



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2016

CORAM :

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Second Appeal (MD) No.23 of 2011

and

M.P.(MD)No.1 of 2011

Special Officer,
Kanyakumari District Plantation Employee
Cooperative Thrift & Credit Society,
K.V.117, Kulasekharam Post,
Kanyakumari District. ... Appellant/Appellant/Defendant

-Vs-.

Easwaran ... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, praying to reverse and set aside the judgment and decree dated 19.09.2008 passed by the learned Subordinate Judge, Padmanabhapuram in A.S.No.87 of 2007 in confirming the judgment and decree of Additional District Munsif Court, Padmanabhapuram, in O.S.No.196 of 2002, dated 30.09.2004.

For Appellant : Mr.S.Ramesh
For Respondent : Mr.S.C.Herold Singh
for Mr.T.Jeen Joseph

JUDGMENT

This Second Appeal has been filed by the defendant in the suit in O.S.No.196 of 2002 on the file of the Additional District Munsif Court, Padmanabhapuram.

2.The respondent herein filed a suit in O.S.No.196 of 2002 praying for a decree of permanent injunction restraining the defendant from recovering a sum of Rs.6,925/- from the plaintiff being the arrears of salary earlier that had been paid by the defendant to the plaintiff and also for enabling the plaintiff to recover the arrears from the defendant who had stopped the payment of salary. The plaintiff prayed for a sum of Rs.300/- with effect from 01.05.2001.



3.The suit was resisted by the defendant on several grounds. However, one of the grounds that was raised by the defendant in the written statement is that the suit itself is not maintainable in view of the fact that the plaintiff has either a remedy before the Industrial Tribunal under the provisions of Industrial Disputes Act or before the authority under the Cooperative Societies Act by virtue of Section 156 of the Tamil Nadu Cooperative Societies Act.

4.The trial Court as well as the lower appellate Court have decreed the suit as prayed for holding that the suit is neither barred under Section 156 of the Cooperative Societies Act nor under the provisions of the Industrial Disputes Act. Section 156 of the Cooperative Societies Act reads as follows:

"156.Bar of jurisdiction of Civil Courts.--Notwithstanding anything contained in any other law for the time being in force, no order or award passed, decision or action taken or direction issued under this Act by an arbitrator, a liquidator, the Registrar or an officer authorised or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any court and no injunction shall be granted by any court in respect of anything which is done or intended to be done by or under this Act."

5.Similarly, the Industrial Disputes Act contemplates a mechanism to decide every dispute that arise between the master and employee. Section 2(k) reads as follows:

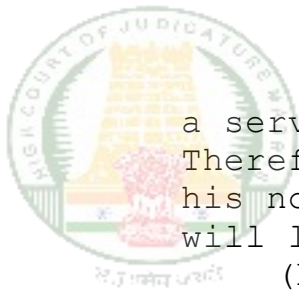
"industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or nonemployment or the terms of employment or with the conditions of labour, or any person;"

6.Having regard to the provisions of the Industrial Disputes Act, it can be seen that any dispute on all matters as between the employer and employee can be decided under the Industrial Disputes Act by referring the matter to the Industrial Tribunal. Having regard to the exclusive jurisdiction of the Tribunal and the legal position settled by this Court in a catena of judgments the Civil Court's jurisdiction is impliedly excluded.

7.The learned counsel for the appellant relied upon a judgment of a Division Bench of this Court in the case of Eswaramoorthy P. and others v. R.J.B.Leoraj and others reported in 2008-III-LLJ-694 wherein it has been held as follows:

"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] 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 or by an industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947, they could not have Section 153 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."



8. The learned counsel for appellant further relied upon the judgment of Division Bench of this Court in W.A.No.3684 of 2004 and batch in Villupuram District Central Cooperative Bank Limited., rep. by its Special Officer v. R.Santhanam and others wherein this Court has followed the judgment of the earlier Division Bench wherein the judgment of learned Single Judge of this Court in Somasundaram V. Liyakat Ali [1997 (1) CTC 4] has been specifically overruled. The judgment of this Court in Somasundaram V. Liyakat Ali [1997 (1) CTC 4] has been relied upon by the lower appellate Court in this case to hold that the suit is maintainable. However, the decision which was followed by the lower appellate Court has been overruled by this Court earlier and the law has been well settled by the judgment of the Division Bench of this Court in the case cited above. Having regard to the legal position and the implied exclusion of jurisdiction of Civil Court, this Court feel that the dispute can only be resolved by referring the matter to the Industrial Tribunal or by availing the remedy provided under the provisions of Tamil Nadu Cooperative Societies Act. Hence, the judgment of the lower appellate Court in A.S.No.87 of 2007 confirming the judgment and decree of the trial Court in O.S.No.196 of 2002 is set aside. The suit filed in O.S.No.196 of 2002 is dismissed. The Second Appeal is allowed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Deputy Registrar (Accounts)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge, Padmanabhapuram.

2. The Additional District Munsif, Padmanabhapuram.

Copy To:

The Section Officer,

Vernacular Records,

Madurai Bench of Madras High Court, Madurai.

+1 cc to Mr.V.Raghavachari, Advocate, SR.No.74884

+1 cc to Mr.T.Jeen Joseph Advocate, SR.No.74247

srm

SH/RR-ME:20.01.2017:4P/6C