IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.12.2023

PRONOUNCED ON : 13 .08.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.Nos.15826 of 2015
and
W.M.P.No.1 of 2015

T.Balu ...Petitioner

Vs.

1. The Joint Registrar of Co-operative Societies,
Vellore Region, Vellore.

2. The President
Villupuram District, Central Co-operative Bank Ltd.,
Villupuram. ..Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondents to disburse the Gratuity, Special Provident Fund and Encashment of Earned Leave Salary together with interest to the petitioner under Section 79 of the Tamil Nadu Coop. Societies Act.

For petitioner	:	Mr.K.Raja for Mr.M.Kaviveerappan
For R1	:	Ms.C.Sangamithirai Special Government Pleader
For R2	:	Mr.R.Arumugam

ORDER

This writ petition is filed for a direction to the respondents to disburse the Gratuity, Special Provident Fund and Encashment of Earned Leave Salary together with interest to the petitioner under Section 79 of the Tamil nadu Coop. Societies Act.

2. The petitioner was appointed as Assistant in the second respondent bank on 16.09.1996 and promoted as Assistant Manager and was further promoted as Branch Manager Incharge, at Vikravandi Branch. He was suspended from service on 23.02.2012 on the complaint of certain irregularities committed in the second respondent Bank. An enquiry was conducted and as per the enquiry report the petitioner was terminated from service on 23.11.2012. While so, the petitioner was not allowed to relieve on attaining the age of superannuation on 30.06.2013. The retirement benefits, *viz.,* Gratuity, Special Provident Fund and Encashment of Earned Leave benefits were also not disbursed to the petitioner; in this connection he has made several representations and finally on 29.01.2015 he has submitted one more representation to disburse his retirement benefits but there was no response from the respondents. Hence, this writ petition.

3. Separate counter affidavits have been filed by the first and the

second respondents stating that while the petitioner was working as Assistant Manager, Villupuram District Co-operative Bank and he has committed certain irregularities, for which charge sheet was issued to him on 29.12.211; he was called to give explanation, which he failed to do so; the second respondent appointed an enquiry officer to enquire the charges leveled against the petitioner and finally the enquiry officer has submitted his report on 26.09.2012 holding that except charge No.2 other charges were confirmed; the respondent Bank by proceeding dated 12.10.2012 directed the petitioner to submit his explanations and the same was submitted on 29.10.2012 by the petitioner; subsequently, the order of dismissal was passed on 23.11.2012; the petitioner filed a revision petition against the order of dismissal which was also dismissed. Apart from disciplinary proceeding surcharge proceedings were also initiated against the petitioner for Rs.1,04,94,608/- and the petitioner has filed Co-operative appeal before the District Court, Villupuram and an order dated 29.07.2016 has been passed to retrial the surcharge processing. Under these circumstances, when the petitioner is liable to pay the amounts, the relief sought by the petitioner cannot be granted.

4. It is mentioned in the counter affidavit that the petitioner has

indulged in various mis conducts and since the surcharge proceedings were initiated against the petitioner directing the petitioner to pay a sum of Rs.1,04,94,608/- the petitioner has no legal right to claim the terminal benefits.

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

6. The gratuity amount is being given to the employees keeping in view of his service rendered to the organisation. In case if this is denied by one reason or the other the retired employees would be put to lot of hardship. Therefore, in sofar as gratuity is concern either under Payment of Gratuity Act (for brevity "the Act") or Tamil Nadu Co operative Society Act, there is no provision which permits with holding of gratuity or forfeiting of gratuity excepting under certain circumstances as mentioned in 4 (6) of the Act.

7. The petitioner was working in the Tamil Nadu Co operative Society thereby, the provisions of Tamil Nadu Co operative Society Act, 1983 applies excepting Section 79 there is no other provisions which authorizes the Tamil Nadu Co operative Societies to with hold the gratuity on one ground or the other.

8. It is observed by this Court in the judgment decided between ***A.Sengodan vs. Registrar of Co-operative Societies, 2015 (5) CTC 726 : 2015 (4) LLN 154*** that gratuity and provident funds earned by the employees of the Society cannot be with held. The services rendered in the Co operative Society is non-pensionable service therefore, the monetary benefits of provident funds and gratuity cannot be with held in the absence of statutory provisions under the Co operative Society Act. The relevant paragraph of the above said judgment is extracted hereunder:

> *"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.
12. Hence, the impugned order is quashed. A direction is issued to the third respondent-Society to settle the retiral benefits including Provident Fund, Gratuity, Leave Encashment and other benefits connected thereto, as expeditiously as possible, and not later than eight weeks. The Writ Petition is allowed. No costs. The Miscellaneous Petitions are closed."

9. Similarly, it is held in another case reported in Special Officer, the Management of R.1779 Srirangam Co-op, Union Bank Ltd. vs. Joint Commissioner of Labor, 2012 (1) CWC 17 stating that the right of an employer to forfeit gratuity must reflect in order to termination itself and it should be a contemporaneous order and not a best defence taken by the

employer. More over opportunity is to be given to the employees in cases of forfeiture. Forfeiture of gratuity is to be exercised basing on a valid order of dismissal. Relevant paragraphs of the judgment are extracted hereunder:

> *"13.The Act provides for a close-knit scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions of a scheme for a gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which he may be denied therefrom. As noticed herein before, sub-section (6) of Section 4 of the Act contains a non obstante clause vis-.-vis sub-section (1) thereof. As by reason thereof, an accrued or vested right is sought to be taken away, the conditions laid down thereunder must be fulfilled. The provisions contained therein must, therefore, be scrupulously observed. Clause (a) of sub-section (6) of Section 4 of the Act speaks of termination of service of an employee for any act, wilful omission or negligence causing any damage. However, the amount liable to be forfeited would be only to the extent of damage or loss caused. The disciplinary authority has not quantified the loss or damage. It was not found that the damages or loss caused to Respondent 1 was more than the amount of gratuity payable to the appellant. Clause (b) of subsection (6) of Section 4 of the Act also provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been convicted for an offence involving moral turpitude. Conditions laid down therein are also not satisfied."*

10. In the case on hand the petitioner was terminated from service due to certain irregularities when he was working as a Branch Manger charge. However, no orders has been passed for forfeiture of either the gratuity amount or provident fund amount and other amounts to be paid to the petitioner. As already observed, there is no provision in Tamil Nadu Co operative Society Act for forfeiture of the gratuity.

11. Similarly, excepting Section 78 of the Tamil Nadu Co operative Society Act, 1983 there is no other provision in respect of provident fund to be maintained by the Tamil Nadu Co operative Society. Above all, the respondent Bank has not issued any proceedings at the time of termination of the petitioner forfeiting either part or full gratuity amount. Similarly, no such proceedings are issued in respect of stoppage of special provident fund and encashment of leave salary etc., The respondent Bank should have issued notice to the petitioner prior to stoppage of gratuity, special provident fund and encashment of leave salary etc. Therefore, if the respondent Bank has some right there must be proceedings from the Bank that the said funds which are to be paid to the petitioner are being stopped explaining the reasons for the stoppage. The respondent Bank has stated that since

surcharge proceedings are initiated against the petitioner, the petitioner has no legal right to claim terminal benefits. Under what provisions the petitioner has no legal right is not clearly mentioned.

12. In view of the above, this writ petition is allowed directing the respondent Bank to disburse the Gratuity, Special Provident Fund and Encashment of Earned Leave Salary together with interest to the petitioner under Section 79 of the Tamil Nadu Coop. Societies Act.

13. Accordingly, this writ petition is allowed. Connected W.M.P.is closed. No costs.

13.08.2024

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Index	:	Yes/No
Internet	:	Yes/No
Citation	:	Yes/No

DR. D.NAGARJUN,J.

vca

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