



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.05.2017

C O R A M

THE HONOURABLE Mr. JUSTICE R.SURESH KUMAR

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Writ Petition (MD)No.6179 of 2016

and

W.MP(MD).No.5453 of 2016

K.Ayyakannu

... Petitioner

Vs.

The Rivisional Authority U/S. 153 of
Tamil Nadu Co-Operative Societies Act
(Additional Registrar of Co-Operative Societies)
170 E.V.R. High Road,
N.V.N Maligai,
Kilpauk, Chennai- 600 010.

... Respondent

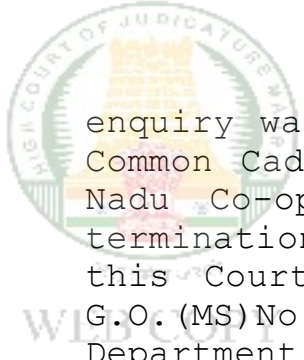
Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the order of the respondent passed in Na.Ka.No.52270/2015 Sa.Pa.1 dated 24.02.2016 and quash the same and give liberty to the petitioner to challenge the order of termination in Na.Ka.No.9174/2005/ Ve.Se.Sa dated 11.04.2011 either U/S.41 of the Tamil Nadu Shops and Establishments Act or U/S.153 of the Tamil Nadu Co-operative Societies Act 1983 by condoning the delay in filing the petition.

For Petitioner	:	Mr.V.O.S.Kalaiselvam
For Respondent	:	Mr.S.Kumar
		Additional Government Pleader

O R D E R

The prayer in the writ petition is for a writ of certiorari to call for the records relating to the order of the respondent in Na.Ka.No.52270/2015 Sa.Pa.1 dated 24.02.2016 and quash the same and give liberty to the petitioner to challenge the order of termination in Na.Ka.No.9174/2005/ Ve.Se.Sa dated 11.04.2011 either U/S.41 of the Tamil Nadu Shops and Establishments Act or U/S.153 of the Tamil Nadu Co-operative Societies Act 1983 (hereinafter referred to as 'the Act') by condoning the delay in filing the petition.

2.The petitioner was working as Secretary of the Co-operative Society. At one point of time, as per the decision of the respondent Department, he was brought under the common cadre. A disciplinary action was also initiated against the petitioner for the alleged loss incurred by the Society, pursuant to which, an



enquiry was conducted. Based on the Enquiry Officer's Report, the Common Cadre Committee constituted under Section 75 of the Tamil Nadu Co-operative Society Act, 1983, has passed an order of termination on 11.04.2011. The petitioner immediately approached this Court by filing W.P.(MD).No.4715 of 2011, challenging the G.O.(MS)No.122, Co-operation, Food and Consumer Production (CN1) Department, dated 04.07.2008 and the present consequential termination order dated 11.04.2011.

3.The said Writ petition was finally disposed of on 31.03.2015, wherein, the learned Judge has held that, para 8 of the said G.O, which was under challenge, had been incorporated for the benefit of both the employer and employee. Therefore, there is no illegality or infirmity with the said paragraph No.8 of the said G.O, which was under challenge. Therefore, that portion of the prayer sought for in the writ petition, was dismissed.

4.Insofar as the consequential prayer for quashing the termination order dated 11.04.2011, the learned Judge has dismissed that portion also on the sole ground that the petitioner has not exhausted the alternative remedy available in the statute, namely, under Section 153 of the Act. Since the said Writ Petition was dismissed even as against the termination order, merely on the ground of non availing of alternative remedy, the petitioner had chosen to file a revision before the respondent, who is the Revisional Authority to exercise the revisional power under Section 153 of the Act. Though the revision was filed on 25.06.2015 and subsequent letter in support of his revision is also filed on 10.12.2015 by the petitioner, the said revision has been rejected by a cryptic order of the respondent dated 24.02.2016. Therefore, challenging the same, the present Writ Petition is filed.

5. Heard both sides.

6.The learned counsel appearing for the petitioner would submit that the learned Judge, in the earlier round of litigation ie., in W.P.(MD)No.4715 of 2011, has dismissed the prayer challenging the termination order dated 11.04.2011 only on the ground of non availing of alternative remedy. In this regard, the learned counsel would rely upon para 12 of the order in W.P.(MD). No.4715 of 2011, which reads thus:

"12. The petitioner has alternative, effective remedy by way of revision under section 153 of Tamil Nadu Co-operative Societies Act, 1963. The petitioner did not avail the alternative, effective, statutory remedy. No reason was given by the petitioner for not availing this remedy."



7. The learned counsel would further submit that only pursuant to the dismissal of the writ petition on the ground of non availing of alternative remedy, the petitioner immediately approached the Revisional Authority by way of statutory Revision under Section 153 of the Act and the petitioner was in fond hope and expectation that a detailed consideration would be made on the revision filed by the petitioner and a decision would be taken by the Revisional Authority thereon. However, shockingly the revision has been dismissed by the respondent on 24.02.2016 by a three line order, which does not contain any reason. Therefore, the learned counsel for the petitioner would submit that the order impugned is liable to be interfered with by this Court.

8. Per contra, Mr. S. Kumar, Additional Government Pleader appearing for the respondent, would submit that the very termination order dated 11.04.2011 is a detailed and in fact, very exhaustive order. After looking into the said order of termination, the Common Cadre Committee passed the original termination order only after taking into account each and every charge framed against the petitioner and the explanation given by him and the ultimate conclusion reached by the Enquiry Officer. Only on consideration of these aspects, the said termination order was issued. Since the said order has not been assailed for any acceptable or plausible reasons before the Revisional Authority, the said revision has been rejected through the impugned order.

9. In this regard, the learned Additional Government Pleader would also rely upon Section 153 of the Act, which gives the Revisional power and the same is reproduced hereunder for better appreciation of the issue:-

"153. Revision.-(1) 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 bye-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



Provided that every application to the Registrar or the Government for the exercise of the powers under this section shall be preferred within ninety days from the date on which the proceedings, decision or order to which the application relates was communicated to the applicant.

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(2) No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representations.

(3) The Registrar or the Government, as the case may be, may suspend the execution of the decision or order pending the exercise of his or their power under sub-section (1) in respect thereof.

(4) The Registrar or the Government may award costs in any proceedings under this section to be paid either out of the funds of the society or by such party to the application for revision as the Registrar or the Government may deem fit."

10. The learned Additional Government Pleader would also submit that the language used in Section 153 of the Act would clearly envisage that only in case of either Registrar or the Government, as the case may be, being the Revisional Authority, to whom, it appears that any such decision or order which was sought to be revised, modified, annulled, reversed or remitted for re-consideration, then only, necessary order is to be passed by the Revisional Authority. Therefore, the Mandatory requirement under Section 153 of the Act is that only in case of requirements of modification, annulment, reversion or remitted back for reconsideration, such decision has to be made by the revisional authority, after giving an opportunity of making representation by the revision petitioner, against whom, order, prejudiced in nature is to be passed. Here, in the case in hand, since the petitioner did not file or did not appear before the Revisional Authority either to modify or annul or reverse or even to remit the matter for re-consideration and therefore, a short order has been issued by the Revisional Authority, the learned Additional Government Pleader appearing for the respondent would submit that merely because a short order has been passed by the Revisional Authority, the same has to be construed as an order passed under non-application of mind and without considering the merits of the issue. Therefore, the learned Additional Government Pleader would submit that the impugned order is justifiable and needs no interference from this Court.

11. This Court has considered the said rival submissions made



12. The order impugned is reproduced hereunder for better appropriation of the case:-

“பார்வையில் காணும் தங்களது 25.06.2015 தேதிய சீராய்வு மனுவும் 10.12.2015 தேதி கடிதமும் பரிசீலிக்கப்பட்டது. தாங்கள் அளித்த விளக்கம் ஏற்றுக் கொள்ள இயலாத நிலை உள்ளதால் தங்களது சீராய்வு மனு அசலாக இத்துடன் திரும்பி அனுப்பப்படுகிறது.”

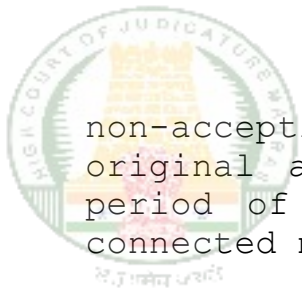
If this is the order passed by the statutory revisional authority, this Court, on the face of it, finds that certainly the order is infirm and the same cannot be accepted as an order sustainable in the eye of law.

13. In fact, in this case, the petitioner has already approached this Court by way of earlier round of litigation through the writ petition. The said writ petition was dismissed insofar as the prayer challenging the termination order is concerned to the effect that the petitioner had not availed the alternative remedy. The learned Judge has observed in Para 12 of the said order, which had already been extracted hereinabove. Thus, the petitioner has availed alternative effective remedy by way of revision **under Section 153 of the Tamil Nadu Co-operative Society Act 1983**. (emphasis supplied)

14. When the revision provided Under Section 153 of the Act, it is considered to be not only an alternative remedy, but also an effective remedy. Certainly, by a common knowledge every one would accept that such Revisional Authority would look into the matter in detail and give cogent reasons for accepting or non-accepting the findings given and conclusion reached by the original authority. Instead of resorting such method, the Revisional Authority has chosen to pass a cryptic order, as has been extracted above, in three lines, which is not only un-sustainable, but also unjustifiable.

15. Therefore, this Court is of the view that the impugned order dated 24.02.2016 passed by the respondent, being a Revisional Authority, cannot stand under legal sanitary, as it did not contain any reasons for rejecting the revision of the petitioner. Hence, the said impugned order is liable to be quashed. Accordingly, it is quashed.

16. In the result, the writ petition is allowed in part and the matter is remitted to the respondent/Revisional Authority with a direction to take up the revision of the petitioner on file once again and give an opportunity to the petitioner. The petitioner is directed to re-submit the said revision before the respondent within a period of two weeks from the date of receipt of a copy of this order and thereafter, the same shall be decided on merits and in accordance with law by giving cogent reasons for accepting or



non-accepting the reasons given and conclusion arrived at by the original authority and pass a reasoned order thereon, within a period of three months thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/True Copy/

Sub Assistant Registrar

To

The Revisional Authority U/S. 153 of
Tamil Nadu Co-Operative Societies Act
(Additional Registrar of Co-Operative Societies)
170 E.V.R. High Road,
N.V.N Maligai,
Kilpauk, Chennai- 600 010.

+1cc to Mr.V.O.S.Kalaiselvam, Advocate Sr.No.56260
+1cc to Spl.Government Pleader Sr.No.56471

NS/DAS/DSS

VB/JC/SAR4/14.07.2017/6P/4C

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