

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.19090 of 2017 &
W.M.P.No.20606 of 2017

V.Venkataraman

.. Petitioner

Vs.

1.The Managing Director,
George Town Co-operative Bank,
2/62, Krishnappa Agraharam Street,
Chennai- 600 079.

2.The General Manager,
George Town Co-operative Bank,
2/62, Krishnappa Agraharam Street,
Chennai 600 079.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for records relating to the Memo dated 28.03.2016 from the second respondent and quash the same and direct the respondent to repay the deduction already made in the petitioner's salary.

For Petitioner : Mr.R.Rajaram

सत्यमेव जयते
O R D E R

Challenge in this writ petition is to the Memo dated 28.03.2016 issued by the second respondent stating that the loan installment amount is to be recovered from the salary of the writ petitioner in 36 monthly installments. The impugned Memo was issued by the George Town Co-operative Bank, which is a Co-operative Society registered under the Tamil Nadu Co-operative Societies Act.

2. The learned counsel for the writ petitioner contended that in view of the fact that there is a statutory violation in issuing the order impugned in this writ petition, the writ petition is maintainable in this regard. The learned counsel

has cited the regulation, the special Bye-laws issued by the respondent Co-operative Society, wherein, it is stated that deduction to be made from wages shall be in accordance with the relevant provisions of the Shops and Establishment Act, 1947. Therefore, the recovery has to be made only by following the provisions under the Shops and Establishment Act and not otherwise. Further, the learned counsel has placed reliance upon the decision of the Hon'ble Supreme Court of India in the case of Akalakunnam Village Service Cooperative Bank Limited and Another Vs. Binu N. and Others (2014) 9 SCC 294, wherein, paragraph No.5, reads as under:

'5.The judgment of the learned Single Judge of the High Court was challenged by the Bank as well as selected candidates by way of two separate writ appeals, challenging maintainability of the writ petition against the appellant Cooperative society. The appellants contended that the writ petitioners have effective alternative remedy under Section 69 of the Kerala Cooperative Societies Act (in short 'the Act'). They further contended that since the writ petitioners participated in the selection process, they cannot turn round and take the contention that the selection process itself is bad. It has been further contended on behalf of the appellants that the directions in the circular are not mandatory, in nature, but are only guidelines and unless the writ petitioners prove prejudice, the High Court should not interfere with the selection process.'

This apart, the learned counsel contended that earlier an interim order was also granted by this court in a similar case.

3. Admittedly, the writ petitioner is working as last grade servant in the George Town Co-operative Bank, which is a Co-operative Society registered under the Tamil Nadu Co-operative Societies Act, 1983. The Co-operative Society is funded by its members and the various schemes are formulated for the welfare of the members by the Board on the approval of the Registrar of the Co-operative Societies. Thus, there is no Government contribution in respect of investments. The elected Board will be administering the affairs of the Society and therefore, the Co-operative Society registered under the Tamil Nadu Co-operative Societies Act is not a 'State' within the meaning of Article 12 of the Constitution of India. The legal principles are well settled by the larger Bench of this Court in the case of K.

Marappan Vs. State of Tamil Nadu 2006 (4) CTC.689(FB). Accordingly, no writ proceedings shall be entertained against the Co-operative Society.

4. In order to consider the arguments advanced by the learned counsel for the writ petitioner that the Bye-laws stipulates that any deduction of the salary to be undertaken under the provisions of the Shops and Establishment Act, this Court is of the view that the welfare legislations like Shops and Establishment Act, Gratuity Act, Payment of Constitutional Allowance Act is to be followed by all the Managements and Establishments for the welfare of the employees working therein. But, statutory violation must be shown for issuance of writ under Article 226 of the Constitution of India against the Co-operative Society. It is necessary that a statutory violation committed by the authorities under the provisions of the Co-operative Societies Act is to be established, but no such violation is established in the case on hand. Contrarily, it is the case where, the writ petitioner has given a letter in favour of the person, who borrowed a loan and under this pre-text, a Memo was issued to recover the salary of the writ petitioner. However, it is a dispute between the writ petitioner and the Co-operative Society management. Section 90 of the Tamil Nadu Co-operative Societies Act provides provisions to resolve the disputes.

Section 90 reads as follows:

90. Disputes:- (1) If any dispute touching the constitution of the Board or the management or the business of a registered Society (other than a dispute regarding disciplinary action taken by the Competent Authority constituted under sub-section (3) of Section 75 or the Registrar or the society or its Board against a paid servant of the Society) arises-

(a) among Members, past Members and persons claiming through Members, past Members and deceased Members, or

(b) Between a Member, past Member or person claiming through a Member, past Member or deceased Member and the Society, its Board or any officer, agent or servant of the Society, or

(c) between the society or its Board and any past Board, any officer, agent or servant, or any past officer, past agent or past servant, or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased servant of the Society, or

(d) between the Society and any other registered Society, such dispute shall be referred to the Registrar for decision.

5. Since, there is a specific provision under the Tamil Nadu Co-operative Societies Act to resolve the disputes between the members and the management etc., as stated supra, the writ petitioner ought to have approached the Competent Authorities under the provisions of the Tamil Nadu Co-operative Societies Act. Contrarily, the writ petitioner moved this writ petition without exhausting the remedies available under the provisions of the Tamil Nadu Co-operative Societies Act. Thus, this Court is of the opinion that the petitioner has to exhaust the remedies available under the Act and, therefore he has to follow the legal procedures contemplated therein.

6. Under these circumstances, this Court is of the clear opinion that the writ petitioner has filed this writ petition without exhausting remedies available under the Tamil Nadu Co-operative Societies Act. Further, the Co-operative Society is not a 'State' within the meaning of Article 12 of the Constitution of India. No writ will lie against the Co-operative Society.

7. Accordingly, no further adjudication is required to be undertaken in this writ petition. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1. The manager Director,
George Town Co-operative Bank,
2/62, Krishnappa Agraharam Street,
Chennai 600 079.

2. The General Manager,
George Town Co-operative Bank,
2/62, Krishnappa Agraharam Street,
Chennai 600 079.

+1cc to Mr.R.Rajaram, Advocate in sr.no.52714

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&

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SR(CO)

NR 18/08/2017