

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.07.2018

DELIVERED ON : 07.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.2356 of 2004

M.Siva Subramanian

... Petitioner

Vs

1.The Joint Registrar of Cooperative Societies
Tirunelveli Region
Tirunelveli - 627 002.

2.The Special Officer
D-1725, Veerakeralampudur Primary Agricultural
Cooperative Bank
Veerakeralampudur - 627 861.

3.G.Paul Durai

... Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus to call for the records in pursuant to the impugned order passed by the second respondent in proceedings dated 4.12.2002 and the consequential order passed by the first respondent in Proc.Na.Ka.1045/2003/Sa Pa, dated 9.5.2003, to quash the said orders and consequently direct respondents 1 and 2 to permit the petitioner to continue as the Secretary of the second respondent Society with all consequential service benefits.

For Petitioner : **Mrs.S. Sujatha**

For Respondents : Mr.L.P.Shanmugasundaram
Spl. Government Pleader
for 2nd respondent

Mr.K.S.Duraipandi
for 3rd respondent

O R D E R

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the second respondent

in proceedings dated 4.12.2002 and the consequential order passed by the first respondent in Proc.Na.Ka.1045/2003/Sa Pa, dated 9.5.2003, to quash the said orders and consequently direct respondents 1 and 2 to permit the petitioner to continue as the Secretary of the second respondent Society with all consequential service benefits.

2. The facts in a nutshell are as under: The petitioner, who was initially appointed as Attender/Salesman in the second respondent society on 1.7.1989, was subsequently promoted as Clerk in the year 1985. The petitioner claims to have acted as an in-charge Secretary from 1992 till 1996 and states that he was continued to hold the said post even thereafter. It is stated that the petitioner was regularly promoted as Secretary on and from 1.3.1998 and in the said post he claims to have continued for over four years with unblemished record of service.

3. It is averred that the third respondent, who was working as the Secretary of the second respondent society, had committed grave irregularities and was involved in misappropriation of funds and, therefore, disciplinary proceedings were initiated against him, followed by surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act (for brevity, "the Co-operative Societies Act") and after thorough enquiry into the allegations, the third respondent was dismissed from service on 30.9.1992. The third respondent, it is alleged by the petitioner, had not approached the first respondent by way of revision, but had filed a civil suit, being O.S.No.535 of 1992, before the learned District Munsif Court, Tenkasi.

4. It is stated that though an objection was raised to the effect that Section 156 of the Co-operative Societies Act is an implied bar for entertaining a civil suit regarding any dispute arising under the provisions of the the Co-operative Societies Act, inasmuch as the third respondent is an employee of the cooperative society governed by the provisions of the Co-operative Societies Act and the bye-laws of the society and the Civil Court has no jurisdiction to entertain a suit under Section 9 of the Code of Civil Procedure regarding the service matter of the employee of the cooperative societies, the learned District Munsif had not considered such objection and decreed the suit by judgment and decree dated 29.10.2002 and the order of dismissal was declared as null and void and the second respondent was directed to reinstate the third respondent in service.

5. It is alleged that the second respondent in cahoots with the third respondent had not preferred an appeal or taken action against the decree in the civil suit, and in the light of the decree passed, the third respondent was reinstated in the post

of Secretary and the petitioner was reverted to the post of Clerk vide proceedings dated 4.12.2002. The petitioner states that in the order of reversion it is stated that the petitioner's promotion to the post of Secretary was not in consonance with Rule 149(2) of the Tamil Nadu Co-operative Societies Rules, whereas Rule 149(2) of the Rules only speaks about direct recruitment and is silent regarding promotion.

6. The revision filed by the petitioner against the order of reversion was dismissed by the first respondent vide proceedings dated 9.5.2003. Hence, the present writ petition for the relief stated supra.

7. It is the contention of the learned counsel appearing on behalf of the petitioner that Rule 149(2) of the Rules cited in the impugned order is not applicable to promotion and the provision relates only to direct recruitment and, therefore, the action of the second respondent reeks of mala fide and is based on non application of mind. He added that the petitioner had been working for over ten years continuously even prior to his promotion and only thereafter he was promoted as Secretary on regular basis and reverting him to the post of Clerk by citing a wrong provision is unsustainable in law.

8. He further contended that in view of the specific bar under Section 156 of the Co-operative Societies Act, the decree in the suit is not maintainable in law and the same cannot be executed in the eye of law. He hastened to add that when Section 9 of the Code of Civil Procedure specifically stipulates conditions to entertain the suit, the suit filed by the third respondent which is completely barred is not maintainable.

9. Per contra, the learned Special Government Pleader appearing on behalf of the second respondent submitted that Rule 149(1) of the Tamil Nadu Cooperative Societies Rules stipulates a minimum period of three years of satisfactory service for promotion from one category to the immediate next higher category of post and in the case on hand, inasmuch as the petitioner has not put in three years of service, he is not qualified to hold the post of Secretary and was illegally promoted as Secretary as per the Board Resolution dated 30.4.1998 retrospectively from 1.3.1998.

10. He further contended that as against the judgment dated 29.10.2002 passed in the civil suit, an appeal was filed before the Principal Sub Judge, Tenkasi and the same was dismissed by judgment dated 29.7.2003 in A.S.No.7 of 2003. The Second Appeal preferred against the said order is stated to be pending before this Court.

11. The learned counsel appearing on behalf of the third respondent submitted that the person in-charge of a post cannot claim it as a matter of right and, therefore, the consequential promotion/ regularization of the petitioner has rightly been set aside by the respondent authorities and does not warrant any interference.

12. Heard the learned counsel on either side and perused the documents available on record.

13. Anent the contention that the petitioner's promotion was not in consonance with Rule 149(2) of the Tamil Nadu Co-operative Societies Rules, at the outset, it is to be noted that such promotion granted to the petitioner was in pursuance of a Board Resolution. It is not as if the petitioner has misrepresented or played fraud on the respondent authorities and secured promotion as Secretary.

14. Even otherwise, it is borne out by records that the petitioner was serving as in-charge Secretary from 1992 till 1996 and even thereafter and was promoted as Secretary under regular stream on and from 1.3.1998 and in the said post he continued for over four years. The respondent authorities had not placed on record any document disputing the merit or ability of the petitioner for being promoted as Secretary.

15. The petitioner having been promoted as Secretary based on the Board Resolution and having held the charge of Secretary in regular stream for very many years without any objection, that too after serving as in-charge Secretary from 1992 to 1996 and even thereafter, which is beyond any dispute, it does not lie in the mouth of the respondent authorities to revert him to the post of Clerk stating that his promotion was not in compliance with Rule 149(2) of the Rules, more particularly, stating that he has not put in three years of satisfactory service, with the sole objective of accommodating the third respondent in the said post.

16. The respondent authorities, till the order directing reinstatement of the third respondent was passed, did not even bother to consider the veracity of the appointment of the petitioner to the post of Secretary and only after such decree was passed by the Civil Court, they raised the objection regarding appointment of the writ petitioner stating that the same was not in accordance with Rule 149(2) of the Rules.

17. In such view of the matter, this Court is of the view that the above said plea raised by the respondent authorities does not merit consideration at this belated stage.

18. Now, let us analyze the validity of the decree passed by the Civil Court in the challenge made by the third respondent qua the disciplinary proceedings initiated against him.

19. Before advertng to the merits of this plea, it is apposite to refer to Section 9 of the Code of Civil Procedure and Section 156 of the Co-operative Societies Act , which read as under:

"Section 9 of the Code of Civil Procedure:

Courts to try all civil suits unless barred:- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizances is either expressly or impliedly barred."

Section 156 of the Tamil Nadu Co-operative Societies Act:

Section 156. Bar of Jurisdiction of Civil Courts._ Notwithstanding anything contained in any other law for the time being in force, no order or award passed, decision or action taken or direction issued under this Act by an arbitrator, a liquidator, the Registrar or an officer authorised or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any court and no injunction shall be granted by any court in respect of anything which is done or intended to be done by or under this Act."

20. Generally, all suits are triable by the civil court. Section 9 of the Code of Civil Procedure specifies that the courts shall have jurisdiction to try all suits of civil nature except those whose cognizance is either expressly or impliedly barred.

21. It is trite that it is for the party who seeks to oust the jurisdiction of a civil court to establish that the jurisdiction of the civil court is so barred either expressly or impliedly, as held by the Hon'ble Supreme Court in Abdul Waheed Khan Vs. Bhawani and others AIR 1996 SC 1718. It is equally settled that the statute ousting the jurisdiction of the civil court must be strictly construed. In Sahebgouda (Dead) by LRS and others Vs. Ogeppa and others (2003) 6 SCC 151 the Hon'ble Supreme Court held that it is well settled that a provision of law ousting the jurisdiction of the civil court must be strictly construed and onus lies on the party seeking to oust the jurisdiction to establish the same.

22. In another case Dwarika Prasad Agrawal (D) by LRS Vs. Ramesh Chandra Agrawal and others (2003) 6 SCC 220 it has been held that Section 9 Civil Procedure Code confers jurisdiction upon the civil courts to determine all disputes of civil nature unless the same are barred under a statute either expressly or by necessary implication. A provision seeking to bar jurisdiction of a civil court requires strict interpretation. The burden of proof of ouster of jurisdiction of civil court is always upon the party who asserts the ouster of jurisdiction.

23. In the case on hand, it is admitted that the respondent authorities have entered appearance in the civil suit and raised specific objection qua the maintainability of the civil suit and in fact, they have filed appeal before the learned Principal Sub Judge, Tenkasi and the same was dismissed by judgment dated 29.7.2003 in A.S.No.7 of 2003. The Second Appeal preferred against the said order is stated to be pending before this Court.

24.A bare perusal of Section 156 of the Co-operative Societies Act makes it clear that there is a specific bar of jurisdiction of the Civil Courts. It is not as if by virtue of the bar of jurisdiction of the civil courts the third respondent is left remedy less. The third respondent has an effective remedy of revision under Section 153 of the Co-operative Societies Act.

25. Section 153 of the Co-operative Societies Act, which reads as follows:

"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 by-laws not being a proceedings 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.

Provided that every application to the Registrar or the Government for the exercise of the powers under this section 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.

(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 representation.

(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 of 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 part to the application for revision as the Registrar or the Government may deem fit."

26. The third respondent having failed to invoke the alternative remedy available in the Co-operative Societies Act and invoked the provisions of the Code of Civil Procedure, which is explicitly barred by virtue of Section 156 of the Co-operative Societies Act, the suit filed is barred and hit by the provisions of Section 156 of the Co-operative Societies Act .

27. A learned Single Judge of this Court in Somasundaram v. Liyakat Ali, 1997 1 CTC 4, relating to promotion of employees of the co-operative society, held that a civil suit is maintainable. However, another learned Single Judge of this Court in K.Radhakrishnan v. Additional Registrar, 2000 2 CTC 147, in respect of the seniority of employees in a co-operative society held that revision petition under Section 153 of the Co-operative Societies Act is maintainable. In view of such conflicting decisions, the matter was referred to a Division Bench. The Hon'ble Division Bench, after threadbare analysis of the provisions of the Co-operative Societies Act and a catena of decisions, in P.Eswaramoorthy and others v. R.J.B.Leoraj and others, 2008 4 LW 883, held as under:

"24. In the light of the above legal journey through various decisions of this Court as well as of the Supreme Court, the following propositions will emerge:

(a) Section 90 of the 1983 Act providing for settlement of disputes will not include a dispute between a servant of a Co-operative Society and its Management. Therefore, no dispute can be referred to the Registrar or his nominee under Section 90 and consequently, no appeal will lie to the Tribunal under Section 152.

(b) Section 153 of 1983 Act is a departure from Section 97 of the 1961 Act and it is wider in nature. Power has been specifically conferred on the revisional authority under Section 153 to call

for and examine the record of any proceeding under the Act or the Rules or the bye-laws of any officer subordinate to the Registrar or of the Board of Director or any officer of a registered society or of the competent authority constituted under Section 75(3) of the 1983 Act. Therefore, the employees of a Co-operative Society can approach the Registrar or any competent authority under Section 153 to revise any order passed by the Co-operative Society relating to disciplinary action taken against him or denial of promotion or wrong fixation of seniority, etc.

(c) There is no implied ouster of the jurisdiction of the power of the Labour Court/Industrial Tribunal to deal with similar matters if disputes are raised before them by workmen or employees covered by those provisions. Both remedies are available.

(d) The decision in *Somasundaram v. Liyakat Ali*, 1997 (1) CTC 4 may not be a good law. The employees therein filed a Civil Suit regarding promotion issue. As remedy for the aggrieved parties in that case are available either under Section 153 or by an industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947, they could not have gone before the Civil Court. Therefore, the bar under Section 156 of the Cooperative Societies Act as well as the implied ouster of jurisdiction of the Civil Court by the provisions of the I.D. Act will directly apply and the suit is barred.

(e) The decision of P. Sathasivam, J. (as he then was) in *K. Radhakrishnan v. Additional Registrar*, (2000)IIML J7 upholding the right of revision under Section 153 has laid the correct position of law. Likewise, the judgment of P. Sathasivam, J. (as he then was) in *The Management of Madras Atomic Power Project Employees' Consumers (Co-operative Stores Limited, Kalpakkam rep. by its Special Officer v. The Deputy Commissioner of Labour (Appeal) Madras - 6 and 2 Ors.*, (2000) II LLJ 1451 Mad holding that Section 90 of the 1983 Act is not available for employees of Co-operative Societies against the orders of termination has been correctly decided."

(emphasis supplied)

28. The Hon'ble Division Bench in *P. Eswaramoorthy* case, supra, emphatically held that the bar under Section 156 of the Cooperative Societies Act as well as the implied ouster of jurisdiction of the Civil Court by the provisions of the Industrial Disputes Act will directly apply and the suit is

barred. The said proposition applies on all fours to the case on hand.

29. When there is a specific bar of jurisdiction of the Civil Court in the light of the Section 156 of the Cooperative Societies Act, it is not known as to how the civil suit filed by the third respondent has been entertained and the order of dismissal of the third respondent was set aside. It is not the case of the third respondent or nothing has been placed before this Court to show that the order of dismissal was passed without affording him an opportunity of hearing or was in violation of the principles of natural justice. However, as the decree is not in challenge before me, I do not propose to express any opinion on the same.

30. In any event, it is not the case of the third respondent that he had no other effective remedy than preferring the civil suit. The Co-operative Societies Act is a self contained code and under Section 153 of the Co-operative Societies Act the third respondent has a remedy of filing of revision before the competent authority.

31. The Hon'ble Supreme Court time and again held that the jurisdiction of the Civil Court would not be taken away in the case of service dispute, but what is to be seen is whether the dispute arising between an employer and employee would be an industrial dispute or not and the question in regard to jurisdiction of the Civil Court must, therefore, be addressed having regard to the fact as to which rights or obligations are sought to be enforced for the purpose of invoking or excluding the jurisdiction of a Civil Court.

32. In Rajasthan State Road Transport Corporation and another Vs. Bal Mukund Bairwa 2009 (4) SCC 299, the Hon'ble Supreme Court has categorically held that if a statute while creating rights and obligations did not constitute a forum for enforcing the same, plenary jurisdiction of the civil court, in view of Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke and others, (1976) 1 SCC 496, could not be held to have been taken away.

33. That apart, in Rajasthan State Road Transport Corporation Vs. Krishna Kant, AIR 1995 SC 1715, the Hon'ble Supreme Court held that the power of Civil Court would be available only in a case where there is no other alternative remedy available for a person and for the recognition, observance and enforcement of his right, the recourse to the Civil Court would be open. The Hon'ble Supreme Court categorically held that where the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to

approach the forums created by the said Act.

34. In the instant case, the law which would be applicable would be the Cooperative Societies Act and the forums created under the Co-operative Societies Act. If there is an alternative forum enacted under the statute itself, the Civil Courts would be precluded from its jurisdiction. In the instant case, the statute itself provides for revision against an order passed against the third respondent.

35. In Abdul Gafur and another Vs. State of Uttarakhand and others (2008) 10 SCC 1997, the Hon'ble Supreme Court held thus:

"16. Section 9 of the Code provides that the civil court shall have jurisdiction to try all suits of a civil nature excepting the suits of which their cognizance is either expressly or impliedly barred. To put it differently, as per Section 9 of the Code, in all types of civil disputes, the civil courts have inherent jurisdiction unless a part of that jurisdiction is carved out from such jurisdiction, expressly or by necessary implication by any statutory provision and conferred on other tribunal or authority. Thus, the law confers on every person an inherent right to bring a suit of civil nature of one's choice, at one's peril, howsoever frivolous the claim may be, unless it is barred by a statute."

36. Likewise, in United India Insurance Company Limited Vs. Ajay Sinha and another (2008) 7 SCC 454, the Hon'ble Supreme Court held that provisions excluding jurisdiction of civil courts should receive strict construction.

37. From the plain reading of the above principles laid down by the Hon'ble Supreme Court, it is evidently clear that since the third respondent had a statutory remedy available to him and the said statute governs the service conditions of the third respondent, the jurisdiction of the civil court is specifically barred.

38. This Court, therefore, as a general principle would like to reiterate that the principles laid down by the Hon'ble Division Bench of this Court in P.Eswaramoorthy and others v. R.J.B.Leoraj, supra, have to be implemented by the Civil Courts stricto sensu.

39. In the light of the law enunciated in the decisions, supra, and for the foregoing reasons, the following order is passed:

(a) the writ petition is allowed by setting aside the order in Proc.Na.Ka.1045/2003/Sa Pa, dated

9.5.2003 passed by the first respondent;

(b) the respondents 1 and 2 to permit the petitioner to continue as the Secretary of the 2nd respondent Society with all consequential service benefits to the petitioner, excluding the amounts already paid, if any;

(c) the said exercise shall be done within a period of twelve weeks from the date of receipt of a copy of this order;

(d) the Civil Courts in the State of Tamil Nadu are hereby directed not to entertain any civil suits in respect of co-operative societies, since Section 156 of the Cooperative Societies Act ousts the jurisdiction of the civil courts and the civil courts are directed to strictly adhere to the principles laid down by the Division Bench of this Court in P.Eswaramoorthy and others v. R.J.B.Leoraj and others, 2008 4 LW 883;

(e) the Registrar General of the High Court is directed to issue a circular directing all the civil courts not to entertain any civil suits filed against cooperative societies.

(f) No costs.

Sd/-
Assistant Registrar(CS IX)
Dated: 14.09.2018

*** Corrected as per order
of this court dated 18.09.2018
and made herein.**

**Sd/- Assistant Registrar(CS IX)
Dated: 19.09.2018**

//True Copy//

Sub Assistant Registrar

vs

To

- 1) The Joint Registrar of Cooperative Societies
Tirunelveli Region
Tirunelveli - 627 002.

2) The Registrar General, High Court, Madras.

+lcc to Mrs.T.P.Savitha, Advocate, S.R.No.61976

+lcc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.62432.

+lcc to the Government Pleader, S.R.No.62673.

W.P.No.2356 of 2004

rrs 14/09/2018.

SP(19/09/2018)



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