IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2025

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THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

**W.P.No.29838 of 2024**

G.Saravanan ... Petitioner

Vs.

1. The Joint Registrar of Cooperative Societies-cum-
Common cadre Authority,
O/o. The Joint Registrar of Cooperative Societies,
District Collector's Office Campus,
Dharmapuri – 636705.

2. The Administrator,
S.975, A.Murukkampatti Primary Agricultural
Co-operative Credit Society Ltd.,
Murukampatti Police & Village,
Karimangalam Taluk,
Dharmapuri – 635202. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first and second respondents namely, pertaining to the first respondent in Na.Ka./1060/2024/ThoSa dated 31.07.2024 and the second respondent dated 31.07.2024 and quash both the first and second respondents' proceedings dated 31.07.2024 only in respect of withholding of terminal benefits of the petitioner for a sum of Rs.2,33,314/- along with accrued interest; consequently, direct the first and second respondents to settle the entire retirement/terminal benefits i.e. Gratuity fund, provident fund and all other attendant monetary benefits to the petitioner without any deduction therefrom along with 12% interest p.a. from the date of retirement i.e. from 01.08.2024 till date of actual payment.

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| For Petitioner | : Mr.S.Sathiaseelan |
| For Respondents | : Mr.T.Chezhian,<br>Additional Government Pleader |

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**ORDER**

The instant writ petition has been filed challenging the impugned order dated 31.07.2024.

2. Heard the learned counsel for both sides and perused the materials available on record.

3. The learned counsel for the petitioner would submit that, by the

impugned order dated 31.07.2024, the petitioner's terminal benefits were withheld since the petitioner stood as a guarantor for one Shanmugam for a loan amount of Rs. 2,33,314/-, and the amount is still due to the Society. According to the learned counsel for the petitioner, the impugned order is in contravention to Sections 78 and 79 of the Tamil Nadu Co-operative Societies Act (hereinafter referred to as "the Act" for short). Apart from that, the learned counsel also relied upon the judgment of the Division Bench of this Court in ***Registrar of Co-operative Societies v. A. Sengodan,*** reported in ***2019 SCC OnLine Mad 9298,*** wherein the Division Bench of this Court has held that, in the absence of any enabling statutory provisions, a society cannot withhold the terminal benefits of retired employees.

4. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that, since the petitioner stood as a guarantor, his liability towards the principal borrower is co-extensive. Hence, the society is entitled to withhold the amount, as the loan due to the society is to be paid by the principal borrower.

5. I have given my anxious consideration to the submissions made on

either side.

6. The short fact to be considered in the present Writ Petition is whether, in view of any liability by the employee as a guarantor, the respondent society is entitled to withhold the terminal benefits. In this connection, it is appropriate to extract Sections 78 and 79 of the Act, which read as follows:-

***"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 bye-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.*

***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 bye-laws for payment of gratuity to the employees at such rates and on such conditions as may be specified in the bye-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."*

7. As per the above Sections, the society cannot have any right to withhold the provident fund and gratuity. Apart from that, as rightly contended by the learned counsel for the petitioner, the terminal benefits are like a property right. Hence, according to Article 300A of the Constitution of India, unless there is a statutory provision to withhold the property right, it cannot be interfered with by the authorities concerned. This Court is in full agreement with the submission made by the learned counsel for the petitioner. In support of his contention, the learned counsel for the petitioner relied on a judgment of the Hon'ble Supreme Court of India in ***State of***

***Jharkhand v. Jitendra Kumar Srivastava,*** reported in ***(2013) 12 SCC 210.***

8. Though there is a reference in the impugned order that the petitioner stood as a guarantor, the learned Standing Counsel is not in a position to state what the terms and conditions of the guarantee are, so as to withhold the terminal benefits. Accordingly, this Court is of the firm view that the impugned order is in contravention to Sections 78 and 79 of the Act and, as held by the Hon'ble Supreme Court of India, they cannot withhold the terminal benefits without there being any statutory provision under the Act.

9. In view of the matter, this Court is of the view that the impugned order is liable to be quashed. The respondents are directed to settle the petitioner's terminal benefits within a period of eight weeks from the date of receipt of a copy of this order, along with interest at the rate of 6% per annum from the date of retirement till the date of actual disbursal of the terminal benefits to the petitioner.

10. In the result, this Writ Petition is allowed. No costs.

**02.07.2025**

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Index : Yes/No
Speaking order /Non Speaking Order
Neutral Citation : Yes/No

To

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**C.KUMARAPPAN, J.**

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