

CIN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.13192 of 2014
and
M.P. No.1 of 2014

S.Loganathan

... Petitioner

Vs.

1. Deputy Registrar (Credit) of
Co-operative Societies,
Kuralagam, Chennai - 600 108.

2. Management,
Indian Institute of Technology Chennai
Employees' Co-operative Thrift and
Credit Society Limited,
Regn.No.XC-98,
2nd Floor, "UTILITY Building",
IIT Campus, Chennai 600 036.

.... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari to call for the records of the 1st respondent, quash the notice dated 17.04.2014 bearing Na.Ka.No.1066/2014/Saba 1 of the 1st respondent under section 87 (1) of the Tamil Nadu Co-operative Societies Act and pass such other orders.

For Petitioner : Mr.Balan Haridas

For Respondents : Mrs.T.Girija,
Government Advocate for R1.

Mr.R.Bala Ramesh, for R2

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O R D E R

The Petitioner has filed the present Writ Petition seeking to quash the notice dated 17.04.2014 bearing Na.Ka.No.1066/2014/Saba 1 of the 1st respondent under section 87 (1) of the Tamil Nadu Co-operative Societies Act.

2. The learned counsel for the petitioner would submit that the petitioner joined the second respondent society on 04.07.1973 and retired as Manager of the society on 31.07.2009. The employees of the second respondent society were paid salary on par with the employees of the Indian Institute of Technology, Chennai. Whenever there is a revision of salary of the employees IIT, Chennai, the same is adopted and revised for the employees of the second respondent society. The Government of India issued G.O.Ms. No.89/2000 directing the societies to fix the salary to the employees as directed in the said G.O. The second respondent on 04.03.2009 submitted a proposal to the Additional Registrar of Co-operative Societies for exempting the second respondent from G.O.Ms.No.89/2000 on permit to fix the salary to its employees on par with the Indian Institute of Technology, Chennai. The Registrar of Co-operative Societies through communication dated 01.07.2010 to the Additional Registrar asked the details of the individual employees salary. In turn, the Additional Registrar asked the second respondent to furnish the details. Thereafter, the employees have been requesting in this regard and also gave a representation on 27.12.2011 to the Registrar and Additional Registrar. Consequently, the Registrar of Co-operative Societies gave a letter dated 08.01.2013 and 10.06.2013 asking further details and the same was also furnished by the second respondent. The petitioner was retired on 31.07.2009, While so, the first respondent issued a notice on 18.03.2014 under section 87 of the Tamil Nadu Co-operative Societies Act, 1983 to recover Rs.89,237/-. After getting the petitioner's explanation, the first respondent issued a notice dated 17.04.2014 under Section 87 (1) of the above Act and asked the petitioner to show cause as to why the surcharge proceedings should not be finalized.

3. According to the petitioner, the said benefit has not been revised by the Registrar of Co-operative Societies as per the revised scale of pay on the basis of the Government Order. In this regard, the Petitioner filed writ petitions in W.P.Nos.29237/2014 and 29238 of 2014 and the same are pending. The above Writ Petitions are pertaining to the Service matters. Now, the Present Writ Petition is filed challenging the surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983.

4. The Learned Counsel for the Petitioner would submit that the salary has been paid on the basis of the earlier resolution passed by the second respondent society and without considering the said aspect, the impugned notice has been issued by the first respondent. Hence, the petitioner has been filed the present Writ Petition before this Court.

5. The learned Special Government Pleader would submit that the first respondent issued the impugned show cause notice and the petitioner has filed this writ petition at a premature stage. The petitioner can submit explanation raising all the grounds raised in the present Writ Petition and fairly submitted that the other Writ Petitions in WP.Nos.29237/2014 and 29238 of 2014 are pending before this Court. Hence, the final order in the present writ petition, may be subject to the outcome of the aforesaid writ petition.

6. Heard the rival submissions of both the parties and perused the materials available on record.

7. In view of submissions made by the learned counsel for the parties by accepting the submissions of the learned Special Government Pleader, the present impugned show cause notice has been issued by the first respondent at a premature stage.

8. In Union of India v. Kunisetty Satyanarayana, reported in 2006 (12) SCC 28, the Hon'ble Supreme Court has held as follows:

"15.Writ Jurisdiction is discretionary jurisdiction and hence, such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

9. In the light of the settled principals of law and in view of the decision of the Hon'ble Supreme Court cited supra, this Court cannot interfere the same, at this point of time. Admittedly, the petitioner can submit his explanation before the first respondent and hence, the writ petition is liable to be dismissed as not maintainable.

10. However, the first respondent is directed to proceed with the enquiry as contemplated under Section 87 (4) of the Tamil Nadu Co-operative Societies Act, 1983. As per the under taking made by the learned Special Government Pleader, the

first respondent shall not pass final order till the disposal of the W.P.Nos.29237/2014 and 29238 of 2014.

11. It is needless to say that the petitioner is also permitted to file additional explanation, if so advised within a period of two weeks from the date of receipt of a copy of this order.

12. In view of the above, the Writ Petition is dismissed as not maintainable. Consequently connected miscellaneous petition is closed. No order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rkp

To

1. Deputy Registrar (Credit) of
Co-operative Societies,
Kuralagam, Chennai - 600 108.

+1CC TO Balan Haridass, Advocate sr.59802

+1cc to Government Pleader (Co-OP)sr.61043

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ss(19/9/2017)

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