IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 31.03.2016

DATE OF DECISION: 05.04.2016

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A. No.421 of 2014 and M.P. No.1 of 2014

The Chennai Port Trust Employees' Cooperative
Bank Employees Union
represented by its General Secretary
Registration No.955/MDS
New No.110, Old No.37-B, Sembudoss Street
Chennai 600 001 Appellant/Petitioner

vs.

1 The Registrar of Cooperative Societies
N.V. Natarajan Maaligai
Kilpauk, Chennai 600 010

2 The Additional Registrar of Cooperative Societies
Chennai Region
No.91, St. Mary's Road
Abiramapuram, Chennai 600 018

3 The Deputy Registrar (Credit)
Kuralagam, Chennai 600 108

4 The Board of Directors
The Chennai Port Trust Employees
Cooperative Bank Ltd., X-31
No.110, Old No.37-B Sembudoss Street
Chennai 600 001

5 The Secretary
The Chennai Port Trust Employees
Cooperative Bank Ltd., X-31
represented by its Board of Directors
No.110, Old No.37-B Sembudoss Street
Chennai 600 001 Respondents/Respondents

Writ Appeal preferred under Clause 15 of the Letters Patent challenging the order dated 24.02.2014 passed in W.P. No.20754 of 2015.

WP.NO.20754 of 2015:Petition Under Article 226 of the Constitution of India to issue a Writ of Declaration declaring that the order of the Ist Respondent dated 19/01/2012 bearing R.C.No.108270/2009/B2 in so fari as Clause No.1 and 3 and the Consequential order of the 3rd Respondent bearing Na.Ka.No.470/2012 Na.Va. dated 22/04/2012 in so far as Clause No.1 and 7 as illegal arbitrary and contrary to law and consequently direct the respondents to revise the pay scale of the respondents to revise the pay scale of the Employes whose names are given in the annexure to this affidavit in terms of the Revision of wages made in respect of employes working in the chennai port trust pursuant to the settlement entered Under Section 12(3) of the Industrial Disputes Act, 1947 dated 19/01/2010 with effect from 01.01.2007 and pay arrears.

For appellant Mr. Balan Haridas

For RR 1 to 3 Mr. P.H. Arvindh Pandian
Additional Advocate General
assisted by
Mr. L.P. Shanmugasundaram
Spl. Govt. Pleader (Co-operative)

For RR 4 & 5 Mr. P.S. Sivashanmugasundaram
Special Government Pleader

JUDGMENT

SATISH K. AGNIHOTRI, J.

This intra-Court appeal is focussed against the order dated 24 February 2014 passed in W.P. No.20754 of 2013, in and by which, the learned Single Judge dismissed the writ petition.

2 To avoid prolixity, the parties are referred to as per their arraignment in this intra-Court appeal.

3.1 The facts in detail, leading to the filing of this intra-Court appeal are that the appellant is a union of employees of Chennai Port Trust Employees' Cooperative Bank. The members of the appellant union are none other than the employees of the fourth respondent, viz., The Chennai Port Trust Employees' Cooperative Bank Ltd., which is a society registered under the Tamil Nadu Cooperative Societies Registration Act. The members of the fourth respondent bank are none other than the employees of the Chennai Port Trust. Thus, the pay scale of employees of the fourth respondent bank was on par with that of the employees of Chennai Port Trust.

3.2 In the case of officers of the fourth respondent bank, the pay revision was made after passing of resolution to that effect by the Board of Directors in exercise of powers conferred on the Board by virtue of Clause 27 of the Bye-laws of the fourth respondent bank, as per which, the Board of Directors was given power, to prescribe from time to time, the scale of pay of office establishment and to incur such expenditure, as may be necessary for the management of the society with reference to the scale of pay and allowances, in conformity with the pay scale and allowances of the employees of the Chennai Port Trust. In the case of its other employees, the fourth respondent bank entered into a Settlement with its employees under Section 18(1) and 12(3) of the Industrial Disputes Act, 1947 (for brevity "the I.D. Act").

3.3 Accordingly, the fourth respondent bank entered into a Settlement with the appellant union on 25 September 2000 for revision of wages, as in the case of Chennai Port Trust and resolved to revise the wages of the members of the appellant union from September 2000. The fourth respondent bank forwarded the said Settlement and resolution to the third respondent, viz., the Deputy Registrar (Credit), which was turned down by order dated 26 September 2000. Thereagainst, the appellant union preferred a writ petition being W.P. No.16965 of 2000, which was allowed vide order dated 10 September 2008, in the following terms:

> "11 The 3rd respondent would be justified in directing non implementation of the settlement in case the financial position of the 4th respondent was very bad or the proposed settlement was not in the interest of the bank. Nowhere it was stated in the impugned order that the proposed settlement was not in the interest of the 4th respondent bank. The only reason which was stated by the 3rd respondent relates to the non participation of the President in the memorandum of settlement entered into between the petitioner and the 4th respondent. The same cannot be a valid reason in view of bye-law No.34, which gives clear mandate to the Vice President to preside over meetings in the absence of the President.
>
> 12 It is also brought to my notice that the salary was revised in respect of the officers also and salary in accordance with the said revised scale have already been paid to the officers. The petitioners were also paid the revised scale of pay on the basis of the interim order granted by this Court.
>
> 13 According to the learned counsel for the petitioner, the settlement arrived at earlier is sought to be revised very soon and as such, it is not in the interest of the employees as well as the society to unsettle the settlement at this later point of time.

> 14 In view of the aforesaid reasons, I am of the opinion that the 3rd respondent was not justified in issuing the impugned direction and as such, the impugned order is liable to be set aside. Accordingly, the impugned order dated 26.09.2000 is set aside and the writ petition is allowed. x x x x x x x x x "

3.4 While so, when the Chennai Port Trust revised the wages of its employees with effect from 01 January 2007, the fourth respondent bank revised the wages of its employees from October 2008 instead of from January 2007. Feeling aggrieved, the appellant preferred a revision under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983 (for brevity "the Act") before the second respondent, viz., the Additional Registrar of Cooperative Societies, which ended in dismissal vide order dated 04 December 2009. Assailing the said dismissal and also seeking a direction for revision of wages from January 2007, the appellant union preferred a writ petition being W.P. No.25821 of 2009, which was allowed vide order dated 15 July 2011 in the following terms:

> "10 In this view of the matter, as the principle of res judicata is applicable to the present case by reason of the issue raised herein having already been decided by this Court in W.P. No. 16965 of 2000 vide order dated 10.09.2008 which makes it clear that the settlement was reached only based on G.O. Ms.No.89, dated 16.05.2000; that such settlement was very much acted upon by the petitioner-union and the respondent bank and that moreover, already pay scale revision has been given effect to and what is to be paid is only the arrears for the period between 01.01.2007 to 30.09.2008, this Court finds no ground or valid reason whatsoever to sustain the impugned order.
>
> 11. In the result, the writ petition is allowed with a direction to the respondent bank to pay arrears on the pay scales to the employees, for the period from 01.01.2007 to 30.09.2008, but, without any interest thereon. No costs."

3.5 The aforesaid order was duly complied with by the fourth respondent bank. While so, the Chennai Port Trust entered into a Settlement with the appellant union under Section 12(3) of the I.D. Act on 19 January 2010, as per which, the wages of the employees were revised. When things stood so, the first respondent, viz., the Registrar of Cooperative Societies, vide order dated 19 January 2012, directed the fourth respondent bank to amend Clause 27 of the Bye-laws in tune with Rule 149(1) of the Tamil Nadu Cooperative Societies Rules, 1988 (for brevity "the Rules"). Following the said order, the third respondent too, vide order dated 22 April 2012, directed the fourth respondent bank to submit proof for amending Clause 27 of the Bye-laws. In response, the fourth respondent addressed a representation stating inter alia that its employees are being paid wages on par with the employees of Chennai Port Trust and also passed a resolution to that effect. However, this did not find favour with the respondents 1 to 3 and accordingly, wages of the members of the appellant union were not revised.

3.6 Feeling aggrieved, the appellant union filed the instant writ petition seeking a declaration that the order dated 19 January 2012 passed by the first respondent insofar as Clause nos.1 and 3 and the consequential order dated 22 April 2012 passed by the third respondent insofar as Clause nos.1 and 7, are invalid, arbitrary and contrary to law and further, for a direction to the respondents to revise its employees' pay scale, pursuant to the Settlement dated 19 January 2010.

3.7 The main bone of contention of the appellant union before the learned Single Judge was that when the Settlement arrived at between the appellant union and the fourth respondent bank was premised on Clause 27 of the Bye-laws and when the pay revisions on the earlier occasions were confirmed by this Court in W.P. Nos.16965 of 2000 and 25821 of 2009 vide orders dated 10 September 2008 and 15 July 2011 respectively, the order dated 19 January 2012 passed by the first respondent and the consequential order dated 22 April 2012 passed by the third respondent, cannot be sustained.

3.8 Per contra, the main plank of contention of respondents 1 to 3 before the learned Single Judge was that as per Rule 149 (1) of the Rules, the scale of pay and allowances of the employees of all the cooperative societies should be in conformity with the said Rules, whereas, as per Clause 27 of the Bye-laws of the fourth respondent bank, its Board of Directors was empowered to prescribe the scale of pay and allowances in conformity with the scale of pay and allowances of the Chennai Port Trust. Since the members of the appellant union cannot compare themselves with the Central Government employees, the first respondent, in exercise of power vested under Section 12 of the Act, ordered for amendment of Clause 27 of the Bye-laws of the fourth respondent bank, since the same is not in consonance with Rule 149(1) of the Rules.

3.9 The learned Single Judge, taking note of the power vested on the first respondent by Section 12 of the Act qua amendment of bye-laws and following the judgments in Veena Kumari Tandon vs. Neelam Bhalla and Others[1], Babaji Kondaji Garad

1 (2007) 12 SCC 764

vs. Nasik Merchants Cooperative Bank Ltd., Nasik and Others[2] and Samarth Shiksha Samiti and another vs. Bir Bahadur Singh Rathour and Others[3], wherein, it was held by the Supreme Court that bye-laws must conform to the provisions of the Act concerned, dismissed the writ petition filed by the appellant union.

3.10 Impugning the said order of the learned Single Judge, the appellant union is before us.

4 We have given our anxious consideration to the submissions made by the learned counsel for the parties and also perused the pleadings and documents appended thereto.

5 The issue that arises for out consideration is as to whether the Registrar of Cooperative Societies / first respondent herein is competent to direct the Cooperative Societies to amend the bye-laws, which is premised on the basis of the settlement entered into between the management and the employees Union under the provisions of Section 12(3) of the I.D. Act.

6 The second respondent, vide communication dated 22nd March, 2012 was requested to accord approval to Resolution No.71, wherein it was decided that from 1st January 2007 to 31st December, 2011 for five years, the salary on par with the salary of the employees working in the Chennai Port Trust has to be given to the employees of the Bank, as the management had taken a decision to pay the same salary as is given to the employees of the Chennai Port Trust to the employees of Cooperative Bank.

7 An identical issue came up for consideration in W.P.No.16965 of 2000, as aforestated, wherein the implementation of the settlement dated 25th September, 2000, which was rejected by the Deputy Registrar (Credits) on 26th September 2000, was sought. The learned Single Judge of this court quashed the order dated 26th September 2000 impugned therein and directed to implement the settlement. It is stated that no appeal was preferred thereagainst and the order became final.

8 Again, the issue came up for consideration in W.P.No.25821 of 2009, whereunder the implementation of the revision of wages from 1st January 2007 and to grant arrears of wages from 1st January 2007 to 30th September, 2008 with interest was sought by the appellant Union. The learned Single Judge observed that the order dated 10th September 2008 rendered earlier in W.P.No.16965 of 2000 has become final and as such, the pay scale revision based on settlement dated 25th September 2000 reached on the basis of G.O.Ms.No.89, Cooperation, Food and

2 (1984) 2 SCC 50
3 (2009) 3 SCC 194

Consumer Protection Department, dated 16th May, 2000, cannot be set at naught. Accordingly, the writ petition was allowed and the same also attained finality.

9 The order dated 19th January, 2012 was passed by the Registrar of Cooperative Societies, directing to amend Clause 27 of the Bye-laws of the fourth respondent Bank, which was in consideration in the earlier writ petitions and the decision of the management to implement the terms of the settlement reached between the management of the Port Trust Employees Cooperative Bank Ltd. and the workers union, was adverted to and accepted, and as such, a direction to amend Clause 27 of the Bye-laws suitably in tune with Rule 149(1) of the Rules, needs re-examination.

10 The management of the 5th respondent Bank, after having sought the approval of the first respondent, had come up with the counter affidavit, supporting the view of the first respondent / Registrar of Cooperative Societies, stating therein that Clause 27 of the Bye-laws needs amendment.

11 It is beyond cavil that bye-laws have to be in conformity with the statutory provisions. Whether the bye-laws are in conformity with the provisions of the statute have to be examined on participation by all stakeholders, i.e., the management and the workers. Let us proceed to examine as to when the Registrar can make a direction to amend the bye-laws, which according to the Registrar / first appellant is not in conformity with the statutory provisions.

12 It is apt to refer to the relevant provisions from the Act and the Rules. Section 12 of the Act reads as under :

> "12. Power to direct amendment of by-laws.-- (1) Where the Registrar is satisfied that for the purpose of altering the area of operation of a registered society or for the purpose of improving the services rendered by it or for any other purpose specified in the rules, an amendment of the by-laws is necessary, he may, after consulting in the manner prescribed the board of the financing bank, if any, to which the society is affiliated, by notice in writing, call upon the society to show cause, within such time as may be specified in the notice, why the amendment should not be made :
>
> Provided that if the board of the financing bank does not communicate its COMMENTS within sixty days of the receipt of the communication from the Registrar in this regard it shall be deemed that the board of the financing bank has no

COMMENTS to make on the amendment proposed to the by-laws under this sub-section.

(2) If, within the time specified in the notice referred to in sub-section (1), the registered society fails to make the amendment, the Registrar may, after giving the society an opportunity of making its representations, register the amendment and issue to the society a copy of such amendment.

(3) Any amendment of the by-laws registered under sub-section (2) shall have the same effect as an amendment of the by-laws registered under section 11 unless the registration is cancelled in pursuance of a decision in appeal."

13 Rule 149(1) of the Rules reads as under :

"149. Conditions of service of paid officers and servants of Societies.-- (1) Every society shall, taking into account its nature of business, volume of transaction and financial position, adopt, [with the prior approval of the Registrar], a Special by-law covering the service conditions of its employees. The special by-law shall, inter alia, prescribe the following :-

(i) Cadre strength and classification of various categories of posts and the qualifications required thereof for each such posts.

(ii) The method of recruitment for each such posts.

(iii) The scale of pay and allowances for each such posts.

(iv) Conditions of probation for each such posts.

(v) Duties and responsibilities for each such posts.

(vi) Leave of various kinds admissible and, the conditions thereto for each such posts.

(vii) The penalties that may be imposed upon, the procedure for taking disciplinary action and inflicting various kinds of punishments on an employee holding each such post and the authority competent to entertain and dispose of appeal made against an order of punishment imposed by the competent authority on a disciplinary proceedings.

(viii)Conditions relating to acquisition and disposal of movable and immovable property:

Provided that a minimum period of three years of satisfactory service shall be prescribed for eligibility for promotion from one category to the immediate next higher category of post :

Provided further that the Co-operative Training at the appropriate level may be prescribed as a necessary qualification for specific categories of non-technical posts."

14 Under the provisions of Section 12 of the Act, the Registrar of Cooperative Societies / first respondent herein is, indisputably, competent to direct the amendment of the bye-laws. However, before issuing the direction, the Registrar is obliged to give a notice in writing, calling upon the society to show cause within the time limit, why the amendment should not be made. On receipt of the comments, the Registrar has to satisfy himself by recording reasons, which is the heartbeat of the system.

15 Under Rule 149(1) of the Rules, every society is required to take prior approval of the Registrar in the conduct of its business, taking into account, the nature of the business, volume of transaction and financial position, particularly in respect of cadre strength and classification of various categories of posts and the qualifications required thereof for each such posts, the method of recruitment, the scale of pay and allowances for each such post, conditions of probation for each such posts, duties and responsibilities, leave of various kinds admissible and the conditions thereof, the penalties that may be imposed upon, the procedure for taking disciplinary action, etc.

16 On perusal of the order dated 19th January, 2012, whereunder and wherein, the society was directed to amend the bye-laws, there is no indication as to whether any comments of the bank was invited. There is also no reason as to why employees of the cooperative bank are not entitled to pay revision, when admittedly, the cooperative bank is earning profits and intends to share profits with the employees. Thus, the order, wherein a direction to amend the bye-laws was passed, seems to be not in compliance with the requirement of Section 12 of the Act read with Rule 149(1) of the Rules. The Registrar is further obligated to advert to and distinguish how the earlier

orders dated 10th September 2008 and 15th July 2011 rendered by this Court in W.P.Nos.16965 of 2000 and 25821 of 2009, respectively, are distinguishable on facts and why the bye-laws need amendment. The benefits accrued under Clause 27 of the Bye-laws shall be operative, till an amendment, if need be, is made in accordance with the procedure, as stated hereinabove.

17 In such view of the matter, the order dated 19th January, 2012 passed by the first respondent / Registrar of Cooperative Societies and also the consequential order dated 22nd April, 2012 passed by the third respondent / Deputy Registrar (Credit), are set aside, reserving liberty to the first respondent to initiate fresh process, if so advised, in accordance with the provisions of Section 12 of the Act read with Rule 149(1) of the Rules.

18 Resultantly, the writ appeal stands allowed with the aforestated observations. Cost made easy. Consequently connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1 The Registrar of Cooperative Societies
N.V. Natarajan Maaligai
Kilpauk, Chennai 600 010

2 The Additional Registrar of Cooperative Societies
Chennai Region
No.91, St. Mary's Road
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3 The Deputy Registrar (Credit)
Kuralagam, Chennai 600 108

4. The Board of Director
The Chennai Port Trust Employees
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5 The Secretary
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+1 cc to the Government Pleader sr.21831

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