

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2018

CORAM

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

W.P.No.6735 of 2018

and

M.P.No.8365 of 2018

C.Udayakumar

...Petitioner

Vs.

1.The Deputy Registrar of Co-operative Societies,
Hosur Circle, Hosur,
Krishnagiri District.

2.K.K.127, Hosur Primary Agricultural
Co-operative Credit Society Ltd.,
Rep by its President,
Hosur, Krishnagiri District.

3.M.Nagaraj
President
K.K.127, Hosur Primary Agricultural
Co-operative Credit Society Ltd.,
Hosur, Krishnagiri District.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records from the 2nd respondent relating to the order dated 05.03.2018, quash the order of the 2nd respondent dated 05.03.2018 dismissing the petitioner from service as illegal, arbitrary, contrary to law and consequently direct the 2nd respondent to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits.

For Petitioner :Mr.S.Balan Haridas

For Respondents 1 & 2:Mr.L.P.Shanmuga Sundaram,
Special Government Pleader

O R D E R

The relief sought for in this writ petition is to call for the records in relation to the proceedings of the 2nd respondent dated 05.03.2018 and quash the same and direct the 2nd respondent to reinstate the petitioner in service with full back wages.

2.The writ petitioner was employed as a Secretary to the second respondent-Co-operative Society till 11.09.2015. On account of certain allegations, disciplinary action was initiated against the writ petitioner and after conducting a domestic enquiry, he was terminated from service. Challenging the show cause notice dated 19.06.2017, the writ petitioner earlier filed a writ petition in W.P.No.32381 of 2017. The said writ petition was filed even before passing of the final order in the disciplinary proceedings.

3.The learned counsel for the petitioner states that the show cause notice dated 19.06.2017 was issued without recording any reasons for taking a dissenting view. In respect of the enquiry report, if an authority decides to take a dissenting decision, based on certain materials, then an opportunity to the employee must be provided recording the reasons and only after receiving the explanations/objections on the reasons, the final decision shall be taken. However, the procedures contemplated in this regard was not followed at the time of issuance of show cause notice dated 19.06.2017. Thus, the writ petitioner was constrained to move this Court by filing W.P.No.32381 of 2017, wherein a final order was passed on 13.12.2017 which reads as follows:

"7.The learned counsel for the petitioner, however, submitted that the petitioner has not been paid with the subsistence allowance from September, 2016 till this date. The learned Special Government Pleader for the respondents, in reply, submitted that if the petitioner has not been paid with the subsistence allowance as of now, the same will be paid by the respondents as per the rules. Recording his statement, the respondents are directed to pay the subsistence allowance to the petitioner for the relevant period within a period of two weeks from the date of receipt of a copy of this order, if the same has not been paid already, and thereafter shall proceed with the matter as indicated above. With this direction, the writ petition stands allowed. Consequently, the W.M.P.Nos.35671 to 35673 of 2017 are closed. No costs."

4.The grievance of the writ petitioner is that even after the directions issued by this Court, once again, the same decision was taken without adhering the procedures and the writ petitioner is now terminated from service. Therefore, he has filed the present writ petition challenging the order of termination.

5.The learned counsel appearing on behalf of the respondents states that impugned order of termination is issued by the President of the Co-operative Society and therefore, the writ petition itself is not maintainable. The learned counsel for the respondents further contended that the writ petitioner has to approach the competent authorities under the provisions of Tamil Nadu Co-operative Societies Act, 1983. The writ petitioner more specifically has to file a revision petition under the provisions of 153 of the Tamil Nadu Co-operative Societies Act for adjudication and therefore, the writ petition cannot be entertained at this stage, when the order itself is issued by the management of the Co-operative Society.

6.To substantiate the above grounds, the learned counsel for the respondents cited a Judgment of the Hon'ble Division Bench of this Court dated 11.12.2008 passed in W.A.No.1101 of 2008. The relevant paragraph of the judgment is extracted hereunder:

" 7.In view of the well-settled legal principle, it is not possible for this Court to take a different view and go against the order passed by the learned Judge of the writ Court. We do not find any error in the judgment of the learned Judge of the writ Court. We make it clear that it is open to the petitioners to file an appeal before the Appellate Tribunal. Since, the Tribunal also has power to consider the prayer for interim protection; it is open to the petitioners to ask for such protection. However, we do not say anything on the merits of the case of the petitioners. We also make it clear that if the Appellate Authority is approached within ten days from the receipt of a copy of this order, the Appellate Authority shall entertain the appeal on file without insisting on the question of limitation since the matter was kept pending in this Court. With these observations, the writ appeal is disposed of. We have not decided anything on merit. All questions are kept open. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs."

7. In the case of the Titaghur Paper Mills Co. Ltd., and another Vs. State of Orissa and another reported in AIR 1983 Supreme Court 603, the Apex Court has observed as follows:

"11. Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the prescribed authority under sub-s. (1) of S.23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-s. (3) of S.23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under S.24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Art. 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Water Works Co. v. Hawkesford*, (1859) 6 CBNS 336 at p. 356 in the following passage:

"There are three classes of cases in which a liability may be established founded upon statute. ***** But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it ***** the remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspaper Ltd.*, 1919 AC 368 and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tobago v. Gordon Grant and Co.*, 1935 AC 532 and *Secretary of State v. Mask and Co.*, AIR 1940 PC 105. It has also been held to be equally applicable to enforcement of rights,

and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine."

8.This apart, the learned counsel cited a judgment dated 12.09.2017 passed in W.P.No.309 of 2015 reported in CDJ 2017 MHC 6450 and the relevant paragraphs of the judgment are extracted hereunder:

"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 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 Section 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."

9.The learned counsel appearing on behalf of the writ petitioner also cited Judgements of the Hon'ble Supreme Court rendered in the case of Vipulbhai M.Chaudhary Vs. Gujarat

Cooperative Milk Marketing Federation Limited and others reported in 2015 8 SCC and the relevant portion of the judgment is extracted hereunder:

"14.The cooperative societies having been conferred a constitutional status by the Ninety-seventh Amendment, the whole concept of cooperatives has undergone a major change. In 1993, the local self-governments viz., panchayats and municipalities were also given constitutional status under Parts IX and IX-A of the Constitution of India by the 73rd and 74th Amendments. The Statement of Objects and Reasons would show that the Constitution wanted the local bodies to function as vibrant democratic units of self-government. After two decades, cooperative societies were given the constitutional status by including them under Part IX-B. The main object for the said Amendment was also to ensure "their autonomy, democratic functioning and professional management."

10.In the case of Punjab National Bank Vs. Kunj Behari Misra reported in 1998 (7) SCC 84, the relevant portion of the judgment is extracted hereunder:

"19.The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

11. Relying on the above Judgments of the Supreme court, the learned counsel for the petitioner states that when the principles of natural justice has been violated, the writ proceedings can be instituted against the authorities under Article 226 of the Constitution of India. This Court is aware of the fact that there are catena of the Judgments on the principles of natural justice and undoubtedly when the basic principles are violated, the High Court can entertain the writ proceedings under Article 226 of the Constitution of India. However, if an efficacious remedy is availed under the provisions of statute and the authorities competent is a quasi judicial authorities and the proceedings are in the nature of judicial proceedings, then the High Court need not entertain the writ petitions and the authorities must be allowed to exercise their powers conferred under the statutes.

12. The concept of democracy includes the democracy of the institutional 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 effect the very legal principles. It is the duty mandate on the part of the institution to respect other institutions in relation to the exercise of powers under the statute.

13. Undoubtedly, in the event of any gross injustice, the same can directly be questioned under the article 226 of the Constitution of India. However, such circumstances are exceptional and can never be followed as a routine one. Thus, this court is of an opinion on each and every occasion, the employees of the Co-operative Societies cannot be permitted to file writ petition directly without exhausting the remedy available under the provisions of the Tamil Nadu Co-operative Societies Act, 1983. The exceptional circumstances are carved out in the case of K. Marappan Vs. Deputy Registrar of Cooperative Societies, Namakkal reported in 2006 (4) CTC 689. However, in the cases of Disciplinary proceedings, the aggrieved person has to exhaust the remedies available under the Act. If the writ petitions are admitted directly without exhausting the remedies available within the power provided under the statute is not exercised and such circumstances are certainly to be avoided by the Constitutional Courts. In this view of the Matter, this Court is of an opinion that the order impugned is the final order in the departmental disciplinary proceedings and the major penalty of termination of service is inflicted upon the writ petitioner. Undoubtedly, the writ petitioner has to prefer Revision Petition under the Act itself. The learned counsel for the petitioner made a submission that on account of the pendency of the present writ petition, there is delay in

filing the revision petition. Thus, liberty is granted to the writ petitioner to file the revision petition before the competent authorities in the manner known to law. In the event of filing any such revision petition, the authorities competent are bound to consider the same and adjudicate the revision petition on merits and in accordance with law.

14. With these observations, the writ petition stands dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rm/nl

To

1. The Deputy Registrar of Co-operative Societies,
Hosur Circle, Hosur,
Krishnagiri District.
2. The President,
K.K.127, Hosur Primary Agricultural
Co-operative Credit Society Ltd.,
Hosur, Krishnagiri District.

+1cc to Mr.L.P.Shanmugasundaram, Advocate Sr.28926
+1cc to the Government Pleader Sr.28833
+1cc to M/S.Balan Haridas, Advocate Sr.28378

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