IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.03.2026

Pronounced on : .03.2026

CORAM

THE HONOURABLE MR.JUSTICE T. VINOD KUMAR

WP No. 15207 of 2019 and
WMP No.15178 of 2019

R.Kothandan (deceased)

Anusuya

(Petitioner impleaded vide order of this Court dated 13.03.2026 in WMP No.7972 of 2025)

Petitioner

Vs

1. Government of Tamil Nadu,
Rep. by its Secretary, Co-operative,
Food and Consumer Protection
Department, Fort St.George,
Chennai 600 006.

2.Registrar of Co-operative Society,
N.V.N.Building, Periyar E.V.R. Salai
Kilpauk, Chennai 600 010.

3.Joint Registrar,
Managing Director, Vellore District
Central Co-operative Bank Ltd., Anna
Salai, Vellore 632 001.

Respondents

PRAYER Writ Petition filed under Article 226 of the Constitution of India, seeking to issue a writ of declaration, declaring the action of the 1st respondent in restricting the Ex- gratia pension to the petitioner Employees who retired after the introduction of the Employees pension Scheme, 1995 and who did not opted to be a member in the employees pension Scheme, by deducting the pension which they would have received under the Employees Pension Scheme, 1995, as illegal, arbitrary, contrary to law and violation of article 14 of the constitution of India.

For Petitioner:	Mr.Balan Haridass
For Respondents:	Mr.Haja Nazirudeen, Additional Advocate General Assisted by Mr.K.Tamilvendan, Government Advocate for R1 and R2 Mr. L.P. Shanmugasundaram For R3

ORDER

Heard the learned counsel for the petitioner and the learned Additional Advocate General appearing for the Respondents 1 and 2 and the learned Standing Counsel appearing for the third Respondent.

2. The petitioner by the present writ petition has assailed the action of the first respondent in restricting the payment of ex-gratia pension to the employees who had retired after introduction of Employees' Pension Scheme 1995, (in short 'EPS'), and did not become a member of EPS, by deducting notional pension which they would have received under EPS as being illegal, arbitrary and contrary to the law and violation of Article 14 of the Constitution of India.

3. The case of the petitioner in brief is that he had joined the third respondent bank on 01.07.1968 and retired from service on 31.07.1998; that there was no pension scheme in force with the third respondent; that the Central Government had introduced EPS in November 1995 and granted option to become a member of EPS with effect from 01.04.1993; that as EPS was not attractive, many employees like the petitioner, did not join EPS;

4. The petitioner contends that the employees who have opted to join EPS in the year 1993 and thereafter retired in the year 1999 were initially paid pension of Rs.500/- and the same is revised to Rs.1,000/-; and that as the pension payment under the scheme EPS was not attractive, he did not join the scheme.

5. It is the further case of the petitioner that on the Central Government introducing EPS, the employees and union working in the third respondent as well as other District Central Cooperative Banks submitted large-scale representations to the Government of Tamil Nadu, for ex-gratia payment of Rs.5,000/- per month; that the Government, taking into account that the employees of the District Central Cooperative Bank, were having no protection

on retiring from service, had issued G.O.(Ms).No.132, Cooperative, Food and Consumer Protection Department, dated 20.09.2010 granting ex-gratia pension payment of Rs.2,500/- per month to the employees who worked in the Central Bank and retired during the year 1987-1988 to 1994-1995 and who are not covered under EPS, 1995; that the aforesaid ex-gratia Pension was to be paid by the Central Co-Operative Bank of the concerned district; that the aforesaid G.O also directed the employees who are covered under EPS and receiving pension under the scheme, will be paid ex-gratia pension after deducting the pension, they get under EPS; and that the family pension was fixed at Rs.1,250/- for the persons who were already granted and getting family pension under EPS after deducting family pension they were getting under EPS.

6. The petitioner contends that there was no provision initially for granting ex-gratia payment to the employees who got retired after introduction of EPS and who did not opt to be a member of EPS; that the first respondent thereafter issued G.O (Ms).No.160 Cooperative, Food and Consumer Protection Department, dated 11.11.2010, extended the benefit of payment of ex-gratia pension even to those employees who retired after introduction of EPS, but did not opt for the same like petitioner; and that the first respondent while issuing the aforesaid G.O had put a condition that the ex-gratia pension would be paid

after deducting the pension which the employee would have got if they had opted to become a member of the EPS; and that the reduced ex-gratia pension was directed to be paid from 20.09.2010.

7. It is the further case of the petitioner that on issuance of G.O.Ms.No.160, dated 11.11.2010, he was getting ex-gratia pension after deducting the notional pension amount which he would have received under EPS if he had opted to become a member of EPS; and that on increase of minimum pension payable under EPS to Rs.1000/-, he was being paid ex-gratia pension of Rs.1500/- by deducting the notional pension receivable by him under EPS if opted to be the member of the same.

8. The petitioner further contend that the ex-gratia pension being paid by the State, had been revised to Rs.3,500/- under G.O(Ms).No.14, Cooperative Food and Consumer Protection (CC1) Department, 31.01.2017 and Rs.4000/- per month under G.O.(Ms).No.47, Cooperative, Food and Consumer Protection (Coop) Department, dated 03.04.2018; that the petitioner was being paid the increased ex-gratia pension after deducting the notional pension, he would have received under EPS if opted for the same while in service.

9. It is the further case of the petitioner that since, EPS provides for an option to the employees to become a member from 01.04.1993; that the employees who had retired from service after 01.04.1993 till November, 1995 and having not opted to join EPS while are being extended the benefit of full ex-gratia pension without making any deduction of notional pension receivable by them under EPS, the direction to reduce the notional pension receivable under EPS from ex-gratia pension in respect of the employees who had retired after introduction of EPS and who opted not to join EPS is discriminatory.

10. It is the further case of the petitioner that since, the respondent/Government vide G.O.Ms.No.26, Cooperative Food and Consumer Protection (CC1) Department dated 05.03.2020 have now extended the benefit of payment of Ex-gratia pension without deducting the notional pension receivable, the deduction of notional pension receivable under EPS under G.O.(Ms).No.132, dated 20.09.2010 as made applicable to the employees who retired after introduction of EPS and paid Ex-gratia pension under G.O(Ms).No.160 dated 11.11.2010 is illegal and that the claim of the petitioner to receive the full ex-gratia payment during the period 11.11.2010 to 05.03.2020, is valid and reasonable.

11. The petitioner further contents that he being similarly placed like employees who had retired prior to introduction of the scheme EPS and being paid full ex gratia payment fixed by the Government, he is being paid reduced pension; and that the payment of reduced pension is contrary to the intention of the Government to pay ex-gratia pension in respect of the employees who did not have any kind of protection earlier or after introduction of the EPS. Thus, the deduction of notional EPS pension receivable by him under EPS while making a payment of ex-gratia pension with effect from 20.09.2010 has no absolute justification whatsoever. Contending as above, reliance is placed on the following decisions:

1. *D.S.Nakara and ors. Vs. Union of India & ors. (1983 (1) SCC 305)*

2. All Manipur Pensioners Association by its Secretary Vs. the State of Manipur and Ors. (2020(14) SCC 625

3.Union of Delhi Vs. Smt.Shashi Kiran & Ors. (2022 SSC 438)

4. Shashi Kiran Vs. Union of India (2016 Supreme (Online)(Del) 7639)

5. Order of this Court dated 05.01.2017 in W.P.Nos.28092 to 28094 of 2015

12. Counter affidavit on behalf of the respondents 1 and 2 and a separate counter affidavit on behalf of the third respondent is filed.

13. The respondents 1 and 2 by the counter affidavit filed contended that the employees who did not opt to become members of EPS, the contribution payable to the employees under EPS was continued to be with the provident fund; that as per EPS, introduced with effect from 16.11.1995, the employer who was earlier contributing to Employees Provident Fund (EPF), apportioned 8.33% of the contribution to the EPS and 1.16% would be contributed by the Central Government as per paragraph 3 of the scheme; that the EPF provided for remittance of contribution @ 12% by the employer and 12% by employee; and that on introduction of EPS with effect from 16.11.1995, the employer contribution to the extent of 8.33% from and out of 12% of employer contribution was apportioned towards EPS and wherever the employee did not opt to become a member of EPS, 12% of employer contribution continued with EPF.

14. The respondents by the counter affidavit contended that the State Government had granted ex-gratia payment to the employees of cooperative bank to be paid by the respective Central Cooperative Bank, for which, they are required to create corpus from and out of their own funds; that the ex-gratia pension has been permitted on humanitarian grounds; that the State Government did not provide any funds to the third respondent, which is the cooperative

bank; and that the classification of employees who have opted for EPS and who had not opted, is a reasonable classification and such classification cannot be said to be invalid or violating Article 14 of the Constitution of India.

15. On behalf of the respondents, it is also contended that the categorization of employees of the Central Cooperative Bank who had retired from service prior to the introduction of EPS and those who have retired after introduction of EPS, is reasonable categorization and does not violate Article 14 of the Constitution of India; and thus, extending the benefit on humanitarian ground, cannot be called as unjust or illegal or discriminatory.

16. On behalf of the respondents, it is also contended that the payment of ex-gratia pension by the third respondent bank by creating the corpus fund, cannot be claimed as a matter of right; and that of extending the benefit of ex-gratia payment by nomenclature itself, indicates that it does not have a force of any statute for the petitioner to claim the same, either the matter of right or the directions / conditions imposed therein, being discriminatory or arbitrary; and that the payment of ex-gratia pension being a policy decision of the State, the petitioner cannot lay any challenge to the said policy decision of the State to

direct the payment of ex-gratia payment to the employees who had retired after introduction of EPS, which benefit had been extended by the State under G.O (Ms).No.160 dated 11.11.2010 on humanitarian ground to the employees, who had retired post-introduction of EPS but did not choose to exercise option to become a member of the same.

17. On behalf of the respondents, it is also contended that G.O (Ms).No.160 was issued on 11.11.2010, extending the benefit of payment of ex-gratia pension to the employees of the cooperative bank who had retired post-introduction of EPS and did not exercise option to become a member, by deducting the notional pension amount they would have received under EPS; that the petitioner having received the ex-gratia pension since then, cannot seek to lay challenge to the aforesaid G.O, after a decade; and that the present petition as filed suffers on account of delay and laches, apart from being not maintainable.

18. The third respondent by the Counter affidavit contended that on introduction of EPS, the same was challenged by the Tamil Nadu cooperative banks employees Association vide W.P.No.2110 of 1996; that a Division Bench

of this Court had rejected the challenge; that the petitioner herein was the General Secretary of the petitioner Association that had challenged the constitutional validity of EPS; that the petitioner being a General Secretary of the Bank Employees Trade Union, was well aware of the fact that many other employees who are employed with the third respondent enrolled as member of EPS and had availed the benefit of the scheme; that the Government considered the demand for payment of pensionary benefit as a welfare measure to the employees who had retired prior to the introduction of EPS and directed the Central Cooperative Banks of the District to create corpus fund for payment of ex-gratia pension to its retired employees who did not have any security post-retirement; and that the petitioner, being aware of the scheme, having taken a conscious decision not to become a member of the same, cannot claim himself as similarly placed with the employees who had retired prior to the introduction of EPS, who did not have an option to become a member of the EPS in order to receive pension.

19. The third respondent, by the counter affidavit, also contended that the petitioner had encashed the Provident Fund accumulation which included the entire 12% of the employer's share of contribution with interest thereon on his retirement and only as an afterthought has filed the present writ petition.

Contending as above the third respondent seeks for dismissal of the writ petition.

20. I have taken note of the respective contentions made by the learned counsel on either side.

21. At the outset, it is to be noted that the G.O.(Ms).No.132, dated 20.09.2010 and G.O (Ms).No.160 dated 11.11.2010 by which the State Government had directed the Central Cooperative Banks to create corpus funds to pay ex-gratia pension to its retired employees who lack security post their retirement, cannot be considered as statutory measure for the petitioner to claim discrimination.

22. Further, the nomenclature by which the payment is made by the third respondent to its employees itself indicates the same to be a gratuitous and is not by virtue of operation of any law. Though, the petitioner had claimed that he is similarly placed like the employees who had retired from service, as he also did not opt to become a member of the scheme, it is to be noted that the

employees who retired from service during the period 1987-1988 to 1994-1995, there exists no relationship of employer and employee, while the same is not so in the case of the petitioner, as the petitioner continued to be an employee of the third respondent even after the introduction of EPS.

23. Further, the petitioner having chosen not to become a member of EPS, had taken conscious decision by himself, weighing pros and cons of the scheme, including the benefit he would derive by not becoming the member of EPS, whereby 12% of the employer contribution being credited to EPF and also requiring to make the mandatory contribution of 12% of under EPS, thereby having benefit to deal with the surplus fund to an extent of 12% by himself.

24. It is also to be noted that the petitioner who continued to be in service after introduction of EPS and having opted to remain outside EPS, would constitute separate class by himself and cannot be compared with retired employees who did not have the option to become a member or not while in service.

25. It is a settled position of law that any policy decision having financial implication or cascading effect, the judicial interference is unwarranted and restraint is to be maintained.

26. The Hon'ble Apex Court in the case of ***Punjab State Cooperative Milk Producers Federatin Ltd., Vs. Balbir Kumar Walia, (2021) 8 SCC 784***, after referring to its earlier decisions on issue of the judicial interference in administrative decisions held that only when the decision-making process or the decision itself suffers from illegality, irrationality and procedural impropriety, judicial interference is called for.

27. The Hon'ble Supreme Court in the case of ***State of Maharashtra & Anr. vs. Bhagwan reported [(2022) 4 SCC 193]*** dealing with payment of pension to employees of the society, observed as under:

> *"28. As per the settled proposition of law, the Court should refrain from interfering with the policy decision, which might have a cascading effect and having financial implications. Whether to grant certain benefits to the employees or not should be left to the expert body and undertakings and the Court cannot interfere lightly. Granting of certain benefits, may result in a cascading effect having adverse financial consequences."*

28. The Apex Court by observing as above, held that merely because the society has certain funds, and it can bear the burden of paying pension to all its employees, it is ultimately, for the State Government or the society to take their own policy decision whether to extend the pensionary benefits to its employees or not.

29. In the light of the aforesaid authoritative pronouncements of the Apex Court, it is to be noted that the petitioner in the present case has taken a conscious decision not to become a member of EPS, thereby the employer requiring to make its contribution of 12% to EPF and the petitioner having withdrawn his provident fund including the employer contribution on his retirement from service, enjoyed the fruits of such funds from the date of its encashment and also availing the benefit of ex-gratia pension paid by the 3rd respondent to its employees who did not have any security as a benevolent measure which benefit was also extended to the employees who had the option to join EPS but not opted to join, however by restricting grant of such benefit by deducting the notional pension receivable under EPS, the said the restriction imposed cannot said to be an unreasonable restriction for the petitioner to feel aggrieved or agitated to approach this Court. Coupled with the fact that the petitioner having enjoyed the benefits of Provident Fund accumulation in his

account and also having derived benefit extended by the 3rd Respondent on a humanitarian basis, cannot claim violation of Article 14 of the Constitution of India as it is by his own volition, the petitioner had opted to remain outside the EPS and derived the benefit which he felt was more beneficial at the relevant point of time.

30. In so far as the decisions relied on by the petitioner as noted herein above, it is to be noted that the said decisions would not advance the case of the petitioner as the same dealt with CPS and not in relation to ex-gratia payment made. If only the State has not issued G.O (Ms).No.160 dated 11.11.2010, the petitioner would not be eligible to receive ex-gratia pension offered by the 3rd respondent had not got a case to claim as being eligible for ex gratia payment.

31. Thus, the present writ petition as filed is wholly misconceived and is devoid of merits and is accordingly, dismissed.

32. Though it is a fit case to impose costs, this court is refraining from doing so as the petitioner had deceased during the pendency of the present writ

petition and this Court does not intend to burden the legal heirs who have come on record.

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

13-03-2026

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

To

1. The Secretary
Co-operative, Food and Consumer
Protection Department, Fort St.George,
Chennai 600 006

2.Registrar of Co-operative Society,
N.V.N.Building, Periyar E.V.R. Salai
Kilpauk, Chennai 600 010.

3.Joint Registrar,
Managing Director, Vellore District
Central Co-operative Bank Ltd., Anna
Salai, Vellore 632 001.

T.VINOD KUMAR J.

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Pre delivery order in
WP No. 15207 of 2019 and
WMP No.15178 of 2019

13-03-2026
(2/2)