

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.09.2017

CORAM

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

W.P.No.29382 of 2016

K.Mohan

.. Petitioner

Vs

1.The Joint Registrar of Co-operative Societies,
Vellore Zone,
Vellore.

2.The Deputy Registrar of Co-operative Societies,
Tirupathur,
Vellore District.

3.The Co-operative Sub-Registrar/Field Officer,
Madhanur,
Ambur Taluk,
Vellore District.

4.The President,
Ambur Co-operative Primary Agriculture
and Rural Development Bank Ltd.,
Sandror Kuppan Post,
Ambur Taluk,
Vellore District.

5.The Secretary,
Ambur Co-operative Primary Agriculture and
Rural Development Bank Limited,
Ambur,
Vellore District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, after calling for the concerned records from the 1st and 2nd Respondent, quash the order of the 1st Respondent dated 23.06.2015 bearing Na.Ka.No.7743/2014 A2 (Revision Petition No.16/2014) and the order of the 3rd Respondent dated 02.03.2016 bearing Judgment No.1/2015-16, Dispute No.96/2015-16 Sa.pa as

illegal, arbitrary and contrary to law and consequently direct the respondents to implement the order of the 2nd respondent dated 12.06.2012 bearing Na.Ka.No.39/2005 V.S., by refunding the recovered amount of Rs.1,52,712/- towards the pay granted for the period from 1.7.1992 to 28.2.2002, restore the pay scale of the petitioner, pay the arrears of salary from 28.2.2002 to date of retirement, calculate the terminal benefits on the basis of the revised pay and refund the illegal recovery of Rs.1,02,367/- to be towards excess provident fund contribution and Rs.1,11,320/- towards the alleged 13% of excess payment of dearness allowance and pay 18% interest on the aforesaid recovered amount from the date of recovery till the actual payment.

For Petitioner : M/s.Balan Haridas

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

O R D E R

The order passed by the 1st respondent in proceedings dated 23.06.2015 and the subsequent order passed by the 2nd respondent in proceedings dated 02.03.2016 are under challenge in this writ petition.

2.The learned counsel appearing for the writ petitioner states that the writ petitioner is an employee of the 4th respondent Co-operative Society and the terminal benefits already disbursed to the writ petitioner was sought to be recovered. In this regard, the writ petitioner has originally filed a revision petition under Section 153 of the Tamil Nadu Co-operative Societies Act [hereinafter referred as "the Act"] and the same was initially entertained by the 1st respondent. Subsequently, the final order was passed in the revision petition by the 1st respondent in proceedings dated 23.06.2015, stating that the revision under Section 153 of the Act is not maintainable. The writ petitioner should approach the Deputy Registrar of Co-operative societies under Section 90 of the Tamil Nadu Co-operative Societies Act [hereinafter referred as "the Act"].

3.Pursuant to the said order passed by the 1st respondent, the writ petitioner once again approached the Deputy Registrar of Co-operative societies under Section 90 of the Act and the Deputy Registrar also considered the case on merits and passed an order in proceedings dated 02.03.2016, confirming the order

of recovery. The writ petitioner has challenged both the orders on the ground that the original revision filed by the writ petitioner under Section 153 of the Act ought not to have been rejected by the 1st respondent and the 2nd respondent who is an incompetent authority to decide the service matters in relation to the employees of the Co-operative society could not have passed any orders on merits on the application filed by the writ petitioner.

4. The learned counsel for the writ petitioner made a submission that the 1st application filed by the writ petitioner, by way of revision under Section 153 of the Act is in accordance with the Act. However, pursuant to the directions issued by the 1st respondent, he was forced to approach the 2nd respondent under Section 90 of the Act. The petition under Section 90 of the Act was filed only on account of the directions issued by the 1st respondent in the order passed under Section 153 of the Act.

5. Let us now look into the provisions of Section 90 of the Act as well as Section 153 of the Act. Section 90 of the Act deals with disputes, it is unambiguously enumerates that 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). The nature of disputes to be entertained and resolved by the competent authorities under Section 90 of the Act are well enumerated in the provision itself, and there is no ambiguity in respect of entertaining the disputes under Section 90 of the Act by the competent authorities. All the powers under the Tamil Nadu Co-operative societies Act are provided to the Registrar of Co-operative societies under the Act and the powers of the Registrar are further delegated to the Joint Registrar as well as the Deputy Registrar by way of the notification. Thus, certain powers under the Act are delegated to the Joint Registrar of Co-operative societies and certain powers are also delegated to the Deputy Registrar of Co-operative societies. Thus, both the Joint Registrar as well as the Deputy Registrar are exercising the powers of the Registrar conferred under the Act by virtue of the notification issued by the State.

6. Section 153 of the Act categorically enumerates the power of revision by the Registrar. Accordingly, the Registrar may of his own motion or on application, call for and examine the record of any officer subordinate to him or of the board or any officer of a registered society or of the competent authority constituted under Sub-Section (3) of Section 75 and the

Government may, of their own motion or on application, call for and examine the record of the Registrar, in respect of any proceedings under this Act or the rules or the by-laws not being a proceeding in respect of which an appeal to the Tribunal is provided by Sub Section (1) of Section 152 to satisfy himself or themselves as to the regularity of such proceedings, or the correctness, legality or propriety of any decision passed or order made therein; and, if, in any case, it appears to the Registrar or the Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, he or they may pass orders accordingly wherever the disputes not covered under Section 90 of the Act are certainly covered under Section 153 of the Act. This being the scope of these two provisions namely, Section 90 and Section 153 of the Act. It is clear that the service conditions and all related matters ought to be dealt under Section 153 of the Act and under Section 153, the Joint Registrar is the competent authority to exercise the powers of the Registrar under the Act.

7. In this view of the matter, there is no ambiguity in respect of these two provisions. All disputes relating to the Constitution of the board etc., are to be dealt under Section 90 of the Act and all the service related matters of the employees of the Co-operative Societies Act are to be dealt with under Section 153 of the Act. The case on hand relates to the recovery of the amount from the petitioner, who is an employee of the Co-operative society. Such being the factum of the case, the original revision petition filed by the writ petitioner is in order and the 1st respondent, instead of entertaining the same and passing an order on merits and in accordance with law, erroneously directed the writ petitioner to approach the Deputy Registrar under Section 90 of Act. The 2nd Respondent/Deputy Registrar also has committed an error in entertaining the application under Section 90 of the Act. The Deputy Registrar also ought not to have entertained the petition under Section 90 of the Act. This being the case, both the orders of the impugned passed by the 1st and 2nd respondents are in contravention with the provisions of the Act. Thus, the impugned order passed by the 1st respondent in proceedings dated 23.06.2015 and the order passed by the 2nd respondent in proceedings dated 02.03.2016 are set aside. The entire matter is remitted back to the 1st respondent for re-consideration. The 1st respondent shall take up the matter on file and decide the same on merits and in accordance with law, by affording opportunity to all the parties concerned and pass orders within a period of twelve weeks from the date of receipt of a copy of this order.

8. Accordingly, the writ petition stands allowed. However, there is no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Joint Registrar of Co-operative Societies,
Vellore Zone,
Vellore.

2.The Deputy Registrar of Co-operative Societies,
Tirupathur,
Vellore District.

+1cc to Mr.Balan Haridas, Advocate, S.R.No.69781

+1cc to Mr.L.P.Shanmugaundaram, Advocate, S.R.No.70774

+1cc to the Government Pleader, S.R.No.70822

W.P.No.29382 of 2016

RMP (15/11/17)

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