(2015) 07 MAD CK 0077

In the Madras High Court

Case No : W.P. No. 22892 of 2015 and M.P. Nos. 1 and 2 of 2015

A. Sengodan APPELLANT

Vs

Registrar of Co-operative Societies and Others RESPONDENT

Date of Decision : 29-07-2015

Acts Referred:

Tamil Nadu Co-operative Societies Act, 1983 — Section 78, 79

Citation : (2015) 5 CTC 726 : (2016) 148 FLR 181 : (2015) 4 LLN 154 : (2015) 6 MLJ 684

Hon'ble Judges : D. Hari Paranthaman, J.

Bench : Single Bench

Advocate : R. Chandrasekaran, for the Appellant; E.M.S. Natarajan, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

D. Hari Paranthaman, J.—The petitioner was initially appointed as Salesman in the third respondent-Society in 1986, was promoted as Writer and further promoted as Senior Writer. After putting in 30 years of service, he retired on 30.04.2015. No departmental/criminal proceedings are pending against him. Based on surcharge proceedings, he was not paid the retiral benefits like Provident Fund (both employer and employees'' contribution), Earned Leave encashment, Gratuity, etc. Hence, he filed this Writ Petition. The second respondent passed the impugned order, directing the third respondent not to disburse the retiral benefits, as the surcharge proceedings are pending against the petitioner. The surcharge proceedings had not attained finality, as the matter is seized of by the Principal District Court, Namakkal. The petitioner made representation dated 06.05.2015 before the respondents 1 and 2 for settlement of the above said retiral benefits.

2. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents 1 and 2 and perused the material documents available on record. Since the impugned order in the Writ Petition is

passed by the second respondent-Deputy Registrar of Co-operative Societies, it is not necessary to issue notice to the third respondent-Society.

3. If the petitioner is governed by the provisions of the Payment of Gratuity Act, the gratuity payable to him on retirement, cannot be with-held by the employer on any account other than the reasons given under the provisions of the said Payment of Gratuity Act. The respondents 1 and 2 cannot with-hold the gratuity on the ground that the surcharge proceedings are pending against the petitioner.

4. On the other hand, if the provisions of the Payment of Gratuity Act are not applicable to the case of the petitioner, the issue will be governed by Section 79 of the Tamil Nadu Co-operative Societies Act, which is extracted hereunder:

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

5. A reading of the above extracted Section 79 makes it clear that the provisions of the Payment of Gratuity Act, are being incorporated therein, the gratuity earned by an employee for rendering service, cannot be with-held at the time of retirement.

6. It is also relevant to notice the fact that the third respondent-Society is a non-pensionable establishment and only retirement benefits like Gratuity are being paid to its employees.

7. Equally, it is also worthwhile to be noted that the Provident Fund cannot be with-held. While a certain amount is being deducted towards the PF contribution from the salary of employees like the petitioner herein, matching contribution is made by the employer and disbursed at the time of retirement of an employee.

8. If the establishment like the third respondent-Society is governed by the Employees'' Provident Funds and Miscellaneous Provisions Act, then the petitioner shall be paid the contribution made by him at the time of retirement, and the petitioner is entitled to pension as provided under the scheme provided under the provisions of the Employees'' Provident Funds and Miscellaneous Provisions Act.

9. If an employee is not governed by the Employees'' Provident Funds and

Miscellaneous Provisions Act, the same are not applicable to the employees like the petitioner working under the third respondent-Society, and in that case, Section 78 of the Tamil Nadu Co-operative Societies Act is applicable, which reads as follows:

"Section 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 by-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."

10. In my view, unless there is a statutory provision for with-holding the Provident Fund (relating to contributions of employer and employees)/Gratuity, or other retiral benefits, the same cannot be with-held. The employer cannot with-hold the above retiral benefits of the employees under any circumstances, in the absence of power conferred on them or provided under the relevant statute. Hence, the impugned order is quashed. A direction is issued to the third respondent-Society to settle the retiral benefits including Provident Fund, Gratuity, Leave Encashment and other benefits connected thereto, as expeditiously as possible, and not later than eight weeks. The Writ Petition is allowed. No costs. The Miscellaneous Petitions are closed.