



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2016

CORAM:

THE HONOURABLE DR.JUSTICE **S.VIMALA**

W.P (MD) No.21837 of 2016

P.Ramesh

: Petitioner

Vs.

1.The Secretary to Government,
Cooperation, Food and Consumer Protection Department,
Secretariat, Chennai.

2.The Joint Registrar of Co-operative Societies,
Theni Region, Theni District.

3.The Joint Registrar,
Madurai District Pandian Consumer Co-operative
Wholesale Stores Ltd.,
162, Keelaveli Veethi,
Madurai - 625 001.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent herein in Letter No.14401/Cal/2016-1, dated 16.09.2016, quash the same and consequently direct the first respondent to dispose of the Review Application on merits by entertaining the Review Application filed by the petitioner on 02.08.2016.

For Petitioner : Mr.A.Sivasubramanian

For Respondents : Mr.A.Muthukaruppan,
Additional Government Pleader.

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus praying to quash the proceedings of the first respondent in Letter No.14401/Cal/2016-1, dated 16.09.2016 and consequently to direct the first respondent to entertain the Review Application filed by the petitioner on 02.08.2016 and dispose of the same on merits.

<https://hcservices.ecourts.gov.in/hcservices/>

2.Heard the learned counsel appearing for the petitioner and



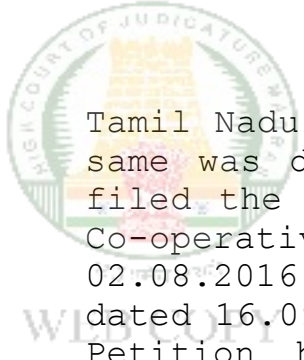
the learned Additional Government Pleader, who took notice for the respondents. By consent, the writ petition itself is taken up for final disposal.

3. The facts leading to the filing of this writ petition are as follows:

The petitioner has been appointed as Junior Assistant on 26.09.1986 in the Whole Sale Stores Limited. The Department decided to promote the eligible employees and fixed the crucial date as 01.04.2013. On 14.06.2013, the third respondent issued a charge memo to the petitioner, alleging that he failed to do his official duty. While so, on 03.07.2013, the third respondent issued orders promoting seven persons as Assistants and his name was not placed in the promotion list for the reason that charge memo is pending. Therefore, the petitioner filed a Revision Petition before the District Registrar, Co-operative Societies, under Section 153(1) of the Tamil Nadu Co-operative Societies Act, 1983, questioning his denial of promotion. The second respondent, vide order dated 26.12.2014, dismissed the same. Against which, the petitioner filed a Review Petition under Section 154(1) of the Tamil Nadu Co-operative Societies Act, 1983, before the first respondent, on 02.08.2016. The first respondent, by the impugned proceedings, dated 16.09.2016, rejected the same, on the ground that the same has been filed after 90 days. In order to quash the same, this writ petition has been filed.

4. The learned counsel for the petitioner would submit that the first respondent has passed the impugned order without providing an opportunity of hearing to the petitioner and it is against the principles of natural justice and therefore the impugned order is liable to be set aside. The learned counsel for the petitioner also relies upon the decision of the Principal Bench of this Court dated 31.03.2016 made in W.P.No.11911 of 2016, wherein it has been held as follows:

"4.1t may be true that the period of limitation for filing review petition before the second respondent under Section 153 of the Act is three months. However, the Act does not state that the authority cannot entertain a petition after the period of limitation. Therefore, the petitioner should be given opportunity to seek for condonation of the delay, by showing sufficient cause. If the revisional authority / second respondent is satisfied with the same, then he may pass appropriate orders. Though the learned counsel for the petitioner submitted that the petitioner has filed a review petition along with condone delay petition, with a supporting affidavit, a copy of the same has not been filed in the typed set of papers".



Tamil Nadu Co-operative Societies Act, 1983, on 15.07.2013 and the same was dismissed on 26.12.2014. Against which, the petitioner filed the Review Petition under Section 154(1) of the Tamil Nadu Co-operative Societies Act, 1983, before the first respondent, on 02.08.2016. The first respondent, by the impugned proceedings, dated 16.09.2016, rejected the same, on the ground that the Review Petition has been filed beyond 90 days time. It would be appropriate to reproduce Rule 170 of the Tamil Nadu Co-operative Societies Rules, 1988:

"170.Application for Review.- (1) The time within which an application for review may be preferred under sub-section (1) of Section 154 shall be ninety days from the date of receipt by the applicant for review of the order to which the application relates.

(2)The application shall be in the form of a memorandum setting forth concisely and under distinct heads, the discovery of new and important facts which, after the exercise of due diligence, were not then within the knowledge of the applicant or couldn't be produced when the order was made or the mistakes or errors apparent on the face of the record or other good and sufficient reasons on the basis of which review is sought. It shall be accompanied by a memorandum of evidence.

(3)The application shall be accompanied by the original or copy certified in accordance with Rule 173 of the order to which the application relates. The fee payable in respect of every application shall be in accordance with Schedule III.

(4)No application for review shall be entertained unless it is accompanied by

(a)such additional number of copies as there are parties to the original order ; and

(b)a receipted Challan or records to evidence payment towards the fees specified in Schedule III.

(5)The application shall, so far as it may be necessary, be disposed of by the Co-operative Tribunal or Registrar or the Government in such manner as it or they may deem fit provided that no order prejudicial to any person shall be passed unless such person has been given an opportunity of making his representations.

(6) Every order of the reviewing authority shall be reduced in writing and a copy thereof shall be communicated free of cost by the reviewing authority to the parties to the review by personal delivery under acknowledgement or under certificate of posting".

6.As per Rule 170(5), the authority, who is inclined to reject the review, cannot do so, without providing an opportunity of hearing to the review petitioner. Under such circumstances, the impugned proceedings, dated 16.09.2016, passed by the first respondent, which has been passed without providing an opportunity of hearing to the petitioner, is liable to be set aside and



accordingly the same is set aside and the matter is remitted back to the first respondent, who shall provide an opportunity of hearing to the petitioner and take the Review Application on file and dispose of the same, by strictly adhering to Rule 170(5) of the Tamil Nadu Co-operative Societies Rules, 1988.

7.The writ petition is allowed on the above terms. No costs.
Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

smn

To

- 1.The Secretary to Government,
Cooperation, Food and Consumer Protection Department,
Secretariat, Chennai.
- 2.The Joint Registrar of Co-operative Societies,
Theni Region, Theni District.
- 3.The Joint Registrar,
Madurai District Pandian Consumer Co-operative
Wholesale Stores Ltd.,
162, Keelaveli Veethi, Madurai - 625 001.

+1cc to Mr.A.Sivasubramanian, Advocate Sr.No. 69982

+1cc to Spl.Government Pleader Sr.No. 69760

JAM/30.11.16/CK/4p-6c

ORDER MADE IN
W.P(MD)No.21837 of 2016

16.11.2016