

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-03-2015

CORAM:

THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAN

W.P.Nos.34693, 36581, 36585, 38480, 38481 and 39095 of 2004
and 4874, 5295, 7896, 8314, 9506, 9850, 21432, 26475, 28399 and
34053 of 2005 and 3639 of 2008 and WPMP Nos.43911, 43914, 46015 and
46619 of 2004, 5395, 5851, 8971, 10341, 10674, 23353, 28924 and 36963
of 2005
and WVMP Nos.1176 and 1464 of 2005 and 1817 of 2006 and 378 of 2007
and MP No.1 of 2008

Tamil Nadu Cooperative Bank Employees
Association (Regd. No.2423/MDS),
233, NSC Bose Road,
Chennai-1 represented by its
General Secretary

.. Petitioners in WPs.34693, 36581,
36585, 38480, 38481, 39095 of 2004.
5295, 7896, 8314, 9506, 9850, 21432,
26475, 34053/2005 and 3639/2008.

Kancheepuram Central Co-op. Bank Staff Union,
CPF/1240 rep. by its General Secretary,
A.R.Hariharan,
No.20/7, Anantha Iyengar Street,
Uthiramerur 603 406.

..Petitioner in WP.4874/2005.

The Salem District Central co-operative Bank,
Legal heir Employees Association,
SDCCB Buildijng, Salem 636 001
rep. by its Secretary,
Mr.A.Murugesan.

..Petitioner in WP.28399/2005.

The State of Tamil Nadu rep. by
The Principal Secretary to Government
Co-operation, Food and Consumer
Protection Department, Fort St. George,
Chennai 600 009.

2. The Registrar of Co-operative societies,
170, EVR High Road,
Kilpauk, Chennai 10.

..Respondents 1 and 2 in all WPs.

The Special Officer,
Sivagangai District Central Co-operative Bank Ltd.,
Sivagangai. ..Respondent 3 in WP.34693/04.

The Special Officer,
The Madurai District Central co-operative Bank Ltd.,
187, North Veli Street,
Madurai 625 001. ..Respondent 3 in WP.36581/04.

The Special Officer,
The Virudhunagar District Central co-operative Bank Ltd.,
104/1, Madurai Road,
Virudhunagar 626 001. ..Respondent 3 in WP.36585/04.

The Special Officer,
The Coimbatore District Central Co-operative Bank Ltd.,
Coimbatore 18. ..Respondent 3 in WP.38480/04.

The Special Officer,
The Erode District Central Co-operative Bank Ltd.,
Bhavani Main Road,
Erode 638 003. ..Respondent 3 in WP.38481/04.

The Special Officer,
The Pudukottai District Central Co-operative Bank Ltd.,
Pudukottai. ..Respondent 3 in WP.39095/04.

The Special Officer,
Kancheepuram Central Co-operative Bank ltd.,
Kancheepuram 631 501. ..Respondent 3 in WP.4874/05.

The Special Officer,
The Kancheepuram District Central Co-operative Bank Ltd.
15G, Sheikpet North Street,
Kancheepuram 631 501. ..Respondent 3 in WP.5295/05.

The Special Officer,
The Vellore District Central Co-operative Bank Ltd,
Officers Line, Vellore. ..Respondent 3 in WP.7896/05.

The Special Officer,
The Villupuram District Central Co-operative Bank Ltd.,
2, Government Hospital Road,
Villupuram. ..Respondent 3 in WP.8314/05.

The Special Officer,
The Thanjavur District Central Co-operative Bank Ltd.,
Thanjavur. ..Respondent 3 in WP.9506/05.

The Special Officer,
The Tiruvannamalai District Central Co-operative Bank Ltd.,
Tiruvannamalai. ..Respondent 3 in WP.9850/05.

The Special Officer,
The Kumbakonam District Central Co-operative Bank Ltd.,
2, T.S.R.Big Street,
Kumbakonam 612 001. ..Respondent 3 in WP.21432/05.

The Special Officer,
The Villupuram District Central Co-operative Bank Ltd.,
2, Government Hospital Road,
Villupuram. ..Respondent 3 in WP.26475/05.

The Deputy Registrar of Co-operative Societies,
Tindivanam,
Villupuram District. ..Respondent 4 in WP.26475/05.

The Special Officer,
The Salem District Central Co-operative Bank Ltd.,
Salem 636 001. ..Respondent 3 in WP.28399/05.

The Special Officer,
Cuddalore District Central Co-operative Bank Ltd.,
Cuddalore. ..Respondent 3 in WP.34053/05.

The Special Officer,
The Dharmapuri District Central Co-operative Bank Ltd.,
KK.349, Nethaji Bypass Road,
Dharmapuri 1. ..Respondent 3 in WP.3639/08.

Prayer in all WPs.:

This Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Declaration, declaring that G.O.Ms.Nos.241, 221, 242, 232, 238, 222, 231, 233, 236, 226, 225, 228, 236, 84, 230 and 234, Co-operation Food and Consumer Protection [CCI] Department dated 2.6.2004, 31.5.2004, 2.6.2004, 31.5.2004, 31.5.2004, 31.05.2004, 31.05.2004, 31.05.2004, 31.05.2004, 31.05.2004, 31.05.2004, 31.05.2004, 15.3.2005, 31.5.2004 and 31.5.2004 and the special bye laws as approved therein relating to the service conditions of employees of the Sivagangai District Central Cooperative Bank Ltd. are unconstitutional and null and void and not binding on the employees of the third respondent Bank.

For Petitioner in WPs.

34693, 36581, 36585, 38480,
38481 & 39095/04, 5295, 7896,
8314, 9506, 9850, 21432,
34053/05 and 3639/08

: Mr.R.Yashod Vardhan, Senior
Counsel for Mr.R.Sunil Kumar

For Petitioner in WP 26475/05 : Mr.A.S.Thambusamy

For Petitioner in WP 4874/05 : Mr.R.Rajaram

For Petitioner in WP 28399/05 : M/s.T.Karunakaran, G.Arulselvi.

For Respondent - 1 : Ms.T.P.Savitha, G.A.

For Respondents- 2 & 3 : Mr.Vijay Narayan, Senior Counsel
for Mr.R.Parthiban,
Mrs.G.Thilakavathy,
Mr.M.R.Raghavan
Mr.M.S.Palanisamy
Mr.P.S.Sivashanmuga Sundaram
M/s.Aiyar and Dolia.

C O M M O N O R D E R

All these writ petitions challenge the validity of the Government Orders, approving the Special Bye-laws framed under Rule 149 of the Tamil Nadu Cooperative Societies Rules 1988, regulating the service conditions of the employees of various District Central Cooperative Banks.

2. I have heard Mr.R.Yashod Vardhan, learned Senior Counsel Mr.A.S.Thambusamy and Mr.R.Rajaram, learned counsel appearing for the petitioners, Mr.Vijay Narayan, learned Senior Counsel, Mrs.G.Thilakavathy, Mr.M.R.Raghavan, Mr.M.S.Palanisamy and Mr.P.S.Sivashanmuga Sundaram learned counsel appearing for the Banks and Ms.T.P.Savitha, learned Government Advocate appearing for the official respondents in all WPs.

3. When the correctness of a Government Order in G.O.Ms.No.86, Cooperation, Food and Consumer Protection Department, dated 12.3.2001, validating all appointments to Cooperative Societies and Cooperative Banks, was put to test in a batch of writ petitions, a Division Bench of this Court issued directions in L.Justine and Another vs. The Registrar of Cooperative Societies {2002 (4) CTC 385}, to Societies where cadre strength had not been fixed, to adopt Special Bye-laws in conformity with Rule 149(1) of the Tamil Nadu Cooperative Societies Rules 1988. The Registrar of Cooperative Societies was directed to issue a Circular to all Societies, calling upon them to adopt Special Bye-laws.

4. In pursuance of the said directions, the District Central Cooperative Banks of Sivagangai, Erode, Pudukottai, Kancheepuram, Vellore, Coimbatore, Villupuram, Madurai, Virudhunagar, Tanjore, Dharmapuri, Salem, Kumbakonam, Tiruvannamalai and Cuddalore, adopted Special Bye-laws and sent the same to the Government for approval. By independent orders, passed in G.O.Ms.No.241, dated 2.6.2004, G.O.Ms.No.238, dated 31.5.2004, G.O.Ms.No.222, dated 31.5.2004, G.O.Ms.No.231, dated 31.5.2004, G.O.Ms.No.233, dated 31.5.2004, G.O.Ms.No.232, dated 31.5.2004, G.O.Ms.No.236, dated 31.5.2004, G.O.Ms.No.221, dated 31.5.2004, G.O.Ms.No.242, dated 2.6.2004, G.O.Ms.No.226, dated 31.5.2004, G.O.Ms.No.234, dated 31.5.2004, G.O.Ms.No.84, dated 15.3.2005, G.O.Ms.No.228, dated 31.5.2004, G.O.Ms.No.225, dated 31.5.2004 and G.O.Ms.No.230, dated 31.5.2004, in Cooperation, Food and Consumer Protection Department, the Government approved the Special Bye-laws for each of those District Central Cooperative Banks.

5. Contending that some of the terms and conditions of service stipulated in those Bye-laws, in so far as their application to the serving employees are concerned, are contrary to the directions of this Court, contrary to the settlements reached under the Industrial Disputes Act and tend to alter the existing service conditions, the Associations/Unions of employees of these Cooperative Banks have come up with the present writ petitions.

FIRST CONTENTION:

6. After the decision in L.Justine was rendered by the Division Bench on 24.10.2002, another batch of writ petitions in W.P.No. 16190 of 1995 batch, was taken up by the Division Bench for disposal. In the said batch, the question as to the propriety of the Special Officers of Cooperative Societies, in adopting the Model Bye-laws framed by the Registrar of Cooperative Societies, arose. The grievance projected by the employees in the said batch of cases, was that there cannot be an unsavoury uniformity in the Bye-laws adopted by all Societies. The said batch of cases was disposed of by an order dated 9.12.2002. Since it is of relevance, the operative portion is extracted as follows:-

"There are several kinds of Cooperative Societies with varied functions and it may require some bye-laws to suit the situation of a particular Society or Societies having regard to the nature of functions/business. The variance may be with regard to the cadre strength and any other matter and, to say concisely, all the clauses in the bye-laws cannot be the same and similar. May be, the general clauses tally, but special features may vary.

3. The complaint of the learned counsel appearing in this batch of writ petitions is that since there is no selected body to manage

the Societies, and as the Societies are being managed by the Special Officers, who are no other than the subordinates of the Government, the Special Officers are being commanded to adopt the Model Bye-laws framed by the Registrar, and that the said Model Bye-laws may not suit all the Societies in some respects.

4. We have perused the counter affidavit filed on behalf of the Government and, in fact, there is not much resistance put up by the respondents in this regard. Having considered all the aspects, we dispose of this batch of writ petitions with a direction to the Special Officers, manning the Cooperative Societies involved in all these writ petitions, to frame the Model Bye-laws, by taking the relevant factors into considerations for each Society, after hearing the petitioners' Union and then submit the said Draft Bye-laws for approval and registration, to the appropriate authority. This exercise shall be made within a period of three months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are closed. No costs."

7. Subsequently, another batch of writ petitions in W.P.No.41932 of 2000 batch, was disposed of by the Division Bench by an order dated 8.1.2003, holding that the decision in L.Justine would cover even these cases. However, it was also clarified by the Division Bench that wherever cadre strength of Cooperative Societies had already been fixed on the basis of relevant Government Orders, that will stand. Therefore, the Division Bench held that while considering the cadre strength and the question of revision of pay scales, the Government Orders on the basis of which cadre strength was fixed, should be taken into account.

8. The first contention of the petitioners in these writ petitions is that while approving the Special Bye-laws, by the orders impugned in these writ petitions, the respondents have violated the orders of the Division Bench dated 9.12.2002 and 8.1.2003. The violation according to the petitioners, is of two fold viz., (i) that the Unions were not heard before the Special Bye-laws were sent for approval, as directed by the Division Bench in the order dated 9.12.2002 and (ii) that the cadre strength was not fixed in accordance with the order of the Division Bench dated 8.1.2003.

9. Though the petitioners complained of two violations, the learned counsel appearing for the petitioners in all these writ petitions, conceded at the time of hearing that the petitioners are

not very much concerned about the fixation of cadre strength, since there was no threat of retrenchment of existing employees on that account. The fixation of cadre strength may have an impact on future recruitments. Therefore all the learned counsel for the petitioners, did not press the said contention.

10. As regards the contention that the Unions were not heard before the Special Bye-laws were sent for approval, it is contended by the learned counsel appearing for the Banks that the Model Bye-laws were first circulated to the Unions and it is only after considering the objections raised by the Unions that the Special Bye-laws were framed and sent for approval to the Government. This fact is not disputed by the learned counsel appearing for the petitioners.

11. But Mr.R.Yashod Vardhan, learned Senior Counsel appearing for some of the Unions, contended that some of the clauses contained in the Model Bye-laws furnished to the Unions, were different from the corresponding clauses in the Special Bye-laws. Therefore, according to the learned Senior Counsel, the opportunity given to the Unions, turned out to be a farce and was violative of the order of the Division Bench dated 9.12.2002.

12. But the said contention cannot be accepted for two reasons. They are as follows:-

(i) The direction issued by the Division Bench on 9.12.2002 was "to frame Model Bye-laws, by taking the relevant factors into consideration for each Society, after hearing the petitioners' Union and then submit the Draft Bye-laws for approval and registration". Admittedly, the Model Bye-laws were circulated to the Unions. After the Unions submitted objections, the Bye-laws were adopted with modifications and then sent for approval. There was no bar for the Special Officers to incorporate any modifications, after receiving the objections of the Unions. Therefore, there was no violation of the order of the Division Bench.

(ii) Section 73 of the Tamil Nadu Cooperative Societies Act, 1983, empowers a registered society to appoint such paid officers and servants as are necessary for the efficient performance of its functions. The proviso to Section 73 indicates that the qualifications and conditions of service of such officers and servants, including the disciplinary control and the cadre strength, shall be such as may be prescribed. Rule 6 (1) of the Tamil Nadu Cooperative Societies Rules 1988, lists the matters that could be dealt with, by the Bye-laws of a Cooperative Society. Rule 6(1) (mm), reads as follows:-

"6. Subject matter of Bye-laws:- (1) The Bye-laws may deal with all or any of the following matters, namely,

(a)

.. .. .

(mm) subject to the provisions contained in Sections 73 to 77 and the rules

made and orders issued thereunder, Special bye-laws specifying the authority competent to fix, revise or regulate the strength of the establishment, the scales of pay and allowances of the employees of the Society; and the conditions of service of employees of the Society providing for -

(A) the age at entry in service and for retirement on superannuation;

(B) the minimum educational and other qualifications for the several categories of employees;

(C) the method of recruitment of candidates;

(D) the service conditions including leave to which employees are eligible, the authority competent to sanction leave, the penalties that may be imposed by way of disciplinary action and the authority competent to impose such penalties and the appellate authority in respect of disciplinary action taken by such authority;

(E) the establishment of employees provident fund; and

(F) payment of gratuity on retirement or death."

Rule 6(2) enables the inclusion of any incidental matters in the bye-laws of a society. Rule 7(2) requires the Registrar to examine the proposed bye-laws of a society and satisfy himself that all the requirements specified in Section 9(1) have been complied with. Therefore there are adequate safeguards and the opportunity given by the Division Bench to the Unions, is in addition to what is statutorily prescribed. Hence, a substantial compliance with the directions of the Division Bench in its order dated 9.12.2002, was sufficient. In as much as there has been substantial compliance, the first contention that the order of the Division Bench was not followed, cannot be accepted.

SECOND CONTENTION:

13. The second contention of the petitioners is that some of the provisions of the Special Bye-laws are actually contrary to the terms of the Settlements entered into by the Unions with the managements under Section 12(3) of the Industrial Disputes Act, 1947. According to the petitioners, these Settlements had the approval of the Registrar of Cooperative Societies and were not similar to the Settlements under Section 18(3), which became the subject matter of hot contest in L. Justine case. Therefore, the petitioners contend that those Settlements cannot be annulled unilaterally by the Special Bye-laws.

14. In support of the said contention, Mr.R.Yashod Vardhan, learned Senior Counsel for some of the petitioners, relied upon the decision of the Division Bench of this Court in Tiruchirappalli Hirudayapuram Cooperative Bank Employees' Union vs. Joint Registrar of Cooperative Societies {1992 (1) LLJ 747} and the decisions of the Supreme Court in Karnataka State Road Transport Corporation vs. K.S.R.T.C. Staff and Workers' Federation {1999 (2) SCC 687} and Transmission Corporation, A.P. Ltd vs. P.Ramachandra Rao {2006 (9) SCC 623}.

15. In Tiruchirappalli Hirudayapuram case, the Division Bench of this Court held that the respondents cannot adjudicate over the Settlements and unilaterally set them at naught, on the ground that the Settlements were the product of collusion. In Karnataka State Road Transport Corporation, the Supreme Court held that the binding effect of a Settlement, as a contractual obligation, continued until replaced by another Settlement. This decision followed one of the earliest decisions of the Apex Court in LIC of India vs. D.J.Bahadur {1981 (1) SCC 315}. In Transmission Corporation case, the Supreme Court held that so long as there was no challenge to the Settlement, under Section 12(3), it is binding.

16. Before testing the validity of the above contention, it is necessary to point out that in L.Justine, the Division Bench considered the effect of Tiruchirappalli Hirudayapuram Society case in paragraph 17(m) of its decision. It was held therein that settlements valid in the eye of law, but which are annulled after the change of management, stood on a different footing than unauthorised settlements and settlements with retrospective effect. After saying so, the Division Bench declared in paragraph 19(vii) of the judgment in Justine

"that either the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 or the Industrial Disputes Act, 1947, or the settlements entered under Sections 12 or 18 thereof, shall have no application to the staff of the cooperative societies appointed without adequate qualifications or beyond the cadre strength for the period from 9.7.1980 to 11.3.2001. This is equally applicable to the staff appointed to the cooperative societies, otherwise than through employment exchange, for the period from 12.3.2001 onwards.

Moreover, the directions issued in para 19(i) and 19(v) by the Division Bench in L.Justine, were virtually set aside by the Supreme Court in A.Uma Rani vs. Registrar, [2004 (7) SCC 112].

17. Keeping the above in mind, let me have a look at the list of matters in the Special Bye-laws, with respect to which the petitioners raise the above contention. The matters about which the petitioners have a grievance are as follows:-

(a) PROVIDENT FUND: Under the Settlements entered into by some of the District Central Cooperative Banks, the Provident Fund Contribution was to be 10% of the basic pay and dearness allowance. In few cases, it is 12%. But the Special Bye-laws tend to bring the same in accordance with the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act 1952 and the Scheme thereunder. Therefore, the employer's contribution may come down.

(b) LEAVE TRAVEL CONCESSION: Under the Section 12(3) Settlements, some of the banks allow Leave Travel Concession, upto a maximum distance of 1,500 kms one way for a block of every 2 years and both ways for a block of 4 years. But by the Special Bye-laws, the Leave Travel Concession that could be allowed to the employees would be as per the Rules applicable to Government servants. It appears that the maximum distance allowed in the case of Government servants, is only 800 kms.

(c) TRAVELLING ALLOWANCE: The Settlements prescribe different amounts of TA/DA for different places for different categories of employees. But the Special Bye-laws tend to bring them on par with what is fixed by the Government or the Registrar.

(d) LOANS AND ADVANCES: The Settlements entitle the employees to different types of loans and advances such as educational loan, housing loan, consumer loan, marriage loan, vehicle loan, festival advance etc. But the Special Bye-laws indicate that the various kinds of loans and advances would be in accordance with the Regulations approved by the Registrar.

18. Apart from the above matters on which the Special Bye-laws, according to the petitioners, tend to encroach into the Settlements under Section 12(3), there are also three other matters in the Special Bye-laws, about which the petitioners have a grievance. They are (i) the promotional policy indicated in Special Bye-laws, disables a person who suffered any punishment during a period of 3 years immediately preceding the date for consideration, from being eligible for consideration (ii) there is a provision in the Special Bye-laws for sending an employee of a Cooperative Society to another Society on Foreign Service, which is not permissible and (iii) there is a provision in the Bye-laws for presuming abandonment of service, if an employee is continuously absent for a prescribed period.

19. It is the contention of the petitioners that it is settled law that the Special Bye-laws of a Cooperative Society do not have the force of law. There are mere contracts and hence these Special Bye-laws cannot override the Settlements reached under the Industrial Disputes Act, 1947. In support of his contention, Mr.R.Yashod Vardhan, learned Senior Counsel relied upon the decision of the Supreme Court in Cooperative Central Bank Ltd vs. Additional Industrial Tribunal, Andhra Pradesh {AIR 1970 SC 245}, wherein it was held that the Bye-laws of a Cooperative Society framed in pursuance of the provisions of the Act, cannot be held to be law or to have the force of law and that though the Rules framed in exercise of the power conferred by Statute normally have the force of the Statute, that principle cannot be applied to the Bye-laws of a Cooperative

Society. The learned Senior Counsel also relied upon a Five Bench decision of this Court in K.Marappan vs. Deputy Registrar of Cooperative Societies, Namakkal Circle, Namakkal {2006 (4) MLJ 641}, wherein the larger Bench held that the Bye-laws of a Cooperative Society do not have the force of law and that they are in the nature of contract between the Society and its employees or between the Society and its members.

20. Before testing the correctness of this argument, it is necessary to have a look at Rule 6 and Rule 149. As stated earlier, Rule 6(1) enlists the matters that could be dealt with by the Bye-laws. Rule 6(1)(mm) empowers Special Bye-laws to be issued, subject to the provisions of Sections 73 to 77 and the Rules made and orders issued thereunder, in respect of the conditions of service of employees of the Societies. Thus, Rule 6(1) contemplates two types of Bye-laws viz., (i) General Bye-laws which constitute the contract inter se between the members of the Society and between the Society and its members and (ii) Special Bye-laws dealing only with the terms and conditions of service of employees. There can be no doubt that the General Bye-laws of a Society, though framed in exercise of the power statutorily conferred, are in the realm of a contract. Therefore to this extent, the learned counsel for the petitioner is right.

21. But how far the same argument can be stretched, in the light of the mandate of Rule 149, is a question that requires further probing. This is on account of the fact that Rule 149 does not just list out, the matters for which provision could be made in the Special Bye-laws. In other words, there is a distinction between Rule 6(1) and Rule 149. Rule 6(1), as stated earlier, lists the matters which could be dealt with by the Bye-laws. The Societies are given a free hand to frame Bye-laws, in respect of matters which are listed in Rule 6(1). Even Rule 6(1)(mm) gives a leverage for the Societies to frame Special Bye-laws in respect of matters listed in Sub Clauses (A) to (F). In respect of these matters, the Society has an element of freedom.

22. But Rule 149 stands on a different footing. It appears to provide a complete Code in itself, in respect of matters covered thereunder. Rule 149 does not say that the matters listed therein are to be taken care of or provided for in the Bye-laws. In fact, there is no reference in Rule 149 to Special Bye-laws. The Scheme of Rule 149 is as follows:-

(i) Clause (a) of Sub Rule(1) of Rule 149 divides the posts, both Administrative and Technical, in a Cooperative Society, into 7 Classes, depending upon the minimum of the time scale of pay. Clause (b) contains a Table which prescribes the method of appointment to each of those 7 Classes of posts.

(ii) Clause (a) of Sub Rule (2) of Rule 149 contains a table which prescribes the educational as well as other qualifications required for appointment to each of the 7 Classes of posts, whether Administrative or Technical. Clause (b) prescribes an additional

qualification for direct recruitment to posts (other than those in Class 7) in Apex and Federal Societies. Clause (c) stipulates cooperative training as an essential qualification for an employee holding a post other than the posts which are technical or stenotypists or typists or posts in Class 7. Clause (d) stipulates that all promotions are to be only on the basis of merit and ability, seniority being taken into account only when the merit and ability are equal. The proviso to Clause (d) mandates that a person should have put in satisfactory service of not less than 5 years to be eligible for consideration for promotion.

(iii) Clauses (a) and (b) of Sub Rule (3) necessitates a transparent method for recruitment by prescribing for notification of the vacancies to the employment exchange and the publication of advertisements in Dailies, calling for applications. Clause (c) emphasises the need for a written examination and/or oral interview for recruitment.

(iv) While Clause (a) of Sub Rule (4) prescribes the age of 30 years for the General Category candidates and 35 years for the Scheduled Castes and Scheduled Tribes, Clause (b) prescribes the age of retirement as 58 years, for all Classes of posts except the posts in Class 7 for which, the age of retirement is 60 years.

(v) Sub Rule (5) speaks of disqualification of a person both for appointment and for continuation in employment, if he is found guilty of any offence involving moral turpitude.

(vi) Sub Rule (6) speaks about probation, extension of probation and termination of probation.

(vii) Sub Rule (7) bars the appointment of a person who is a near relation to a member of the Board or of a paid Officer of a Society.

(viii) Clause (a) of Sub Rule (8) stipulates whether an employee shall be entitled to casual leave not exceeding 12 days in a year. The Clause also mandates that such leave should not be combined with any other leave and that such leave shall not be availed for more than 6 days continuously. Clause (b) fixes privilege or earned leave as 12 days for every 12 months of service and stipulates that it could be accumulated only upto 60 days. Clause (c) entitles an employee to sick leave upto 18 days for every 12 months of service. However Clause (d) makes it clear that what is prescribed in Sub Rule (8) shall not affect the entitlement to a higher rate of casual or privilege or earned or sick leave, if the terms of the agreement containing service conditions, existing at the time of commencement of these Rules provide for the same. Clause (e) prohibits the encashment of any leave other than privilege or earned leave. It also prescribes certain conditions for such surrender and encashment of earned leave.

(ix) Sub Rule (9) makes it necessary for certain categories of employees not to be absent from station or to leave the Headquarters even during holidays without obtaining the sanction in writing of the competent authority. The Rule also mandates such person to inform the address at which he could be contacted while on leave.

(x) Sub Rule (10) details the procedure for applying and the procedure for sanctioning leave.

(xi) Sub Rule (11) prohibits an employee from communicating to

outsiders, any document or information relating to the Society, which is in his possession or knowledge.

(xii) Sub Rule (12) makes an employee responsible for and liable to make good any financial loss, which the Society may sustain on account of his breach of orders or negligence.

(xiii) Sub Rule (13) bars an employee from having any pecuniary transactions with outsiders.

(xiv) Sub Rule (14) prohibits an employee from contesting for any election and from canvassing in any election.

(xv) Sub Rule (15) bars an employee from engaging himself in any trade or business and from accepting employment or work elsewhere.

(xvi) Sub Rule (16) relates to the conduct of an employee in acquiring and disposing of properties. The Rule also requires the submission of returns in Form No.42 of the assets and liabilities of an employee.

(xvii) Sub Rule (17) speaks about the penalties that could be imposed upon an employee.

(xviii) Sub Rule (18) indicates the authorities competent to impose such penalties. It also indicates the procedure to be followed for imposing such penalties.

(xix) Sub Rule (19) deals with the power of suspension, payment of subsistence allowance and the period upto which an employee could be placed under suspension.

(xx) Sub Rule (20) deals with the right of appeal and the authorities competent to deal with the appeals.

(xxi) Sub Rule (21) speaks about Provident Fund coverage.

(xxii) Sub Rule (22) speaks about payment of Gratuity.

(xxiii) Sub Rule (23) requires every Society to maintain a Service Register for every employee and to enter therein, all service particulars. The Rule also requires every Society to maintain a seniority list.

(xxiv) Sub Rule (24) requires every Society to maintain confidential reports of officers and indicates the authority and the manner in which adverse remarks are to be entered therein.

(xxv) Sub Rule (25) makes the principle of reservation enunciated in Rule 22 of the General Rules for State and Subordinate Services, applicable to Societies.

(xxvi) Sub Rule (26) deals with the applicability of the Rules to the Managing Director or to an employee borne on the common cadre of service.

(xxvii) Sub Rule (27) deals with the applicability of the Rules to Government Servants and servants of other institutions, deputed to a Society.

23. A careful scrutiny of Sub Rules (1) to (27) of Rule 149 would show that a reference to the Bye-laws (General or Special) is made in these Sub Rules only in one or two places and not in others. For example, the types of leave to which a person is entitled, the method of availing such leave etc., are all statutorily fixed by Sub Rules (8) to (10). The Special Bye-laws framed by a Society, cannot actually go contrary to these statutory rules. Similarly, Sub Rule (21) deals with the Provident Fund and Sub Rule (22) deals with Gratuity. Though Sub Rule (22) makes a reference to the provisions of

the Payment of Gratuity Act, 1972, it also permits the Bye-laws to fix the gratuity payable to an employee, subject to a minimum. Sub Rule (21) dealing with Provident Fund reads as follows:-

"Every employee governed by the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (Central Act XIX of 1952) shall contribute to the provident fund in accordance with the provisions of that Act. In the case of an employee of a Society who has been regularised or confirmed but not governed by the provisions of the said Central Act XIX of 1952 contribute to the Employees' Provident Fund of the Society in accordance with the regulations framed by the board for the purpose with the approval of the Registrar."

24. Therefore, so long as the Special Bye-law is in tune with sub-rule (21) of Rule 149, the petitioners cannot make out a grievance that the Provident Fund contribution will come down by virtue of the Bye-laws, which do not have the status of law. The question here is not as to whether the Special Bye-laws are sought to be elevated in status to that of a law. The question here is as to whether the adherence to Rule 149(21) of the Tamil Nadu Co-operative Societies Rules, may make the Special Bye-law vulnerable to attack on the ground that it is merely in the realm of a contract.

25. Similarly, the leave to which an employee of a Co-operative Society is entitled, the various types of leave, the conditions of the grant of leave etc., are also stipulated in sub-rules (8) to (10). But there is no sub-rule dealing with Leave Travel Concession. Clause (d) of sub-rule (8) of Rule 149 makes it clear that nothing contained in the rule shall affect the eligibility of a higher rate of leave applicable to employees under the terms of the agreement of service conditions existing before the commencement of these rules. Therefore, even now, it is open to the petitioners to point out to the competent authority, anything in respect of which a saving clause is made similar to Rule 149(8)(d).

26. In the sub-rules of Rule 149, there are no provisions for Travelling Allowance or Loans and Advances. Therefore, if Special Bye-laws have been made relating to these items, contrary to the settlement reached earlier, the petitioners Union can always go back and seek a modification of the Bye-laws.

27. In fine, it is seen that some matters in the Special Bye-laws, to which the petitioners have taken objection, fall within the four corners of the statutory Rule 149. Therefore, the contention that the Bye-laws cannot have the force of law, may not be applicable to such of those matters. In respect of very few matters, the sub-rules under Rule 149 are silent. In respect of such matters, the petitioners can always make an objection. Hence, the second

contention can only be upheld partly.

THIRD CONTENTION:-

28. Mr.R.Rajaraman, learned counsel for some of the petitioners submitted that the Bye-laws should satisfy the test of Article 14 and that some of the provisions relating to reduction in pay, promotion foreign service, resignation and deemed resignation due to long absence, are all arbitrary.

29. But I fail to understand as to how Article 14 stands violated. As I have indicated elsewhere Rule 149 itself lists out the classes of posts, the method of recruitment to these posts, the qualifications required for the posts and the method of promotion. The Rules are not under challenge. Therefore, the objection to classes 8, 13(2) etc., are not well founded. The reliance placed by Mr.R.Rajaraman in the decision of the Supreme Court in State of Punjab vs. Inder Singh [1997 (8) SCC 372], to the effect that there cannot be any deputation without consent, is also misplaced. The case before the Supreme Court arose out of Service Jurisprudence. The deputation of a Government servant to foreign service is governed by statutory Rules issued in exercise of the power conferred by the proviso to Article 309. Therefore, the same cannot be imported here.

30. In so far as the objection relating to clause 31.2 which provides for deemed resignation for staying away from duty is concerned, the answer is to be found in Rule 149(10)(d), which makes it clear that staying away from duty can be punished with any one of the penalties specified in sub-rule (17). Therefore, as a consequence, the procedure prescribed in sub-rule (18) (b) may have to be followed before the imposition of those penalties. In other words there are inbuilt safeguards.

31. In S.Meenakshi Sundaram vs. the Deputy Registrar decided on 15.11.1999 by P.Shanmugam,J, in a batch of writ petitions in W.P.Nos. 4473 of 1996 batch, the learned Judge considered the effect of the settlements reached between the managements and employees, as seen from paragraph 58 of the decision. After taking note of the decision in Tiruchirapalli Hirudayapuram case in paragraph 71 and the decision in State Bank Staff Union vs. SBI in para 74, the learned Judge considered the decision of the Supreme Court in LIC vs. D.J.Bahadur, [1981 (1) SCC 315] in para 75. Though the learned Judge held that the question was academic at that time in view of the non-formulation of the Bye-laws at that time, the learned Judge held in para 76 that the provisions of the Co-operative Societies Act will prevail.

32. Therefore, in fine I am of the considered view that all the Special Bye-laws to which the petitioners have taken objection, could be divided into two categories namely:

(a) those Bye-laws which are in tune with the various sub-rules of Rule 149 and

(b) those Bye-laws which are not strictly born out of the sub-rules of Rule 149.

In respect of the Bye-laws falling under the first category, the petitioners cannot maintain a challenge. In respect of the second category, the petitioners can only make representations to the Government.

33. In view of the above, all these writ petitions are dismissed. However, it will be open to the petitioners to make representations to the Government in respect of any specific Bye-law or Bye-laws, which are not in tune with Sections 77 to 79 of the Act or Rule 149 of the Rules. There will be no order as to costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Svn/gr.

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Cooperation, Food and Consumer Protection
Department, Fort St. George,
Chennai-600 009.
2. The Registrar of Cooperative Societies,
170, EVR High Road,
Kilpauk,
Chennai-10.
3. The Special Officer,
Sivagangai District Central Cooperative
Bank Ltd., Sivagangai.
4. The Special Officer,
The Madurai District Central Co-operative Bank Ltd.,
187, North Veli Street, Madurai 625 001.
5. The Special Officer,
The Virudhunagar District Central Co-operative Bank Ltd.,
104/1, Madurai Road,
Virudhunagar 626 001.
6. The Special Officer,
The Coimbatore District Central Co-operative Bank Ltd.,
Coimbatore 18.

7. The Special Officer,
The Erode District Central Co-operative Bank Ltd.,
Bhavani Main Road,
Erode 638 003.

8. The Special Officer,
The Pudukottai District Central Co-operative Bank Ltd.,
Pudukottai.

9. The Special Officer,
Kancheepuram Central Co-operative Bank ltd.,
Kancheepuram 631 501,

10. The Special Officer,
The Kancheepuram District Central Co-operative Bank Ltd.
15G, Sheikpet North Street,
Kancheepuram 631 501.

11. The Special Officer,
The Vellore District Central Co-operative Bank Ltd,
Officers Line, Vellore.

12. The Special Officer,
The Villupuram District Central Co-operative Bank Ltd.,
2, Government Hospital Road,
Villupuram.

13. The Special Officer,
The Thanjavur District Central Co-operative Bank Ltd.,
Thanjavur.

14. The Special Officer,
The Tiruvannamalai District Central Co-operative Bank Ltd.,
Tiruvannamalai.

15. The Special Officer,
The Kumbakonam District Central Co-operative Bank Ltd.,
2, T.S.R.Big Street,
Kumbakonam 612 001.

16. The Special Officer,
The Salem District Central Co-operative Bank Ltd.,
Salem 636 001.

17. The Special Officer,
Cuddalore District Central Co-operative Bank Ltd.,
Cuddalore.

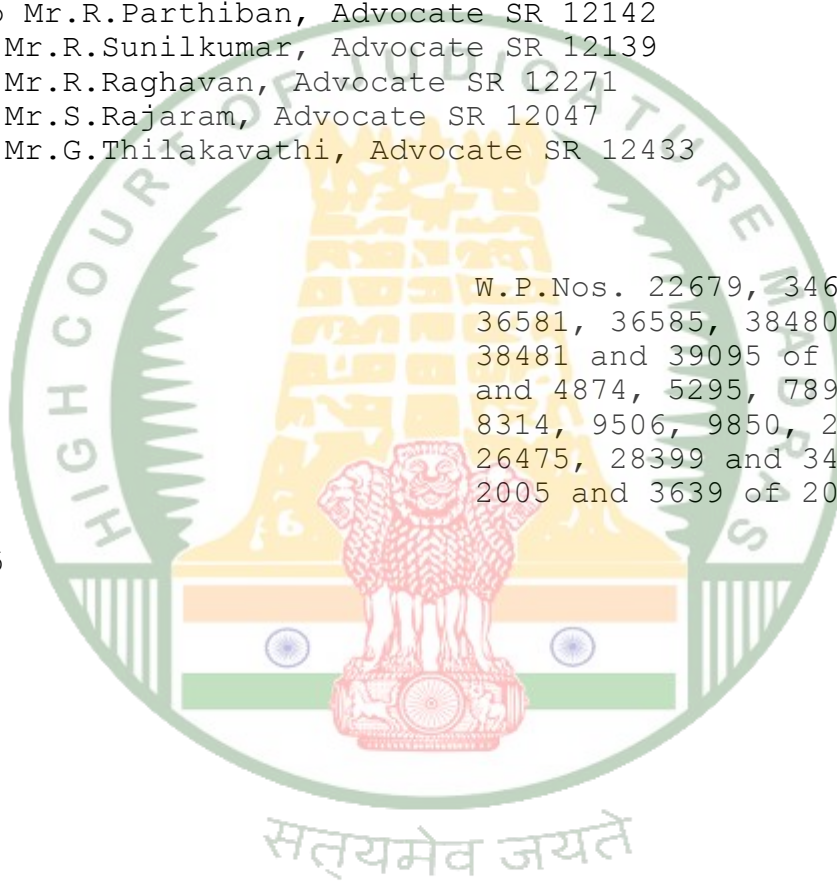
18. The Special Officer,
The Dharmapuri District Central Co-operative Bank Ltd.,
KK.349, Nethaji Bypass Road,
Dharmapuri 1.

19. The Deputy Registrar of Co-operative Societies,
Tindivanam,
Villupura District.

+ 5 CCs to Mr.R.Parthiban, Advocate SR 12142
+ 1 CC to Mr.R.Sunilkumar, Advocate SR 12139
+ 1 CC to Mr.R.Raghavan, Advocate SR 12271
+ 1 CC to Mr.S.Rajaram, Advocate SR 12047
+ 1 CC to Mr.G.Thilakavathi, Advocate SR 12433

W.P.Nos. 22679, 34693,
36581, 36585, 38480,
38481 and 39095 of 2004
and 4874, 5295, 7896,
8314, 9506, 9850, 21432,
26475, 28399 and 34053 of
2005 and 3639 of 2008

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