IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2024

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.2301 of 2020

P.N.Karunakaran .... Petitioner

Vs

1.The Chennai Port Trust
Employees Co-operative Bank Ltd.,
Rep. by its Managing Director,
Old No.37B, New No.110,
Semudoss Street,
Chennai – 600 001.

2.The Additional Registrar of
Co-operative Societies,
St.Mary's Road,
Ramapuram,
Chennai – 600 018.

3.The Registrar,
Registrar of Co-operative Societies (Credit),
N.V.N.Maligai,
E.V.R.Periyar High Road,
Kilpauk, Chennau – 600 010. .... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus call for the records and quash the order dated 14.02.2017 issued by the second respondent in RC.No.3209/2016/C2 read with letter dated 19.03.2019 from the first respondent to the extent it permits the withholding of Earned Leave, Security Deposit, Family Welfare Deposit pending dispose of W.P.NO.14423 of 2014 and consequently direct the second and third respondents to ensure that the first respondent Society pay the petitioner the balance of his terminal benefits amounting to Rs.5,40,347/- towards earned leave encashment, security deposit and family welfare deposit and interest on gratuity for delayed payment along with an interest of 13% from 30.11.2014 being the date of his retirement, till the date of payment.

For Petitioner	: Mr.D.Nagasaila
For R1	: Mr.L.P.Shanmugasundaram
For R2 & R3	: Mr.M.Rajendran Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the order passed by the second respondent dated 14.02.2017 and the letter dated 19.03.2019 which withhold the benefits comprising Earned Leave, Security Deposit and Family Welfare Deposit.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioner joined the services of the first respondent as Lower Division Clerk/Sheroff. Subsequently, he was promoted to the post of Accountant. While being so, there was a vacancy in the post of Secretary in the year 2010 and the petitioner was requested to take charge and function as Secretary-in-charge. Accordingly, the petitioner had taken charge as Secretary on 01.08.2010. While being so, the petitioner was served with a charge memo dated 20.07.2014 and the charges are as follows :-

> *Charge 1 : No register or filed were maintained separately for the audit rectification till date. As per section 20Q of the Tamil Nadu Co-operative Societies Act, 1988 a register should be maintained recording the audit defects noted or any objections of the audit and also record the action taken on the report and the details how it has been rectified. As soon as the defects are noted in the audit report it should be rectified and a copy should be sent to the Joint Registrar. The Secretary has not maintained in the register for according audit defects noted and by this Court he has failed in his duty.*
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> *Charge 2 : As per section 208 of the Income Tax Act, advance tax should be paid as per the schedule given in Section 211 of the Income Tax Act.*

(i) On or before 15th September – 30% of the tax calculated on the estimated income.

(ii) On or before 15th of December – 60% of the tax calculator it on the estimated income.

(iii) On or before 15th of March – the whole amount of tax calculated on the estimated income.

But since the income tax was not paid within the stipulated time the bank has incurred a loss of Rs.9.46 lakhs for the years 2011-12 and Rs.7.38 lakhs for the year 2012-13.

Charge 3 : The Secretary has misused his power and also acted against rule 10 of the bye laws of the bank by taking an insurance policy from the New India Insurance Company through his wife, who is an agent of the company for the purpose of insuring the fixed deposits, and other equipments of the bank.

Charge 4 : In addition to the above mentioned charges a separate memo dated 31.10.2014 was given to the petitioner in which an additional charge was framed. The Reserve Bank imposed a fine of Rs.74.03 lakhs on the Society for not maintaining the SLR for the period from 01.04.2009 to 31.03.2011.

4. On receipt of the said charge memo, the petitioner submitted his explanation, stating that it is not the duty of the Secretary-in-charge to maintain the various registers and his responsibility was limited to supervision. He further explained that a separate register was now being maintained to register and record audit defects along with the details of their rectification. The petitioner also pointed out that the Society's accounts were not computerised and that the advance tax was paid based on expected or projected profits, which could not be accurately calculated. The petitioner further explained that although a penalty was imposed due to lower projections of income for advance tax, the unpaid advance tax amount had been utilised for the society's banking business, generating profit from its use. Regarding the Statutory Liquidity Ration (hereinafter referred to as “SLR”) default and the penal interest imposed by the Reserved Bank of India starting from April, 2009, whereas the petitioner had taken charge as Secretary-in-charge only in August, 2010. Subsequently, the petitioner ensured proper payment of the SLR, cleared the entire backlog and updated all records.

5. As per the circular issued by the Reserve Bank of India under Section 24 of the Banking Regulation Act, 1945, every bank is required to maintain a SLR of 25% of its total deposits to meet the unforeseen exigencies and to protect the interests of the borrowers. Accordingly, the first respondent bank was required to maintain 15% of its deposits in Government securities and the remaining 10% with the Central Co-operative Bank. However, the Reserve Bank of India refused to recognize the 10% deposited by the first respondent with the Chennai Central Co-operative Bank, as part of the SLR citing the reason that the first respondent had availed the loans from the said banks. However, the explanation submitted by the petitioner was not accepted and a domestic enquiry was ordered by appointing an Enquiry Officer.

6. After due enquiry, the Enquiry Officer submitted a report dated 21.11.2014. The Enquiry Officer concluded that the first charge was partly proved and the charges 2 and 3 were held to be proved. In respect of the 4th charge, it is pending before the Court. Once again, the petitioner was called upon to submit his explanation. Subsequently, The petitioner was imposed a fine of Rs.5,000/- and directed to pay Rs.1,000/- to the bank representing the amount earned in two years by his wife along

with a fine of 12% interest. Further the retirement benefits due to the petitioner was withheld. Accordingly, the petitioner paid a fine of Rs.5,000/- as well as Rs.1,000/- along with 12% interest and he was permitted to retire from service by an order dated 29.11.20214, effective from the afternoon of 30.11.2014, on condition that a part of his financial benefits would be withheld. Aggrieved by the said order, the petitioner preferred a revision as contemplated under Section 153 of the Tamil Nadu Co-operative Societies Act. The Revisional Authority, considering all the facts and circumstances, held that the petitioner was holding the post of Secretary-in-charge under the control of the Board. Therefore, he cannot be held responsible for non-maintenance of the SLR.

7. Insofar as the retirement benefits are concerned, the petitioner is entitled for gratuity and it cannot be liable for any attachment. However, the remaining Earned Leave amount, Security Deposit amount and Family Welfare Deposit etc., cannot be released and must be withheld, subject to the result of W.P.NO.14423 of 2014, which was filed against the Reserve Bank of India challenging the levy of penalty dated 01.11.2011 and confirmed by the Appellate Authority dated 28.01.2014 and 14.05.2014. Once the Revisional Authority held that the

petitioner is not responsible for the penalty levied for the non-maintenance of SLR, no point in withheld the terminal benefits of the petitioner, such as Earned Leave encashment, Security Deposit and Family Welfare Deposit. If the first respondent filed the above writ petition, the petitioner cannot be held liable for the liability imposed by the Reserved Bank of India. Further, the writ petition has now been dismissed.

8. Insofar as the calculation of benefits comprising of Earned Leave encashment, Security Deposit and Family Welfare Deposit are concerned, it cannot be sustained and is liable to be quashed. Accordingly, the order impugned in this writ petition is hereby quashed. However, the petitioner was paid gratuity only to the tune of of Rs.7,41,711/- instead of Rs.8,46,905/- as ordered by the Revisional Authority. Therefore, the first respondent is directed to disburse the remaining amount of gratuity amount with interest at the rate of 6% per annum as well as the earned leave encashment, security deposit and family welfare deposit, within a period of four weeks from the date of receipt of a copy of this order.

9. With the above direction, this writ petition stands allowed. No costs.

20.08.2024

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

1. The Managing Director,
The Chennai Port Trust Employees Co-operative Bank Ltd.,
Old No.37B, New No.110,
Semudoss Street,
Chennai – 600 001.

2.The Additional Registrar of Co-operative Societies,
St.Mary's Road,
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G.K.ILANTHIRAIYAN, J.

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