
(2014) 09 MAD CK 0133
In the Madras High Court
Case No : Writ Petition No. 26351 of 2012

K. Ramamurthy

APPELLANT

Vs

Registrar of Co-operative Societies

RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2014) 09 MAD CK 0133

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Judgement

D. Hariparthaman, J.—The petitioner was employed as a Manager in the second respondent Co-operative Society. He rendered 30 years of service. However, he was dismissed from service, by an order dated 14.02.2012 for the alleged mis-appropriation of huge amount along with the co-employee. This Court is not concerned about the dismissal in this writ petition, as the claim of the petitioner is only for payment of Provident Fund payable under Section 72 of the Pondicherry Co-operative Societies Act, 1972 (for short "Act").

2. The petitioner earlier made a representation dated 21.05.2012 to the second respondent, to disburse the Provident Fund and other amounts due to him. Since no order was passed, he approached this Court by filing a writ petition in W.P. No. 16827 of 2012 for issuance of a writ of mandamus to direct the respondent to disburse the provident fund and other amounts due to him. This Court, by an order dated 06.07.2012 directed the second respondent to consider the representation of the petitioner dated 21.05.2012 and pass appropriate orders on merits, within a period of four weeks from the date of receipt of a copy the order.

3. It is relevant to extract the following passages found in paragraphs 3 and 4 of said order:-

"3. Since the provident fund amount is payable even after dismissal of the

employee, Mr. Tamilvanan, learned counsel for respondents, on taking notice, submitted that four weeks time may be granted to the second respondent to consider and dispose of the representation of the petitioner on merits.

4. In such circumstances, the writ petition is disposed of, giving direction to the second respondent to consider the representation of the petitioner dated 21.05.2012 and pass appropriate orders on merits, within a period of four weeks from the date of receipt of a copy of this order. No costs."

4. While so, the impugned order dated 13.09.2012 was passed by the second respondent refusing to pay the provident fund amount payable to him on the ground that the petitioner misappropriated huge amount and caused loss to the Society.

5. The petitioner has filed this writ petition to quash the aforesaid order dated 13.09.2012 and for a consequential direction to pay the provident fund amount.

6. The learned counsel for the petitioner placed heavy reliance on Section 72 of the Act. According to the learned counsel, even after dismissal, the provident fund amount cannot be withheld. The learned counsel also referred to paragraphs 3 and 4 of the order dated 06.07.2012 extracted above.

7. On the other hand, the learned counsel for the second respondent has submitted that the writ petition itself is not maintainable since the petitioner can avail remedy of revision under Section 141 of the Act against the impugned order passed by the second respondent before the first respondent. Further, it is submitted that at the most, the petitioner can claim contribution made by him towards provident fund and he cannot claim the contribution made by the employer, since he misappropriated huge amount. The learned counsel also submitted that the petitioner also failed to invest the provident fund in the financing bank as per Section 72(2)(d) of the Act and therefore, he was negligent, besides committing misappropriation. Hence, he is not entitled to the employer's contribution. The learned counsel also submitted that on facts, the petitioner took loan from the provident fund account and he has to repay the loan amount Rs. 63,700/- and after adjusting the said amount, in the normal course, the Society is liable to pay Rs. 2,32,944/-. But now the petitioner could not claim the employer contribution and he could claim only the employee's contribution.

8. I have considered the submissions made by the learned counsel on either side.

9. It is relevant to extract Section 72 of the Act:-

"72. Contributory Provident fund:-

(1) A registered society shall establish a contributory 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 rules and by-laws or the Employees Provident Funds Act, 1952 whichever is more beneficial.

(2) A contributory provident fund established by a registered society under sub-section (1)--

(a) shall not be used in the business of the society;

(b) shall not form part of the assets of the society;

(c) shall not be liable to attachment or be subject to any other process of any court or other authority;

(d) shall be invested in the financing bank."

10. In the aforesaid facts and circumstances of the case, two issues arise for consideration in this writ petition. The first issue is whether the writ petition is maintainable in view of the remedy available under Section 141 of the Act and the second issue is whether the petitioner can be deprived of the provident fund.

11. It is true that the petitioner has a remedy by way of revision against the impugned order passed by the second respondent before the first respondent. If it is not the payment of terminal benefits viz., Provident Fund, this Court, would have no hesitation in directing the petitioner to approach the revisional authority, namely, the first respondent under Section 141 of the Act. But the prayer is for payment of provident fund. Section 72 of the Act, that was extracted above, makes it clear that the provident fund shall not be liable to attachment or be subject to any other process of any court or other authority. That protection is given for payment of provident fund, after the person leaves the service of the employer. In this case, I am not going into the merits or allegations relating to dismissal. Even if an employee is dismissed, in view of Section 72 of the Act, Provident Fund cannot be withheld.

12. In view of a larger Bench judgment of this Court in K. Marappan Vs. The Deputy Registrar of Co-operative Societies and The Special Officer, Vattur Co-operative Agricultural Bank, , the writ petition is maintainable against cooperative society, if the order impugned is contrary to the statutory provision. Further more, in this case, the payment, which the petitioner claims is provident fund, I am of the view that it amounts to deprivation of livelihood under Article 21 of the constitution.

13. Furthermore, when the facts are also not in dispute, no useful purpose would be served in driving the petitioner to the revisional authority after two years of filing of the writ petition for claiming provident fund. Even in the earlier occasion, this Court passed an order dated 06.07.2012 in W.P. No. 16827 of 2012, wherein, it has been clearly held in paragraphs 3 and 4 that the petitioner is entitled to provident fund. But the second respondent can withhold the amount of loan, for which the petitioner has no objection.

14. Taking into account the aforesaid facts, I am of the view that the writ petition is maintainable in view of the aforesaid decision and particularly taking into account Section 72 of the Act, the petitioner is entitled to provident fund. The

records produced by the second respondent as well as the submission made by the learned counsel makes it clear that after deducting the loan amount, provident fund amount payable to the petitioner is Rs. 2,32,944/-.

15. The writ petition is allowed and a direction is issued to the second respondent to pay the amount payable to the petitioner in respect of the Provident Fund, within a period of three months from the date of receipt of a copy of this order. It is stated by the learned counsel for the respondents that surcharge proceedings is pending against the petitioner. The pendency of the surcharge proceeding cannot be a reason to withhold the provident fund. Even if surcharge proceeding is issued and it reaches finality, the provident fund cannot be withheld against surcharge proceeding. However, society can very well proceed against the petitioner for collection of amount payable under the surcharge proceeding. No costs.