



W.P.(MD) No.7032 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2023

CORAM

THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

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A.Sivakumar

... Petitioner

Vs.

- 1.The Joint Registrar of Co-operative Societies,
O/o. The Joint Registrar of Co-operative Societies,
Dindigul.
- 2.The Special Officer,
D.D.115, Palani Co-operative Primary Co-operative
and Rural Development Bank,
Palani, Dindigul District.
- 3.N.Dhandapani,
Supervisor,
D.D.115, Palani Co-operative Primary Co-operative
and Rural Development Bank,
Palani, Dindigul District.
- 4.K.Paramasivan,
Supervisor,
D.D.115, Palani Co-operative Primary Co-operative
and Rural Development Bank,
Palani, Dindigul District.
- 5.K.Ramathal,
Supervisor,



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D.D.115, Palani Co-operative Primary Co-operative
and Rural Development Bank,
Palani, Dindigul District.

6.K.Rohini,
Supervisor,
D.D.115, Palani Co-operative Primary Co-operative
and Rural Development Bank,
Palani, Dindigul District.

7.N.Kumaresan, Supervisor,
D.D.115, Palani Co-operative Primary Co-operative
and Rural Development Bank,
Palani, Dindigul District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the first respondent in his Proceedings Na.Ka.No.8409/2009/Sa.Ba dated 23.07.2010 and the consequential impugned order of the second respondent in Na.Ka.No. 1/2011 Sirappu dated 26.12.2011 and quash the same and consequently direct the respondents herein to refix the seniority of the petitioner by placing the petitioner as Sl.No.1(a) immediately below Thiru.V.Arumugam in Seniority list dated 31.03.2009 as well as in the seniority list dated 24.06.2009 with all consequential monetary and service benefits.

For Petitioner : Mr.A.Thirumurthy
for M/s.Victory Associates

For R1 : Mr.T.Amjadkhan
Government Advocate



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For R2 : Mr.S.Seenivasagam

For R3 to R7 : No appearance

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ORDER

Heard Mr.A.Thirumurthy, learned counsel for the petitioner, Mr.T.Amjadkhan, learned Government Advocate for the first respondent and Mr.S.Seenivasagam, learned counsel for the second respondent. The private respondents are not represented in person or through their counsel.

2. At the outset, a preliminary objection is being raised by Mr.S.Seenivasagam, learned counsel for the second respondent. According to him, under Section 153 of the Tamil Nadu Co-Operative Societies Act, 1983, a Registrar does not have jurisdiction to deal with the matter relating to seniority or other service matters. He would argue that the view taken by this Court in **P.Eswaramoorthy and others Vs. R.J.B.Leoraj and others**, reported in (2008) 5 MLJ 238 is contrary to the decision laid down by the Supreme Court in **Maharashtra State Co-operative Housing Finance Corporation Limited Vs. Prabhakar Sitaram Bhadange**, reported in (2017) 5 SCC 623 and therefore, I should refer the matter to a Larger Bench.



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3. I am unable to agree with the contention of Mr.S.Seenivasagam.

There are several authorities created under the Tamil Nadu Co-Operative Societies Act, 1983 for the purpose of resolving several questions and issues. The authority under Section 90 of the Tamil Nadu Co-Operative Societies Act, 1983 deals with all issues between the members and the society and one society with other society and it excludes the disciplinary proceedings. Similarly, in the case of Audit, Enquiry, Surcharge Proceedings, the power is vested under Sections 80, 81 & 87 of the Tamil Nadu Co-Operative Societies Act, 1983 respectively. Such orders are succeed able to appeal under Section 152 of the Act.

4. In so far as service matters are concerned, there is no specific provision or mechanism dealing with the said issue. It was the view taken in **Somasundaram Vs. Liyakat Ali and Another** reported in 1997 (1) CTC 4 that in absence of such mechanism, the only remedy is available to the parties to approach the Civil Court. The very issue was considered in **P.Eswaramoorthy** case referred to *supra*. The Division Bench was pleased to discuss the issue thereunder and in paragraph 24, the Division Bench held as follows:-



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24. In the light of the above legal journey through various decisions of this Court as well as of the Supreme Court, the following propositions will emerge:-

(a) Section 90 of the 1983 Act providing for settlement of disputes will not include a dispute between a servant of a Co-operative Society and its Management. Therefore, no dispute can be referred to the Registrar or his nominee under Section 90 and consequently, no appeal will lie to the Tribunal under Section 152.

(b) Section 153 of 1983 Act is a departure from Section 97 of the 1961 Act and it is wider in nature. Power has been specifically conferred on the revisional authority under Section 153 to call for and examine the record of any proceeding under the Act or the Rules or the bye-laws of any officer subordinate to the Registrar or of the Board of Director or any officer of a registered society or of the competent authority constituted under Section 75(3) of the 1983 Act. Therefore, the employees of a Co-operative Society can approach the Registrar or any competent authority under Section 153 to revise any order passed by the Co-operative Society relating to disciplinary action taken against him or denial of promotion or wrong fixation of seniority, etc.

(c) There is no implied ouster of the jurisdiction of the power of the Labour Court / Industrial Tribunal to deal with similar matters if disputes are raised before them by workmen or employees covered by those provisions. Both remedies are available.

(d) The decision in *Somasundaram v. Liyakat Ali* [1997 (1) CTC 4 = 1998 (2) LLJ 719]



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may not be a good law. The employees therein filed a Civil Suit regarding promotion issue. As remedy for the aggrieved parties in that case are available either under Section 153 or by an industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947, they could not have gone before the Civil Court. Therefore, the bar under Section 156 of the Co-operative Societies Act as well as the implied ouster of jurisdiction of the Civil Court by the provisions of the I.D. Act will directly apply and the suit is barred.

(e) The decision of P. Sathasivam, J. (as he then was) in *K. Radhakrishnan v. Additional Registrar* [2000 (ii) CTC 147] upholding the right of revision under Section 153 has laid the correct position of law. Likewise, the judgment of P.Sathasivam, J. (as he then was) in the *Management of Madras Atomic Power Project Employees' Consumers (Co-operative Stores Limited, Kalpakkam rep. by its Special Officer v. The Deputy Commissioner of Labour (Appeal) Madras 6 and 2 others* [2000 (III) CTC 738 = 2000 (2) LLJ 1451] holding that Section 90 of the 1983 Act is not available for employees of Co-operative Societies against the orders of termination has been correctly decided.

5. Mr.S.Seenivasagam would argue that in absence of any specific provision, the remedy available to the parties is only to approach the Civil Court. My reading of Section 153 of the Act shows that any order passed by the Society is revisionable at the hands of the Registrar. The power given to the Registrar is wide and being the power of revision, he



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cannot convert himself as appellate authority to deal with the issue as in the other cases, where, the appellate power is vested with the specified authorities.

6. In order to substantiate the case, Mr.S.Seenivasagam, learned counsel for the second respondent would refer to **Maharashtra State Co-operative Housing Finance Corporation Limited** case referred to *supra* and in the particular, he draw my attention to paragraph 8 to state that since the Co-operative Tribunal has no jurisdiction to deal with the service matters, the Registrar also does not have jurisdiction to deal with the civil matters.

7. A perusal of paragraph 8 would show that the Supreme Court was called upon to decide the issue as to whether the Cooperative Tribunal under the Maharashtra Cooperative Societies Act, 1960 has jurisdiction to deal with the service matters. The Court held that the Civil Court cannot deal with the service matters and the Cooperative Tribunal being substituted for the Civil Courts, it would also have no jurisdiction to deal with the service matters. Therefore, the issue settled by the Supreme Court was whether a Cooperative Tribunal has jurisdiction to deal with



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the service matter or not and not a case whether Registrar has jurisdiction to deal with the service matter.

8. I do not find any reason to differ from the view taken in **P.Eswaramoorthy** case referred to *supra*. I therefore respectfully follow the same.

9. Having rejected the preliminary objection that the Registrar has no jurisdiction under Section 153 of the Act to deal with the seniority, I dispose this case on merits.

10. The petitioner was appointed as a supervisor in D.D.115 Cooperative Primary Agricultural and Rural Development Bank, Palani, Dindigul District, on 01.08.1997. He was dismissed from service on 27.01.2000. He filed a Writ Petition before this Court challenging the order of dismissal. The said Writ Petition was allowed. In pursuance of the order of this Court in the said Writ Petition, the petitioner was reinstated in service by the Sub Registrar/Executive Officer by his proceedings dated 25.09.2003. The service of the petitioner was regularized by the first respondent by his proceedings dated 23.08.2007



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with effect from 12.03.2001. Time scale of pay was fixed by the second respondent by his proceedings dated 21.11.2008. By an order dated 31.03.2009, a revised seniority list was issued. The said list reads as follows:-

Sl. No.	Name	Designation	Date of Appointment
1	V.Arumugam	Secretary (incharge)	07.02.1973
2	N.Dhandapani	Supervisor	22.05.1998
3	K.Paramasivan	Supervisor	01.06.1998
4	K.Ramathal	Supervisor	01.06.1998
5	K.Rohini	Supervisor	22.05.1998
5	N.Kumaresan	Supervisor	01.12.1998
6	A.Sivakumar *	Supervisor	01.08.1997

* The petitioner herein.

11. The petitioner filed a revision before the first respondent and in said revision, the following order came to be passed by the first respondent:-

... rPuha;T kDjhuH gzpapy; ,y;yhkypUe;j fhyk;
vt;thW Kiwg;gLj;jg;gl;Ls;sJ vd;gJ Fwpj;J vt;tpj
gjpYiufSk;> Mtz rhl;rpfSk; jhf;fy; nra;ag;glhj
epiyapy;> rq;fj;jpd; jdp mYtyH ntspapl;l gzp
%g;Gg; gl;bay; Vw;Wf; nfhs;sf;\$baNj vd KbT
nra;ag;gLfpwJ. vdpDk; gzp%g;G gl;bay; ntspapl;l
gpd;dH gl;baypy; ,lk; ngw;Ws;s midtUf;Fk;



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*njhlHGWj;jg;gl;L> MI;Nrgq;fs; VJkpUg;gpd;> mit
ghprPypf;fg;gl;L tq;fp epHthfj;jhy; gjpy; mspf;fg;gl
Ntz;Lk;. rPuha;T kDjhuH njhptpj;Js;s
MI;Nrgq;fisg; ghprPypj;J gjpyspf;Fk;gbAk;>
mjdbg;gilapy; chpa eltb;iffs; Nkw;nfh;Sk;gbAk;
tq;fp epHthfj;jpw;F Mizapl;L ,dk; 1 jPHT
nra;ag;gLfpwJ. ...*

12. This order of the first respondent is impugned before me by way of this Writ Petition.

13. Mr.A.Thirumurthy accepts the date of appointment and designation that has been given in paragraph 14 of the counter affidavit filed by the first respondent. He would point out that the writ petitioner has been appointed on 01.08.1997. He would state that since the order of dismissal had been set aside and the writ petitioner had been reinstated in service, his seniority should be reverted back to the date of his original appointment rather than the date on which he has been reinstated in service or on the date when his service was regularized.

14. The learned Government Advocate appearing for the first respondent supported the impugned order passed by the first respondent.



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15. Mr.S.Seenivasgam would submit that since the service of the petitioner was regularized only from 12.03.2001, he is not entitled to claim seniority as the person who had been appointed earlier namely, Mr.N.Dhandapani, on 22.05.1998. He would state that the seniority must be reckoned from the date of regularization and not from the date of original appointment.

16. I am unable to accede to arguments of Mr.S.Seenivasgam for the simple reason that it is well settled position of law that when the service of a person is regularized, the seniority reverts back to the date of original appointment and not the date on which the order is passed. In this particular case, admittedly, the petitioner was appointed on 01.08.1997. Subsequently, he was dismissed from the service on 27.01.2000. The said order of dismissal was interfered with and set aside by this Court. Once an order of dismissal is set aside, the petitioner goes back to the position that prevailed on the date of his appointment. Therefore, the seniority of the petitioner must be reckoned only from 01.08.1997 and not the date on which he was regularized.



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17. The first respondent Registrar ought to have taken note of this aspect and set aside the impugned seniority list. On the contrary, the first respondent has directed the petitioner to give a representation to the second respondent bank and he has directed the said representation to be considered by the second respondent.

18. Once seniority list is published and it attains finality, there is no question of giving a representation objecting to the final seniority list. The objection can be given when the tentative list is published and the final list will be published on considering the objection that has been raised.

19. In this particular case, seniority list that has been published is final one and therefore, the question of entertaining an objection to the same does not arise. The only remedy available to the parties was to agitate the correctness of the same and it had been rightly done so in exercise of power vested under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983.



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20. In the light of the above discussion, this Writ Petition succeeds.

Impugned order is set aside. Consequently, the order fixing the seniority of the petitioner in Sl.No.7 is also set aside. The second respondent is directed to re-fix the seniority of the petitioner with effect from the date of his original appointment and not the date on which his service was regularized. Any financial benefits that have been accrued to the petitioner on account of re-fixation of seniority is only to be given notionally.

21. Accordingly, this Writ Petition is allowed. No costs.

09.11.2023

NCC :Yes/No
Internet: Yes/No
Index: Yes/ No
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To

- 1.The Joint Registrar of Co-operative Societies,
O/o. The Joint Registrar of Co-operative Societies,
Dindigul.
- 2.The Special Officer,
D.D.115, Palani Co-operative Primary Co-operative
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V.LAKSHMINARAYANAN, J.

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