IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.309 of 2015

and

M.P.No.1 of 2015

S.Srinivasan ... Petitioner

Vs.

1. The Joint Registrar of Co-operative Societies
   Ariyalur Region, Ariyalur, Ariyalur District.

2. The Deputy Registrar of Co-op. Societies
   Ariyalur Circle, Ariyalur, Ariyalur District.

3. The President
   R.1283, Anaikudam Primary Agricultural
   Co-op. Credit Society
   Anikudam Post - 612 902
   Udayarpalayam Taluk
   Ariyalur District. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to disburse the petitioner's entire terminal benefits like Gratuity, Provident Fund, Earned Leave and Dearness Allowance to the tune of Rs.4.60 Lakhs including the Gratuity and Provident Fund as per U/s. 78 and 79 of Tamilnadu Co-op. Societies Act, 1983 to the petitioner.

WEB COPY

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.L.P.Shanmugasundaram
Special Government Pleader (Co-op)

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

O R D E R

The relief sought for in this writ petition is for a direction to the respondents to disburse the terminal benefits, including Gratuity, Provident Fund, Earned Leave and Dearness Allowance to the writ petitioner in accordance with Sections 78 and 79 of the Tamilnadu Co-operative Societies Act, 1983 [hereinafter called as "the Act"].

2.The learned counsel appearing for the writ petitioner made a submission that the writ petitioner was an employee of the 3rd respondent / Co-operative Society [hereinafter called as "the Co-operative Society"] and allowed to retire from service on 31.10.2010. On account of certain allegations, a criminal case was registered against the writ petitioner and the same was pending on the date of his superannuation. Thus, the terminal benefits including Gratuity, Provident Fund and other benefits are not disbursed to the writ petitioner. Under these circumstances, the writ petitioner was constrained to move this Court by way of the writ petition.

3.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.

4.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.

5.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.

6.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.

WEB COPY

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

7.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

WEB COPY

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

approaching the concerned authorities under the relevant statute. No costs. Connected miscellaneous petition is closed."

8.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

WEB COPY

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

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 with in the prescribed time, the controlling authority is required bysection 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

WEB COPY

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

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."

9.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.

10.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.

11.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.

WEB COPY

12.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

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

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.

13.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

WEB COPY

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

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.

14.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.

WEB COPY

15.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.

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

16.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.

16.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 proves of any court or other authority.

17.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.

WEB COPY

18.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.

19.Thus, it is clear that a separate account can be opened for the purpose of settlement of both Provident Fund and

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

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 though this account only.

20.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.

21.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.

22.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.

WEB COPY

23.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.

24.In this context, this Court is of the opinion that in respect of the employees of the Co-operative Societies, the

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

provisions of the Co-operative Societies Act alone is applicable and not the General Act.

25.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.

26.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.

27.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.

28.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.

WEB COPY

29.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

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

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.

30.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.

31.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.

32.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.

33.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.

WEB COPY

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

34.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.

35.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.

36.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.

37.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.

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

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

WEB COPY

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

To

1. The Joint Registrar of Co-operative Societies
   Ariyalur Region, Ariyalur, Ariyalur District.

2. The Deputy Registrar of Co-op. Societies
   Ariyalur Circle, Ariyalur, Ariyalur District.

3. The President
   R.1283, Anaikudam Primary Agricultural
   Co-op. Credit Society
   Anikudam Post - 612 902
   Udayarpalayam Taluk,
   Ariyalur District.

+1cc to Mr.C.Prakasam, Advocate SR.No.66714

+1cc to mr.L.P.Shanmugasundaram, Advocate SR.No.66697

W.P.No. 309 of 2015

SDR 25.10.2017

WEB COPY

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