BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 24.07.2025

Pronounced On : 07.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

W.A(MD)No.1532 of 2019
and
C.M.P.(MD)No.12248 of 2019

A.2922 BSNL Employees Co-operative
Thrift and Credit Society Ltd.,
Rep. by its Special Officer,
Thallakulam, Madurai. ... Appellant / 2nd Respondent

Vs.

1. K.Gunasekaran,
S/o.A.Kuthalingam,
No.95/29, West Ponnagaram,
6th Street, Madurai. ... 1st Respondent / Petitioner

2. The Joint Registrar of Co-operative Societies,
Madurai Region,
Madurai. ... 2nd Respondent / 1st Respondent

PRAYER in W.A: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order passed in W.P. (MD) No. 9224 of 2010 dated 18.10.2019and allow the Writ Appeal and thus render justice.

PRAYER in C.M.P.: To stay the operation of the impugned order passed in W.P. No. 9224 of 2010 dated 18.10.2019 pending disposal of this writ appeal and pass such other appropriate order as this Court may deem fit and thus render justice.

For Appellant	:	Mr.D.Shanmugaraja Sethupathi
For Respondents	:	Mr.C.Jeganathan for M/s.Veera Associates for R1
	:	Mr.V.Om Prakash Government Advocate for R2

JUDGMENT

S.M.SUBRAMANIAM, J.
and
DR.A.D.MARIA CLETE, J.

Heard.

2. The 1st Respondent was 59 years old at the time of filing W.P.(MD) No. 9224 of 2010 and would be approximately 75 years of age at present. As of 30.11.2009, he had already attained the age of superannuation from the post of Secretary of the appellant Society. In the said writ petition, the relief sought was to quash the order dated 30.11.2009 passed by the appellant Society, as well as the appellate order dated 17.05.2010 passed by the 2nd Respondent confirming the same.

3. By order dated 30.11.2009, issued on the very day of his retirement, certain deductions were made from the 1st Respondent's gratuity and leave salary. Although he was entitled to a sum of Rs.5,04,629/-, the appellant Society deducted Rs.4,06,309/- and proposed to disburse only Rs.98,320/-. The 1st Respondent declined to accept the reduced amount and, by his revision petition dated 06.01.2010, challenged the deductions before the 2nd Respondent. However, by order dated 17.05.2010, the 2nd Respondent dismissed the revision, holding that there was no ground to interfere with the deductions made by the appellant Society.

4. Challenging both the aforesaid orders, the 1st Respondent filed W.P.(MD) No. 9224 of 2010. The appellant Society filed a counter affidavit (dated Nil, August 2010) opposing the claim of the 1st Respondent, and the 2nd Respondent also filed a counter affidavit (dated Nil, September 2010). The appellant's primary contention was that the 1st Respondent was entitled only to the wages applicable to the post of Assistant Secretary, and not that of Secretary, since he had not obtained

the requisite administrative approval to hold the post of Secretary. It was further submitted that an audit objection had been raised in this regard by the Assistant Director of Cooperative Audit vide communication dated 30.11.2004.

5. However, upon examining the entire record, the learned Single Judge found in favour of the 1st Respondent and allowed the writ petition by order dated 18.10.2019. In paragraphs 5 and 6, the Court observed as follows: –

> "5. It is not in dispute that the petitioner was duly promoted as per the qualification prescribed in the rules. Neither, the first respondent nor the second respondent found that the petitioner is not qualified to the post of Secretary. The second respondent had in fact sought for approval on number of occasions. As admitted the approval was never rejected by the first respondent. The fact that the approval was pending for consideration before the first respondent is not in dispute. The first respondent has no reason to reject the proposal and the delay in process the application was not explained by the respondents. As seen from the records, it is stated that the petitioner was given encomium by the respondents for his excellent performance as Secretary of the Society in relation to his Administration. The second respondent Society is a profit earning society. It is stated in the counter affidavit that the second respondent has no authority to promote the petitioner without written orders of the first respondent. From the correspondence, it is seen that proposals were submitted long back and it is

impossible to run the society without Secretary. In the said circumstances, the first respondent was expected to consider the proposal submitted for ratification and the first respondent who has no explanation for rejecting the proposal for ratification cannot contend that the promotion given to the petitioner is not proper. It is not stated that there were other objections to the promotion of petitioner as Secretary. The respondents have not produced before this Court any material to justify the contention that the petitioner is not qualified to the post of Secretary. The petitioner was in fact appointed as Secretary by the second respondent. It is stated that a formal ratification is mandatory. But the appointment is not vitiated for any other reason. The petitioner has served in the post of Secretary with effect from the date of promotion till his retirement of service on superannuation.

6. In such circumstances, the recovery or deduction without even issuing a show cause notice is unconstitutional and the petitioner is entitled to succeed. As a result, this writ petition is allowed and the order of first respondent, dated 17.10.2010, confirming the order of second respondent, dated 30.11.2009 is quashed. The second respondent is directed to pay the retirement benefits as per his entitlement in the post of Secretary with interest at the rate of 18% per annum from 30.11.2009 till realization. The respondent shall disburse the amount within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

6. The present writ appeal has been filed by the appellant Society challenging the order dated 18.10.2019. When the matter was listed

before another Division Bench on 17.12.2019, based on the concession made by the learned counsel for the appellant, notice was ordered limited to the issue of the direction to pay 18% interest on the delayed payment. The order passed by the Division Bench reads as follows: –

> "The learned counsel appearing for the appellant submitted that the appellant / BSNL Employees Co-operative Thrift and Credit Society is restricting their prayer only with regard to the rate of interest awarded by the learned Single Judge and that they are not making any submission with regard to the other aspects. The learned counsel further submitted that the learned Single Judge awarded interest at the rate of 18% p.a., and the same may be reduced.
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> 2. Only to decide this issue, notice is ordered to the respondents returnable on 07.01.2020. Private notice is also permitted."

7. Once the appellant has conceded before this Court that the first respondent validly held the post of Secretary and was entitled to the retiral benefits attached to that post, it necessarily follows that his appointment stands recognized and the salary and retirement benefits due to him cannot be lawfully withheld. The delay in disbursement and the deductions made without authority of law warrant the grant of compensatory interest. In such circumstances, a challenge confined merely to the quantum of interest awarded by the learned Single Judge

stands on weak ground, the substantive liability having already been admitted.

8. Pertinently, learned counsel appearing for the appellant would submit that this intra-court appeal has been instituted in view of the exorbitant rate of interest fixed by the Writ Court. In this regard, this Court asked the learned counsel appearing for the first respondent to secure instructions from the first respondent. On instructions, learned counsel for the first respondent submitted that 8% interest would be agreeable to the first respondent. In view of the said consensus arrived between the appellant and the first respondent regarding rate of interest granted by the Writ Court, this Court is inclined to grant 8% interest per annum for the belated settlement of the terminal benefits payable to the first respondent.

9. In view of the fact that the first respondent has agreed to receive 8% interest per annum instead of 18% per annum as ordered by the Writ Court, no further adjudication needs to be undertaken in respect of the grounds raised between the parties. That apart, this rate of interest

balances the first respondent's right to restitution for the unlawful withholding of retirement benefits with the principle that interest should remain compensatory rather than punitive in cases not governed by the statutory scheme. Accordingly, the award of interest is modified to 8% per annum from the date of retirement until payment, and the writ appeal is disposed of on these terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.] **[A.D.M.C., J.]**

07.08.2025

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
LS/krk

To

1. K.Gunasekaran,
S/o.A.Kuthalingam,
No.95/29, West Ponnagaram,
6^{th} Street, Madurai.

2. The Joint Registrar of Co-operative Societies,
Madurai Region,
Madurai.

S.M.SUBRAMANIAM, J.
and
DR.A.D.MARIA CLETE, J.

LS/krk

Pre-delivery Judgment made in

W.A(MD)No.1532 of 2019

07.08.2025