

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-09-2017

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.17114 of 2015

and

M.P.No.2 of 2015

R.Ramasamy

... Petitioner

Vs

1.The Joint Registrar of Co-op. Societies
Namakkal Region, Namakkal
Namakkal District.

2. The President
S.1320, Sevandhipatti Primary
Agricultural Co-op. Credit Society
Sevandhipatti Post
Namakkal Taluk & District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the first respondent in his Revision No.852/2012/ Sa. Pa. Dated 01.06.2012 whereby confirming the impugned order passed by the second respondent in his proceedings No.Nil, dated 27.01.2012 and quash the same and consequently directing the respondents to disburse the petitioner's retirement benefits like as Gratuity, Provident Fund, Special Provident Fund, Earned Leave Benefits.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.L.P.Shanmugasundaram

Special Government Advocate (Co-op)

ORDER

The order passed by the first respondent, in proceedings dated 1.6.2012, confirming the order passed by the second respondent in proceedings dated 27.1.2012, are under challenge in this writ petition and further direction is sought for to disburse the retirement benefits of the petitioner, including Gratuity, Provident Fund, Special Provident Fund and Earned Leave benefits.

2. The writ petitioner was appointed as a Clerk in the second respondent-Society on 1.10.1972 and thereafter promoted to the post of Secretary. The petitioner states that he was performing the duties and responsibilities attached to the post of Secretary in the second respondent-Society and one Mr.Mathiyazhagan was holding the post of Manager in the same Society and the Manager is responsible for dealing with cash, jewel box and locker key. Accordingly, the same was handed over to the Manager Mr.Mathiyazhagan. The petitioner states that the said Mathiyazhagan, Manager misappropriated Rs.19 lakhs from the Society fund and he was placed under suspension. The said Mathiyazhagan committed suicide subsequently and his properties were attached by the second respondent. The writ petitioner was also placed under suspension on 30.6.2011 on the ground that the petitioner had failed to supervise the Manager. A charge memo was issued in proceedings dated 11.6.2011 and the charges against the writ petitioner was that there was a dereliction of duty and further connived with the said Manager for causing financial loss to the Society to the tune of Rs.10,42,752.48.

3. This apart, another amount of Rs.9,25,000/- was also not credited in the account of the Society and the said amount was misappropriated. At the outset, allegations against the writ petitioner was in relation to lack of supervision and causing financial loss and connivance for misappropriation. The writ petitioner submitted his explanation and an enquiry was ordered. A Domestic Enquiry Officer conducted a detailed enquiry and submitted a report, holding that the charges against the writ petitioner are proved. Based on the enquiry report, the Disciplinary Authorities passed an order on 27.1.2012, terminating the services of the writ petitioner. The order of termination issued on 27.1.2012 was given effect from 30.6.2011. Challenging the said order of termination, the petitioner preferred a revision petition under Section 153 of the Tamil Nadu Co-operative Societies Act, before the first respondent. The revision petition was considered by the first respondent and the writ petitioner raised the point that the retrospective termination issued with effect from 30.6.2011 was irregular. Further, the order of termination was not duly served in time. This apart, subsistence allowance has not been paid to the writ petitioner at the time of conducting the enquiry.

4. The first respondent-Revisional Authority considered the grounds raised in the revision petition by the petitioner and came to the conclusion that the writ petitioner in his capacity as the Secretary of the Society had connived with the Manager Mr.Mathiyazhagan for misappropriation of funds of the Society to the tune of Rs.10,42,752.48. Further, an amount of Rs.9,25,000/- was also not credited in the account of the Society and the said

amount was misappropriated. The writ petitioner was also colluded with the said Mathiyazhagan and connived for committing the act of misappropriation of funds of the Society.

5. In respect of termination, the Revisional Authority has made a finding that the writ petitioner was due to retire from service on 30.6.2011 and he was placed under suspension on 30.6.2011. Thus, the charge memo was issued to him on the last date of his retirement on 11.6.2011. Thus, it is necessary to terminate the services of the writ petitioner with effect from the last date of his retirement and therefore, there was no irregularity in issuing the order of termination with effect from 30.6.2011. In respect of payment of subsistence allowance, the Revisional Authority accepted the claim of the writ petitioner. On these grounds, the revision filed by the writ petitioner was rejected by the first respondent also.

6. The learned counsel appearing for the writ petitioner made a submission that in respect of payment of Gratuity and Provident Fund amount due to the writ petitioner. It is a statutory right of the writ petitioner under the Act and the same cannot be denied. This apart, the order of the second respondent as well as the first respondent, are contrary to the provisions of the Act and the same are liable to be set aside.

7. The learned Special Government Pleader, appearing on behalf of the respondents, made a submission that the writ petitioner was holding the post of the Secretary and he was due to retire from service on attaining the age of superannuation on 30.6.2011. Certain irregularities were brought to the notice of the competent authorities by virtue of the report submitted under Section 81 of the Tamil Nadu Co-operative Societies Act. Thus, a charge memo dated 11.6.2011 was issued to the petitioner. Thereafter, the writ petitioner was placed under suspension on 30.6.2011 on the date of his retirement. On receipt of the explanation from the writ petitioner, the Disciplinary Authority ordered for a domestic enquiry in proceedings dated 19.9.2011 and the Enquiry Officer conducted the enquiry and submitted a report on 31.10.2011. Based on the enquiry report, a second show cause notice was issued to the writ petitioner on 2.11.2011 and the writ petitioner had submitted explanation on 19.11.2011. By considering the explanations and the materials available on record, the Disciplinary Authority/Special Officer passed the final order on 27.1.2012, imposing the punishment of termination against the writ petitioner.

8. The revision petition filed by the petitioner was also rejected by the first respondent by duly considering the merits of the case and there is no irregularity in the orders impugned

in this writ petition.

9. The learned Special Government Pleader brought to the notice of this Court that the Bye-laws of the second respondent-Co-operative Society, more specifically, 31(4) states that "the employee under suspension shall not be allowed to retire on attaining the age of superannuation. His suspension shall be deemed to have been extended till the disposal of the disciplinary proceedings against him during the extended period the service rights accrued to the employee shall freeze on the date of superannuation and the employee shall not be entitled for subsistence allowance."

10. According to the Bye-Law, an employee, who was placed under suspension on the last date of his retirement, is not entitled for subsistence allowance, in view of the fact that the services of the employee of the Co-operative Society, are non-pensionable. In view of the bye-law in relation to the service conditions governing the employees of the Co-operative Society, the writ petitioner is not entitled for subsistence allowance and there is no irregularity in non-payment.

11. The writ petitioner was due to retire on 30.6.2011 and the order of suspension was also issued on the last date of retirement on 30.6.2011 and the services, being non-pensionable, there is no question of payment of subsistence allowance arises in respect of pensionary benefits. The same is to be settled after completion of the disciplinary proceedings and therefore, the second respondent-Society had followed the bye-laws and the rules in force and there is no irregularity in conducting the disciplinary proceedings in view of the fact that irregularities were noticed during the fag end of the services of the writ petitioner.

12. Further, it is stated in the counter-affidavit filed by the first respondent that the bye-law 43(26) of the Sevinthipatty Primary Agricultural Co-operative Credit Society states that when a subscriber is dismissed from the services of the Society, he shall retain his right over his subscription upto the date of dismissal together with interest calculated upto the end of the year proceeding his dismissal, but shall not fair for all other benefits from the fund. Further, it is stated that the surcharge proceedings were initiated against the writ petitioner and EP No.43/11 was ordered on 2.6.2011 against the writ petitioner in which the petitioner was jointly and severally held liable for the payment of Rs.19,81,032/- and the said proceedings are challenged by way of CMA(CS) No.27/2012 now pending before the Principal District Sessions Court, Namakkal.

13. The employees Contribution Provident Fund to the tune of Rs.6,68,046/- as on 31.3.2014 was yet to be paid to the writ petitioner in view of the award passed in surcharge proceedings under Section 87 of the Act in relation to the misappropriation of funds to the tune of Rs.19,81,032/- against the writ petitioner.

14. On appreciation of the above facts and circumstances of this case, this Court is of the opinion that the actions initiated against the writ petitioner are yet to be completed in all respects under the provisions of the Tamil Nadu Co-operative Societies Act, 1983. There is no irregularity in conducting the disciplinary proceedings since due opportunity was provided to the writ petitioner to submit his explanation to participate in the domestic enquiry even after the report was submitted, a second show cause notice was issued to the writ petitioner.

15. The writ petitioner has not submitted a copy of the enquiry report or the other documents relied on by him before the Domestic Enquiry Officer. In the absence of submission of all such documents, this Court is not in a position to appreciate the contentions in the enquiry report. However, on perusal of the order of termination issued by the Disciplinary Authority/Special Officer, considering the materials available on record, issued the punishment of termination.

16. This apart, the allegation against the writ petitioner is of misappropriation and lack of supervision and connivance of the Manager, resulting huge monetary loss to the Society. All the allegations against the writ petitioner are serious and the same are held proved even before the Domestic Enquiry Officer and in respect of the grounds raised in this writ petition that the order of termination was issued with retrospective effect, needs no consideration in view of the fact that the writ petitioner was due to retire from service on 30.6.2011 and the disciplinary proceedings continued even after his retirement and the final order was passed on 27.11.2012, there is no provision for extending the services of the employees of the Co-operative Society and therefore the order of termination was given effect from the last date of retirement of the writ petitioner i.e, from 30.6.2011. Thus, there is no irregularity or illegality in granting the effect of termination with effect from 30.6.2011, which is the date of superannuation of the writ petitioner.

17. In respect of non-payment of subsistence allowance, the counter-affidavit filed by the first respondent categorically states that the bye-law provides that an employee placed under suspension on the last date of retirement, is not eligible for subsistence allowance. The reason behind the analogy is that the employees of the Co-operative Societies are working in a non-

pensionable establishment and there is no provision for payment of subsistence allowance after the date of retirement.

18. This apart, the service condition was incorporated in the bye-law itself and the writ petitioner has not challenged the same. There is no prohibition for the Co-operative Society employees, who attained the age of superannuation to accept an employment after retirement. This apart, the services of the writ petitioner are not retained in service. When the services are not retained, the order of suspension issued has no significance and it is only a linkage provided for conducting and continuing the disciplinary proceedings and therefore, the non-payment of subsistence allowance as per the bye-laws after attaining the age of superannuation, cannot be construed as an irregular. The provision for subsistence allowance can be provided only in the event of retaining the services and if the services are not retained after the date of retirement, then the question of paying the subsistence allowance does not arise at all. Thus, the grounds raised in this writ petition deserves no consideration at all.

19. In respect of the factual aspects, this Court is of the opinion that the Disciplinary Authority as well as the Revisional Authority had considered the merits and the demerits of the case and there is no irregularity in passing the orders impugned and this Court is of the opinion that the orders passed are based on the materials available on record and the same are not infirm.

20. The learned counsel for the writ petitioner raised the ground that the terminal benefits under Sections 78 and 79 of the Act, is to be paid to the writ petitioner. However, the respondents have stated that the surcharge order against the writ petitioner is pending and in order to compensate the loss caused to the Society. On account of the irregularities committed by the writ petitioner, the same has not yet been disbursed and further the civil miscellaneous appeal is also pending before the Principal District Sessions Court, Namakkal.

21. This Court is of the firm opinion that all actions initiated under the provisions of the Act, are independent and to be taken together cogently and the interest of the institution to be protected. Based on the report submitted under Section 81 of the Tamil Nadu Co-operative Societies Act, three fold actions are permissible under law:-

- (i) Surcharge proceedings under Section 87 of the Act;
- (ii) Registration of a criminal case through the Central Crime Investigation Wing for the offences committed under the Indian Penal Code;
- (iii) Disciplinary proceedings under the Special Bye-Laws.

22. All these actions can go simultaneously and absolutely, there is no bar for the authorities competent to proceed with these actions against the employees. The action under Section 87 is for the purpose of recovering the loss caused on account of such irregularities committed by the employees. A final order passed under Section 87 of the Act, is an appealable order under Section 152 of the Tamil Nadu Co-operative Societies Act. In respect of criminal prosecution, the offences committed under the Indian Penal Code are to be prosecuted under the Criminal Law and those actions are entirely different and the same is for the purpose of convicting the employees, who have committed the offences under the Indian Penal Code.

23. Departmental disciplinary proceedings are initiated for the purpose of punishing an employee for the misconduct committed under the Conduct Rules and the process for conducting enquiry are different and independent.

24. The learned counsel for the petitioner contended that the subsistence allowance has not been paid to the writ petitioner and the prayer for payment of subsistence allowance is also sought for in this writ petition. In respect of subsistence allowance, the course of action is entirely different and the writ petitioner has to exhaust the remedy available under Section 153 of the Tamil Nadu Co-operative Societies Act and here, it is not made clear that whether the writ petitioner has made any such revision before the competent authority under the provisions of the Act. In the absence of any such revision, this Court cannot consider the relief in relation to the payment of subsistence allowance.

25. The learned counsel appearing for the writ petitioner made a submission that in view of Sections 78 and 79 of the Act, terminal benefits of the writ petitioner cannot be stopped and even during the pendency of the criminal case, the respondents cannot withhold the terminal benefits due to the writ petitioner.

26. Further, the learned counsel submitted that Sections 78 and 79 being a Statute the same cannot be violated and the non-payment of terminal benefits is a statutory violation and therefore, the principles laid down by the Larger Bench need not be applied to the cases of settlement of terminal benefits.

27. The learned counsel further contended that the Larger Bench of this Court says that writ is not maintainable against the Co-operative Societies. Further, if it is a statutory violation, then a writ petition can be entertained. In the case on hand, it is the case of violation of Sections 78 and 79 of the Act and therefore the writ is to be entertained and the

prayer sought for has to be granted in favour of the writ petitioner.

28. The learned Special Government Pleader (Co-operative) appearing on behalf of the respondents made a submission that the Larger Bench is clear on the issue that a writ can be entertained under Article 226 of the Constitution of India only after exhausting the remedy available under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983.

29. Secondly, the Hon'ble Single Judge of this Court in the case of R.Gopalan Vs. The Registrar of Co-operative Societies and Ors. reported in W.P.No.9976 of 2015 dated 07.04.2015. The relevant paragraphs being 5 to 9, which is extracted hereunder : -

"5.The learned counsel for respondents 1 and 2 has submitted that the petitioner has an effective remedy under the Payment of Gratuity Act, if the third respondent institution is covered under the said Act. The payment of Gratuity Act is a self contained code and even in the case of workman covered by the Industrial Disputes Act, such workman cannot make a claim under Section 33-C(2) of the Industrial Disputes Act before the Labour Court in respect of gratuity and such workman shall approach the Controlling and Appellate authority under the payment of Gratuity Act, as held by the Apex Court reported in 1980 1 SCC 4 [State of Punjab V. Labour Court, Jullundur and Others].

6. If the payment of Gratuity Act is not applicable to the establishment, then Section 78 of the Tamil Nadu Co-operative Societies Act would govern the institution. In that event, the petitioner could approach the Revisional Authority under Section 153 of the Act.

7. He would further submit that if the third respondent is governed by Employees Provident Fund Act, then he could approach the authority under the said Act. If not, then Section 79 of the Tamil Nadu Co-operative Societies Act would govern the situation and he would approach the revisional authority under Section 153 of the said Act for his settlement of PF dues.

8. I am in entire agreement with the submission made by the learned counsel for the respondents. The petitioner seeks interest for the delayed payment of gratuity and provident fund. In the case on hand, terminal benefits are paid. The only issue is whether the petitioner is entitled to interest for the belated payment of 253 days.

9. In my view, the petitioner could approach the appropriate authority under the relevant statutes seeking the relief relating to interest on the belated payment of terminal benefits. Hence, the writ petition is not maintainable. Further, writ petition is not maintainable against the Co-operative Societies. Accordingly, the writ petition stands dismissed. However, this will not preclude the petitioner from approaching the concerned authorities under the relevant statute. No costs. Connected miscellaneous petition is closed."

30. Further, the learned Special Government Pleader referred the Judgement of the Hon'ble Supreme Court of India in the case of State of Punjab Vs. Labour Court, Jullunder and Ors. reported in (1980) 1 SCC 4. The relevant paragraphs 6 and 7, which is extracted hereunder : -

"6. The third contention raised by the appellant is that the employee respondents were not entitled to apply under section 33-C(2) of the Industrial Disputes Act, 1947 for payment of the gratuity, and should have, if at all, applied under the provisions of the Payment of Gratuity Act. It is urged that the Payment of Gratuity Act is a self-contained code incorporating all the essential provisions relating to payment of gratuity which can be claimed under that Act, and its provisions impliedly exclude recourse to any other statute for that purpose. The contention has force and must be accepted. A careful perusal of the relevant provisions of the Payment of Gratuity Act shows that Parliament has enacted a closely knit scheme providing for payment of gratuity. A controlling authority is appointed by the appropriate Government under section 3. and Parliament has made him responsible for the administration of the entire Act. In what event gratuity will become payable and how it will be quantified are detailed in section 4. Section 7(1) entitled a person eligible for payment of gratuity to apply in that behalf to the employer. Under section 7(2), the employer is obliged, as soon as gratuity becomes payable and whether an application has or has not been made for payment of gratuity, to determine the amount of gratuity and inform the person to whom the gratuity is payable specifying the amount of gratuity so determined. He is obliged, by virtue of the same provision, to inform the controlling authority also, thus ensuring that the controlling authority

is seized at all times of information in regard to gratuity as it becomes payable. If a dispute is raised in regard to the amount of gratuity payable or as to the admissibility of any claim to gratuity, or as to the person entitled to receive the gratuity, section 7(4) (a) requires the employer to deposit with the controlling authority such amount as he admits to be payable by him as gratuity. The controlling authority is empowered, under section 7(4) (b), to enter upon an adjudication of the dispute, and after due inquiry, and after giving the parties to the dispute a reasonable opportunity of being heard, he is required to determine the amount of gratuity payable. In this regard, the controlling authority has all the powers as are vested in a court while trying a suit under the Code of Civil Procedure, 1908 in respect of obtaining evidentiary material and the recording of evidence. The amount deposited by the employer with the controlling authority as the admitted amount of gratuity will be paid over by the controlling authority to the employee or his nominee or heir. Section 7 (7) provides an appeal against the order of the controlling authority under section 7(4) to the appropriate Government or such other authority as may be specified by the appropriate Government in that behalf. The appropriate Government or the appellate authority is empowered under section 7 (8), after giving the parties to the appeal a reasonable opportunity of being heard, to confirm, modify or reverse the decision of the controlling authority. Where the amount of gratuity payable is not paid by the employer within the prescribed time, the controlling authority is required by section 8, on application made to it by the aggrieved person, to issue a certificate for that amount to the Collector. The Collector, thereupon, is empowered to recover the amount of gratuity, together with compound interest thereon at the rate of nine per cent per annum from the date of expiry of the prescribed time, as arrears of land revenue, and pay the same to the person entitled thereto.

7. It is apparent that the Payment of Gratuity Act enacts a complete code containing detailed provisions covering all the essential features of a scheme for payment of gratuity. It creates the right to payment of gratuity, indicates when the right will accrue, and lays down the principles

for quantification of the gratuity. It provides further for recovery of the amount, and contains an especial provision that compound interest at nine per cent per annum will be payable on delayed payment. For the enforcement of its provisions, the Act provides for the appointment of a controlling authority, who is entrusted with the task of administering the Act. The fulfilment of the rights and obligations of the parties are made his responsibility, and he has been invested with an amplitude of power for the full discharge of that responsibility. Any error committed by him can be corrected in appeal by the appropriate Government or an appellate authority particularly constituted under the Act."

31. The learned Special Government Pleader (Co-op) further contended that the writ petitioner was an employee of the Co-operative Society and was facing criminal proceedings as on the date of his retirement and therefore, the terminal benefits cannot be settled on the day of his retirement, only after the conclusion of the criminal proceedings the same can be settled.

32. The learned counsel appearing for the writ petitioner opposed the contention by stating that the services of the writ petitioner is non-pensionable in nature and therefore once the writ petitioner is allowed to retire from service, then the terminal benefits cannot be withheld by the authorities concerned. Therefore, even in case the writ petitioner is convicted in the criminal case, no action can be taken against the employee. In this view of the matter, the terminal benefits cannot be denied under Sections 78 and 79 of the Act.

33. The learned counsel appearing for the writ petitioner further submitted that terminal benefits are legal rights of an employee and the same cannot be deprived on the ground that there are no rules for the initiation of disciplinary proceedings as far as the employees of Co-operative Societies are concerned after their retirement.

34. In this regard the learned counsel cited the judgment of the Hon'ble Supreme Court of India, in the case of State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr on 14th August, 2013 in Civil Appeal No.6770 of 2013, held in paragraph no. 11 is extracted hereunder:-

"11. Reading of Rule 43(b) makes it abundantly clear that even after the conclusion of the

departmental inquiry, it is permissible for the Government to withhold pension etc. ONLY when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. There is no provision in the rules for withholding of the pension/ gratuity when such departmental proceedings or judicial proceedings are still pending."

In this context, this Court has to examine the judgements and the submissions made by the respective counsels appearing on behalf of the parties in lis.

35. This Court is of the view that with regard to the maintainability of the writ petition, the Court has to look into the legal principles settled by the Larger Bench of this Court in the case of K.Marappan Vs. The Deputy Registrar of Co-operative Societies and another reported in 2006 (4) CTC 689 in paragraph no. 21 of the judgment. The following are the prepositions derived by the Larger Bench:-

Sub class (i) of para 21 states that by applying the tests evolved by the Supreme Court in that behalf, if a particular co-operative society can be characterised as a State within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be an authority within the meaning and for the purpose of Article 226 the Constitution. In such a situation, an order passed by a society in violation of the bye-laws can be corrected by way of writ petition.

Sub Class (ii) of para 21 states that by applying the tests in Ajay Hasia it is held that the respondent society carrying on banking business cannot be termed as an instrumentality of the State within the meaning of Article 12 the Constitution.

Sub Class (iv) of para 21 states that a society, which is not a State would not normally be amenable to the writ jurisdiction under Article 226 of the Constitution, but in certain circumstances, a writ may issue to such private bodies or persons as there may be statutory provisions which need to be complied with by all concerned including societies. If they violate such statutory provisions a writ would be issued for compliance of those provisions.

Sub Class (iii) of para 21 stipulates even if a society cannot be characterised as a State within the meaning of Article 12 of the Constitution, even so a writ would lie against it to enforce a statutory public

duty cast upon the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a person or an authority within the meaning of Article 226 of the Constitution.

Sub Class (iv) of para 21 states that a society, which is not a 'State' would not normally be amenable to the writ jurisdiction under Article 226 of the Constitution, but in certain circumstances, a writ may issue to such private bodies or persons as there may be statutory provisions which need to be complied with by all concerned including societies. If they violate such statutory provisions a writ would be issued for compliance of those provisions.

Sub Class (v) of para 21 states that where a Special Officer is appointed in respect of a co-operative society which cannot be characterised as a State a writ would lie when the case falls under Clauses (iii) and (iv) above.

36. In respect of the facts of the present case, it is relevant to cite paragraph no. 21 (vi) and (vii) and the same are extracted hereunder:-

Class (vi) of para 21 categorically enumerates that the bye-laws made a co-operative society registered under the Tamil Nadu Co-operative Societies Act, 1983 do not have the force of law. Hence, where a society cannot be characterised as a 'State', the service conditions of its employees governed by its bye-laws cannot be enforced through a writ petition.

Class (vii) of para 21 states that in the absence of special circumstances, the Court will not ordinarily exercise power under Article 226 the Constitution of India when the Act provides for an alternative remedy.

37. In this context, let us now look into the provisions of the Tamil Nadu Co-operative Societies Act, 1983. The Act is a specially enacted to govern the Co-operative Societies in the State. The Act is self-contained code providing mechanism for the redressal of the grievances including to the employees of the Co-operative Societies.

38. Section 78 stipulates that the registered society not being an establishment to which the employees Provident Fund applies may establish a Provident Fund for the benefit of its Employees to which shall be credited all contributions made by

the Employees and the Society in accordance with the Bylaws. A Provident Fund established by a registered Society under sub-section (1) shall be invested in the Financing Bank, but shall not --

- (a) be used in the business of the society:
- (b) form part of the assets of the society:
- (c) be liable to attachment or be subject to any other process of any court of other authority.

39. Section 79 deals with Gratuity Fund which is extracted hereunder:-

(1) A registered society not being an establishment to which the Payment of Gratuity Act, 1972 (Central Act 39 of 1972) applies, may provide by its by-laws for payment of gratuity to the employees at such rates and on such conditions as may be specified in the by-laws and such society may establish a gratuity fund or make other arrangements for the purpose.

(2) A gratuity fund, if any, established by a registered society under sub-section (1) shall be invested in the financing bank, but shall not-

- (a) be used in the business of the society:
- (b) form part of the assets of the society:
- (c) be liable to attachment or be subject to any other process of any court or other authority.

40. In both the sections, it is very clear that the General Act viz., the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Payment of Gratuity Act, 1972 are not applicable to the employees of the Co-operative Societies.

41. In this regard, the Act provides that the Co-operative societies in the state of Tamil Nadu may establish Provident Fund for the benefits of its employees.

42. Thus, it is clear that a separate account can be opened for the purpose of settlement of both Provident Fund and Gratuity amount to the employees of the respective Co-operative Societies. This Court has to see that as of now, the Provident Fund and Gratuity amount dues are settled to the employees of the Co-operative Societies by creating separate funds in the respective Central Co-operative Banks, in which primary Co-operative Societies are members. In other words, Primary and other Co-operative Societies are the members of the Central Co-operative Bank concerned in the District Level and all the primary societies are having accounts in this regard.

Accordingly, the Provident Fund account and the Gratuity account are maintained by the respective Co-operative Societies by operating a separate account in the concerned District Central Co-operative Banks. All the settlements in respect of the Provident Fund and Gratuity are settled to the employees through this account only.

43. It is an undisputed fact that the General Acts viz., The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and The Payment of Gratuity Act, 1972 are not applicable to the employees of the Co-operative Societies and all statutory benefits like Gratuity, Provident Funds are extended through the Provisions of the Special by-laws and being maintained by way of Separate Fund under the Central Co-operative Bank concerned under the Co-operative Societies Act.

44. The legal principles in this regard is that when there are by-laws and a Special Acts provides mechanism for the purpose of providing Gratuity and Provident fund to its employees then the General Acts will not be applicable and the Special Act will prevail over the General Act.

45. The Co-operative Societies Act being a Specially enacted Act for regulating the affairs of the Co-operative Societies in the State, the Co-operative Societies Act will be applicable to the employees of the co-operative societies, in the state of Tamil Nadu.

46. Further, Sections 78 and 79 of the Act also made it very clear that the society through by-laws shall establish a separate account for the purpose of settling Provident Fund and Gratuity to the retiring employees.

47. In this context, this Court is of the opinion that in respect of the employees of the Co-operative Societies, the provisions of the Co-operative Societies Act alone is applicable and not the General Act.

48. Now, this Court has to consider the spirit of the Larger Bench judgment regarding the maintainability of the writ petition and the settlement of the statutory dues. When this Court has to come to the conclusion that Provident Fund and Gratuity are regulated under the Provisions of the Tamil Nadu Co-operative Societies Act, through a separate account in the Central Co-operative Bank, the other mechanism provided under the Tamil Nadu Co-operative Societies Act is also made applicable to the employees of the Co-operative Societies regarding the settlement of all the terminal benefits including the service conditions.

49. By-laws of the Co-operative Societies are enacted by the Board and the same was approved by the Registrar of Co-operative Societies under the Provisions of the Act.

50. Thus, the by-laws governing the service conditions, and the Act in respect of the settlement of statutory rules are to be applied in respect of the employees of co-operative societies.

51. When the Act is made applicable, more specifically, under Sections 78 and 79 of the Act. This Court is bound to see other provisions relating to the redressal of grievances in respect of the employees under the Act. When the Provident Fund amount and the Gratuity amount created under Sections 78 and 79 of the Act are not settled in respect of the employees of the Co-operative Societies, they are bound to exhaust the remedy available under Sections 153 and 154 of the Act. The employees cannot be allowed to take a dual stand in this regard and once they claim the benefits of provisions under Sections 78 and 79 of the Act, they are bound to exhaust the remedy available under Sections 153 and 154. The power under Section 153 for revision is Quasi Judicial in nature. However, once the power of revision is exercised by the Competent Authority and a final order is passed, thereafter, a writ can be entertained under Article 226 of the Constitution of India.

52. Thus the legal principles are well enumerated by the Larger Bench of this Court in Class (vi) and (vii) of paragraph no.21 of the Judgment. It is made clear that the co-operative societies registered under the Tamil Nadu Co-operative Societies Act cannot be construed as a "State" and therefore the service conditions enumerated in the by-laws cannot be enforced through writ petition. Terminal benefits and the service conditions are governed by the by-laws of the respective societies and under Sections 78 and 79 of the Act, which was created for the purpose of the settlement of Provident Fund through the accounts maintained by the Central Co-operative Bank. In this view of the matter, this Court is of the clear opinion that the Employees of the Co-operative societies are bound to avail the remedy available under Sections 153 and 154 of the Act.

53. In view of the legal principles settled by the Larger Bench, Clause (vii) of Paragraph 21 of the judgment and in the absence of any exceptional circumstances, the Court will not ordinarily entertain any writ petition under Article 226 of the Constitution of India, when the Act provides for an alternative remedy. The competent authorities are undoubtedly the officials of the Co-operative department of the State and they are not

directly connected with the officials of the co-operative societies. Thus, the remedy of revision under Section 153 is certainly an independent effective alternate remedy. This Court need not entertain the writ petition under Article 226 as all the employees are bound to exhaust the remedy available under the Provisions of Section 153 of the Act in this regard.

54. In respect of the contention that non-payment of Provident Fund and Gratuity is a statutory violation in respect of the provisions under Sections 78 and 79 of the Act, it is seen that a procedure has been created for the employees of the co-operative societies through its by-laws and the Act. Such being the procedure prescribed under the Act, certainly the employees are bound to avail the remedy available under the Act.

55. It is not as if there is no remedy available to the employees, and when an effective alternative remedy is available to the employees of the Co-operative Societies and there is no doubt, the same is to be exhausted under the law, and the writ courts need not entertain the writ petition.

56. This Court is of the firm opinion that every institution created through and under the Statute is to be respected and the jurisdiction and powers provided under the statute shall be allowed to be exercised by the competent authorities. Thus intermittent intervention is not preferable, and the competent authorities shall be allowed to exercise their Quasi Judicial powers in accord with the provisions of the Act. The competent authorities are also having wide powers to correct the irregularities and illegalities under the Act.

57. The concept of democracy includes democracy of the institution functioning under the Statute also. All must have a say in decision making, which can be direct or indirect. Thus any restraint from exercising the powers under normal circumstances will affect the very principles. It is the duty of the institution to respect other institutions in respect of exercise of power. No doubt in the event of any gross injustice the same can be questioned under Article 226 of the Constitution of India. However, such circumstances are exceptions and cannot be allowed in a routine manner. Thus, this Court is of the opinion that on each and every occasion the employees of the Co-operative Societies cannot be permitted to file a writ directly, without exhausting the remedy available, more specifically, under Section 153 of the Act.

58. In this view of the matter, the case on hand is a case where the terminal benefits are not settled and settlement of terminal benefits is undoubtedly part of service conditions and all terminal benefits are to be settled in accordance with the by-laws and the Co-operative Societies Act. The by-laws are approved by the Registrar of Co-operative Societies and as per Sections 78 and 79 of the Act, a separate account has been created in the respective Central Co-operative Banks and the same is operated by the respective Co-operative Societies and all such Co-operative Societies are governed by the by-laws of Co-operative Societies.

59. In a case of this nature, this Court is of the opinion that the remedy available under Section 153 of the Act is to be exhausted before approaching this Court under Article 226 of the Constitution of India.

60. Accordingly liberty is granted to the writ petitioner to approach the competent authority in order to exhaust the remedy available under the Act. Thus, no further adjudication on merits in respect of the grievances needs to be undertaken in this writ petition.

61. Accordingly, the writ petition stands dismissed. Consequently, connected miscellaneous petition is also dismissed. However, there is no order as to costs.

Sd/-

Assistant Registrar(CS V)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

maya/Svn

To

1. The Joint Registrar of Co-op. Societies
Namakkal Region, Namakkal
Namakkal District.

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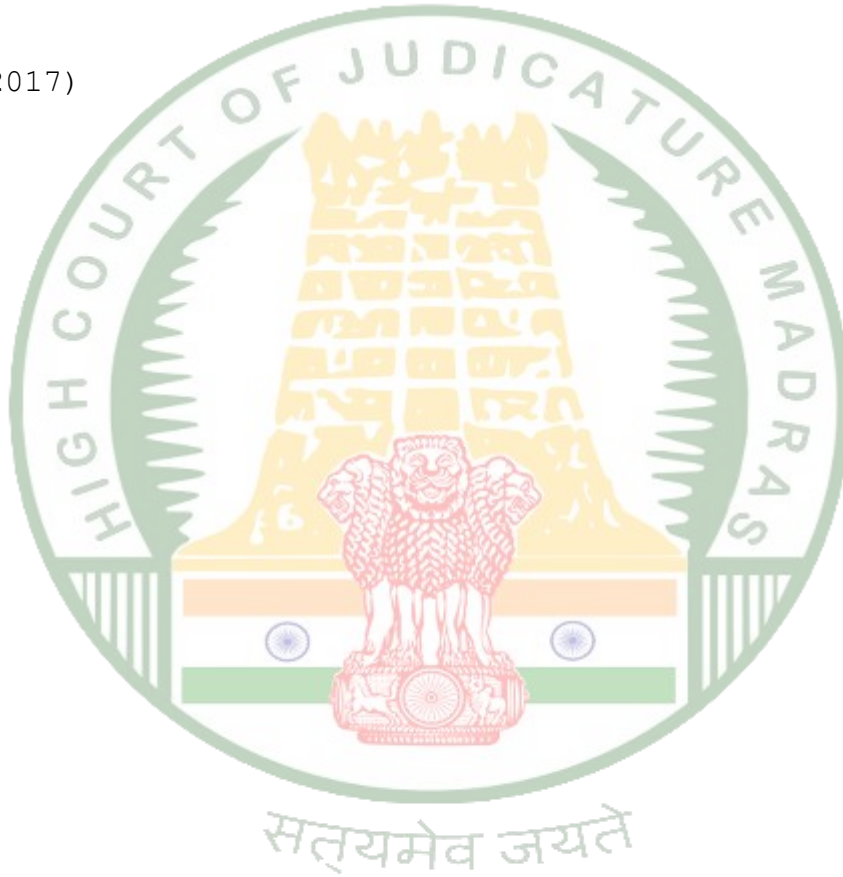
2. The President
S.1320, Sevandhipatti Primary
Agricultural Co-op. Credit Society
Sevandhipatti Post
Namakkal Taluk & District.

+1cc to Mr.C.Prakasam, Advocate Sr. 66715

+1cc to Mr.L.P.Shanmugasundaram, Advocate Sr. 66694

W.P.No.17114 of 2015

AR (V)
VR(26/10/2017)



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