**(2014) 10 MAD CK 0317**

**In the Madras High Court**

**Case No :** Writ Petition Nos. 27398 and 27399 of 2014

K. Anbarayan APPELLANT

Vs

The Joint Registrar of Co. Operative Societies RESPONDENT

**Date of Decision :** 28-10-2014

**Acts Referred:**

Payment of Gratuity Act, 1972 — Section 13
Tamil Nadu Co-operative Societies Act, 1983 — Section 78, 79, 79(2), 82, 87

**Citation :** (2014) 10 MAD CK 0317

**Hon'ble Judges :** M.M. Sundresh, J

**Bench :** Single Bench

## Judgement

M.M. Sundresh, J.—As the issue involved in both the writ petitions is one and the same, they have been taken up together and disposed of by a common order. Both the petitioners have reached the age of superannuation after working with the 3rd respondent society. After reaching the age of superannuation, the petitioners made a request for release of the retiral benefits. The request made by the petitioners has not been considered by the respondents as in pursuant to the enquiry conducted by the 2nd respondent under Section 82 of the Tamil Nadu Cooperative Societies Act, surcharge proceedings were initiated under Section 87 of the Act for the recovery of a total amount of Rs. 56,23,764/- against the petitioners and 5 others for not collecting the dues from the loanees and also not taking legal action against them.

2. Learned counsel appearing for the petitioners submitted that pendency of the surcharge proceedings is not a bar for the payment of retiral benefits and the very same issue has been considered by this Court in D.Govindarajan Vs The Joint Registrar of Co-operative Societies, Tiruvallur and another (CDJ 2014 MHC 3450). Therefore, these writ petitions will have to be allowed.

3. Per contra, learned Special Government Pleader appearing for the respondents submitted that in view of the pendency of surcharge proceedings the petitioners have not been given the retiral benefits. As the proceedings have been initiated

for recovery of a sum of Rs. 56,23,764/-, the discretion of this Court shall not be exercised.

4. The payment of retiral benefits such as gratuity, provident fund and leave encashment is one of right. Unless there is statutory bar, the retired employee cannot be denied of those benefits. Considering the scope and ambit of Section 79 of the Tamil Nadu Cooperative Societies Act, 1983, which deals with the payment of gratuity, this Court in the decision referred supra was pleased to hold as follows:

''5. In my view, the gratuity fund shall be established by the Society, whenever the Payment of Gratuity Act, 1972, is not applicable to the Society, as per Section 79 of the Tamil Nadu Co-operative Societies Act, 1983. Gratuity payable from the said fund is protected under Section 79 of the Act as the gratuity is protected under Section 13 of the Payment of Gratuity Act. Section 79 of the Tamil Nadu Co-operative Societies Act, 1983 is extracted hereunder:

"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."

6. Section 79(2) of the Tamil Nadu Co-operative Societies Act, 1983, makes it clear that similar protection is given to the gratuity payable to an employee of the Co-operative Society, which is not governed by the Payment of Gratuity Act, as provided under the Payment of Gratuity Act.

7. In fact, today I have considered Section 13 of the Payment of Gratuity Act, 1972, in W.P. No. 27296 of 2013 and I have held that the gratuity amount shall not be denied to an employee, on the ground of pendency of surcharge proceeding. In the similar way, pendency of a criminal proceeding cannot be a reason to deny payment of gratuity, for the service rendered by the employee.

8. Therefore, the second respondent Society is liable to pay a sum of Rs. 4,54,348/- towards the gratuity amount payable to the petitioner, from the gratuity fund. In fact, the audited statement, produced by the learned counsel for the Society, also reflects that the petitioner rendered 36 years of service and he received a sum of Rs. 9,470/- as Basic Pay and Rs. 12,406/- as Dearness Allowance and a sum of Rs. 4,54,348/- is lying in his gratuity fund account.''

 

5. The ratio laid down in the said decision is squarely applicable to the facts of the case. Coming to the payment of provident fund, Section 78 of the Enactment deals with the same. A reading of Section 78 of the Act would show that it is pari materia with Section 79. Therefore, the ratio laid down by this Court with respect of the payment of gratuity would apply to the payment of provident fund as well. The payment of earned leave encashment is the duty of the employer to be payable to the employee for the period for which he has worked. Therefore, even the said amount cannot be denied.

6. Furthermore, a mere pendency of the proceedings by itself cannot be a bar. In other words, the proceedings are yet to be concluded against the petitioners. Though the 3rd respondent is not an authority under Article 12, taking into consideration of the public duty imposed upon the said authority, this Court is of the view that the petitioners are entitled to succeed. Furthermore, a duty is also imposed upon respondents 1 and 2 to see to it that the 3rd respondent acts in accordance with law. Accordingly the writ petitions stand allowed. Consequently, the respondents are directed to pay the terminal benefits due to the petitioners within a period of eight weeks from the date of receipt of copy of this order. In view of the facts and circumstances of the case, this Court is not inclined to award any interest on the said terminal benefits payable by the respondents to the petitioners. No costs.