of. Being responsible officer/Headmaster the representations of the petitioner dated 07.10.2014 and 11.02.2015 should have been disposed of by following the due process and keeping in view of the provisions of Cooperative Societies Act.

10. In view of the above the writ petition is disposed of directing the first respondent to consider the representations dated 07.10.2014 and 11.02.2015 of the petitioner and dispose of them as per the procedure known to law as expeditiously not less than four weeks from the date of receipt of copy of this order. There shall be no order as to costs. Connected MP is closed.

14.03.2024

Speaking Order : Yes/No
Index Case : Yes/No
Neutral Citation : Yes/No

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