



W.P.No.7371 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2025

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

W.P.No.7371 of 2023

and

W.M.P.No.7453 of 2023

R.Viswanathan

.. Petitioner

Versus

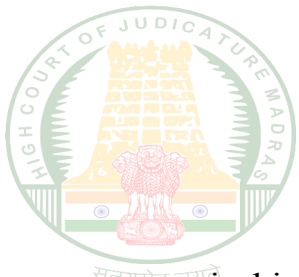
1.The Joint Registrar of Co-operative Societies,
Common Cadre Authority,
Ranipet Region, Collectorate,
Ranipet, Ranipet District.

2. The Joint Registrar of Co-operative Societies,
Ranipet Region, Collectorate,
Ranipet, Ranipet District.

3. The President,
Thakkolam Primary Agricultural
Co-operative Credit Society,
Thakkolam, Arakkonam Taluk,
Ranipet District.

...Respondents

Prayer: This petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the second respondent



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in his proceedings in Na.Ka.125/2023 B1. Dated 06.02.2023 and quash the same and consequently directing the respondents to disburse the General Provident Fund, Special Provident Fund, Encashment or Earned Leave and Encashment of Un-Earned Leave on private affairs to the petitioner and pass orders.

For Petitioner	: Mr.C. Prakasam
For Respondents 1 and 2	: Mr.N. Naveen Kumar, Government Advocate
For Respondent-3	: Mr. K. Surendran

ORDER

This petition is filed to issue a Writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the second respondent in his proceedings in Na.Ka.125/2023 B1, dated 06.02.2023 and quash the same and consequently directing the respondents to disburse the General Provident Fund, Special Provident Fund, Encashment of Earned Leave and Encashment of Un-Earned Leave on private affairs to the petitioner and pass orders.

2.The facts of the case is that the petitioner was discharging his duties as a Secretary in the 3rd Respondent Society without any remarks. While so, all of sudden the 3rd respondent issued suspension order to the



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petitioner on 25.01.2019. The sum and substance of the case is that the petitioner's superannuation date falls on 31.01.2020, but the Joint Registrar of Co-operative Societies passed an order on 31.01.2020 in Na.Ka.8702/2018/B1, wherein the petitioner was not permitted to retire, due to the reason that the criminal proceedings and surcharge proceedings are pending against him. However, the petitioner made a request to disburse his terminal benefits, but no orders has been passed. Pursuant to which the petitioner filed a W.P.No.21941 of 2022 seeking a direction directing the respondents to disburse the General Provident Fund, Special Provident Fund, Encashment of Earned Leave and Encashment of unearned Leave on private affairs and this Court disposed of the writ petition vide order dated 09.09.2022 with a direction to the respondents to disburse the retirement benefits viz., SPF, encashment of E.L and encashment of Un-Earned Leave on Private affairs within a period of twelve weeks from the date of receipt of copy of that order. The grievance of the petitioner is that inspite of the orders passed by this Court the second respondent passed the present impugned order rejecting the request of the petitioner for the reason that the disciplinary proceedings and criminal proceedings are pending against the petitioner.



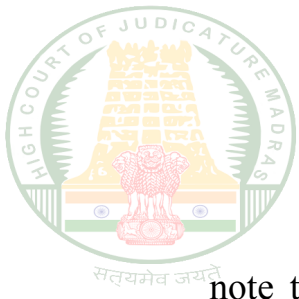
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Challenging the said impugned order the petitioner has come up with this petition.

3. The learned counsel appearing for the petitioner submitted that time and again this Court and Hon'ble Apex Court has held that the respondent has no right to withhold the terminal benefits of an employee due to the pendency of the criminal proceedings and disciplinary proceedings. He further submitted that when the petitioner earlier approached this Court in W.P.No.21941 of 2022, this Court has directed the respondents to disburse the terminal benefits to the petitioner, in spite of the same, the second respondent has not complied with the same. Hence, this petition.

4. The learned counsel appearing for the 3rd respondent/society filed a counter stating that surcharge proceedings have been initiated against the petitioner and two others in Na.Ka.No.950/2019.C.P on 03.04.2020 for misappropriation of funds and some amount has been paid and a sum of Rs.1,24,591/- is due and the society is entitled to recover the same at 18% interest till the date of receipt of the same. It is pertinent to



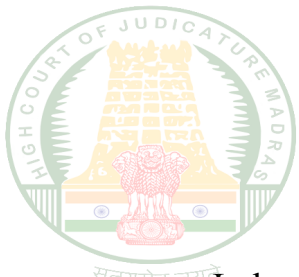
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note that in another enquiry initiated against the petitioner the enquiry officer has submitted a report on 15.09.2020 with a finding that the society has suffered loss to a tune of Rs.14,17,151/-. It has been further stated that at the time of retirement the petitioner is entitled for a sum of Rs.6,22,716/-, Rs.7,49,198/- and Rs.3,10,496/-towards Employees Provident fund Gratuity Fund, Gratuity and encashment of surrender leave respectively. The total amount comes to around Rs.16,82,410/-. It is pertinent to note that till date the petitioner has not paid any amount towards the order passed in Surcharge Order No.1/2019-2020 (Na.Ka.No.950/2019.C.P.) dated 03.04.2020. The society will be put to loss if the terminal benefits are disbursed to the petitioner without conclusion of the surcharge proceedings. Hence, prays to dismiss this petition.

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

6. Before advertng further it would be relevant to go through the Judgment passed by this Court in W.A.No.269 of 2020 and C.M.P.No.4450 of 2020 on 15.09.2021 wherein they have cited the



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Judgment passed in the case of ***The Secretary to Government, Revenue***

Department and others Vs. K. Palaniyandi reported in 2019(5) CTC 19,

and held as under:

“15. There are two type of monetary benefits payable to a Government Servant on retirement. One type of such benefits, such as Earned Leave, Provident Fund and Special Provident Fund amount, is a benefit already accrued and got credit to the account of the employee, which he is entitled to receive automatically on attaining superannuation. Those amounts become his personal property. It makes no difference even if he is not permitted to retire and a departmental proceedings is initiated against him. In other words, those amounts are derived out of like his “Savings” and therefore, the employer cannot stake any claim or impose any restriction as to when such amount could be paid to the employee even after attaining the age of superannuation. In Other words, even as per rules, these amounts are payable either on the date of superannuation or on the date of termination of extension of service. Such payment is to be made even to a person dismissed from service. When such being the position, there cannot be any justification on the part of the employer to retain the said sum by citing the pendency of proceedings.

16. The other type of monetary benefit payable to an employee on his retirement, such as pension, gratuity etc., is certainly not liable to be paid automatically on the person attaining superannuation, if the said person is not permitted to retire and on the other hand, proceedings are initiated against him and the same is pending. The outcome of such proceedings will certainly have a bearing on the entitlement to get or liability to pay such amount. Therefore, the person, who attained the age of superannuation and not to allow retire, based on



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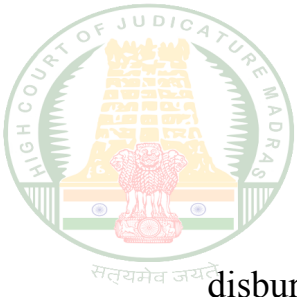
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pendency of the disciplinary proceedings cannot expect the employer to make the payment of pension and gratuity etc., even before the proceedings get terminated, since such liability is depending upon the outcome of such proceedings.”

7.This Court while dealing with the identical facts of the case in W.P.No.3945 of 2020 and W.A.No.269 of 2020 has held that the respondent has a right to withhold gratuity amount during the pendency of the disciplinary and criminal proceedings.

8. In view of the above facts, and on a perusal of the above Judgments passed by this Court, it is made clear that the respondent is entitled to withhold only the Gratuity amount and with regard to Employees Provident Fund and encasement of surrender leave the respondent has no right to withhold and the same should be disbursed to the petitioner.

9. For the foregoing reasons, this Court directs the respondents to disburse the employees Provident Fund and encasement of surrender leave amounting to Rs. 6,22,716/- and Rs.3,10,496/- the same may be



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disbursed to the petitioner within a period of four months from the date of receipt of a copy of this order.

10. With the aforesaid direction, this writ petition is disposed of.

No order as to costs. Consequently, the connected miscellaneous petition is closed.

26.02.2025

Speaking order : Yes/No
Neutral citation : Yes/No
Index : Yes/No
smn

To

1. The Joint Registrar of Co-operative Societies,
Common Cadre Authority,
Ranipet Region, Collectorate,
Ranipet, Ranipet District.

2. The Joint Registrar of Co-operative Societies,
Ranipet Region, Collectorate,
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V.BHAVANI SUBBAROYAN, J.

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