

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.23869 of 2012

C.Palappan

... Petitioner

Vs

- 1.The Joint Registrar of Co-op. Societies,
Krishnagiri Region, Krishnagiri,
Krishnagiri District.
- 2.The Special Officer,
K.K.55, Chinnakothur Primary Agricultural
Co-operative Credit Society,
Chinnakothur,
Krishnagiri Taluk & District. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.1094/2012/Sa.Pa, dated 16.02.2012 and quash the same and consequently, direct the 1st respondent to entertain the statutory revision dated 13.02.2012 and dispose of the same on merits.

For Petitioner : Mr.C.Prakasam

For Respondents : Ms.T.Girija,

Government Advocate for R1

: Mr.M.S.Palaniswamy for R2

O R D E R

Heard Mr.C.Prakasam, learned counsel for the petitioner and Ms.T.Girija, learned Government Advocate appearing for the first respondent and Mr.M.S.Palaniswamy, learned counsel appearing for the second respondent.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.1094/2012/Sa.Pa, dated 16.02.2012 and quash the same and consequently, direct the 1st respondent to entertain the statutory revision dated 13.02.2012 and dispose of the same on merits. "

3. The case of the petitioner is as follows:-

The petitioner was appointed as Clerk in the second respondent Society on 22.10.1993. He was subsequently promoted as Senior Clerk and thereafter, he was asked to look after the work of Secretary of the Society. On the basis of certain acts of misconduct, the petitioner was dismissed from service on 16.12.2003.

4. According to the petitioner, because of his service being terminated, he was mentally upset and he was taking a prolonged treatment for nearly 10 years. On recovery from the illness, the petitioner appears to have submitted a revision petition under Section 153 of the Tamil Nadu Co-operative Societies Act 1983. The first respondent however rejected the revision petition vide proceedings dated 16.02.2012, only on the ground that it was filed beyond 90 days period prescribed under the Act. The said proceedings is put to challenge in the present writ petition.

5. The learned counsel for the petitioner would submit that the first respondent ought not to have rejected the revision petition only on the ground that it was filed beyond 90 days period. On the other hand, the first respondent ought to have considered the case on merits, particularly, when the petitioner had valid reasons for not approaching the first respondent within 90 days.

6. At this, learned counsel appearing for the first respondent would submit that the proviso to Section 153 of the Act is very clear and there is no other provision for condonation of delay by the authority and therefore, the first respondent rightly rejected the revision petition which was filed after nine years from the date of termination.

7. However, learned counsel for the petitioner would draw the attention of this Court to order passed by the learned Judge of this Court in W.P.No.606 of 2011 dated 10.02.2011. In the said order, learned Judge relied on the other order passed by this Court, wherein, this Court by exercising its extraordinary power under Article 226 of the Constitution of India, has directed the first respondent to consider the request of the petitioner therein for condonation of delay and also consider the revision petition on merits. The relevant portion has incorporated in the above said order in paragraph Nos.4, 5 and 6 are reproduced below:-

"4. It is an admitted fact that the petitioner has filed the said revision with the delay. But, according to the learned counsel for the petitioner, a similar issue has been dealt with by this Court in W.P.No.13127 of 2010 and by order dated 23.06.2010, this Court has passed the following order:-

4. Though technically the first respondent is right in relying upon the proviso to section 153(1), there is no specific provision in the Act, barring the application of the provisions of the Limitation Act. Section 153(1) entitled the Registrar and the Government even to exercise suo motu powers of revision. Therefore, in such circumstances, the first respondent need not have rejected the revision petition on the sole ground that it was barred by limitation.

5. In view of the above, the writ petition is allowed. The impugned order is set aside and the matter is remitted back to the first respondent. The first respondent shall consider the request made by the petitioner for condonation of delay and consider the revision on merits and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. No costs. M.P.No.1 of 2010 is closed".

5. As far as the stand of the learned Additional Government Pleader is concerned, certainly when a time limit has been prescribed, when the power to condone the delay is not given to the authority, the authority concerned cannot condone the delay. Consequently, the order passed by the authority is in order. But, under Article 226 of the Constitution, this Court can take note of the totality of the circumstances and deal with the issue.

6. Hence, in view of the fact that an identical issue has been decided by this Court, I am of the opinion that in the case of the petitioner alone, a different view cannot be taken and hence the delay in filing the revision is condoned and the 1st respondent is directed to restore the revision filed by the petitioner on his file and to pass orders on merits within a period of four months from the date of receipt of a copy of this order."

The learned counsel would therefore submit that the similar order may be passed in this case, as the petitioner has legitimate explanation for not approaching the authority within the stipulated time by the Act.

8. This Court after having been appraised of the order passed in other similar proceedings by another learned Judge of this Court, cannot take a different view in the matter, although the statute clearly providing 90 days limitation for filing revision petition under Section 153 of the Act. However, in view of the observations and the directions issued by this Court in other writ petitions, for the sake of uniformity, this Court has to necessarily follow the directions of this Court in the earlier proceedings.

9. For the above said reasons, this Court disposes of the writ petition with a direction to the first respondent to consider the application for condonation of delay on its merits and in case, the first respondent is satisfied with the explanation offered by the petitioner, approaching the authority after several years, the revision petition shall be adjudicated on merits. The authority shall pass considered order thereon, within a period of twelve weeks from the date of receipt of a copy of this order. The petitioner is also permitted to submit additional statement, if he so advised, explaining the cause for such long delay in approaching the authority.

10. With the above direction, the writ petition stands disposed of. No costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

gsk
To

The Joint Registrar of Co-op. Societies,
Krishnagiri Region, Krishnagiri,
Krishnagiri District

+ 1 cc to Mr.C. Prakasam, Advocate Sr.15731
+ 1 cc to Mr. M.S. Palaniswamy, Advocate SR.15511
+ 1 cc to MR. Government Pleader Sr.16333

W.P.No.23869 of 2012

(CS-DR)
EU(19/03/2018)