



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.08.2018

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.18530 of 2018

WEB COPY

1.G.Chokkalingam
2.S.Rajendran
3.V.Pitchairamu

.. Petitioners

/Vs./

1.The Joint Registrar of Co-operative Society (Review Officer),
Ramanathapuram, Ramanathapuram District.

2.The Deputy Registrar / Managing Director,
Q 816 Ramanad District Consumer Co-operative
Wholesale Store Limited,
Ramanathapuram, Ramanathapuram District.

.. Respondents

Prayer: Writ Petition - filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent vide his impugned proceedings Na.Ka.No.3091/2018/Sa.Pa., dated 28.06.2018 and quash the same as illegal and consequentially to direct the first respondent to take up the review on file and decide the matter on merits within the period that may be stipulated by this Court.

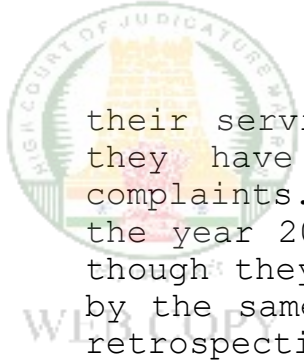
For Petitioners	: Mr.H.Mohammed Imran for M/s.Ajmal Associates
For Respondents	: Mr.K.Mu.Muthu Additional Government Pleader

ORDER

The petitioner has come forward with this writ petition, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the first respondent vide his impugned proceedings Na.Ka.No.3091/2018/Sa.Pa., dated 28.06.2018 and quash the same as illegal and consequentially to direct the first respondent to take up the review on file and decide the matter on merits within the period that may be stipulated by this Court.

2. By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

3. According to the petitioners, they were initially appointed as Temporary Salesmen on 13.01.1988 and 06.06.1989 respectively in the second Respondent Society and subsequently, they were brought under time scale of pay on 01.10.1989. On completion of 15 years of



their service, they were granted Selection Grade on 02.03.2003 and they have been working as such without giving any room for complaints. They have rendered nearly about 30 years of service. In the year 2008, some of the Assistant Salesmen were given promotion, though they were appointed subsequent to the petitioners. Aggrieved by the same, the petitioners submitted their representation seeking retrospective seniority on par with their juniors. Consequently, the second respondent, vide his proceedings dated 10.02.2015, granted promotion with retrospective effect. The said order came to be passed taking into consideration the fact that the juniors were given promotion prior to seniors. While the matter stood thus, the second respondent, vide his proceedings dated 30.12.2017, has cancelled the order of notional promotion dated 10.02.2015 on the basis of the 82 enquiry report.

4. The learned counsel appearing for the petitioners further submitted that it is an admitted fact that prior to the said order dated 30.12.2017, no notice was issued. Though the said order was communicated to the petitioners two months later, the petitioners were forced to put signatures in the acknowledgment with antedate. Aggrieved by the said order, the petitioners filed an application for revision under 153 of the Tamil Nadu Co-operative Societies Act, 1983 along with a petition to condone the delay. However, the first respondent has dismissed the review petition solely on the ground that the review petition was filed beyond the period of 90 days. Even though it was filed beyond 90 days, the first respondent is empowered to condone the delay in view of Section 5 of the Limitation Act, 1963. The first respondent has neither considered the application for condoning delay nor decided the issue on merits. Aggrieved over the order of the first respondent, the petitioners are before this Court.

5. Heard the learned counsel appearing for the petitioners and the learned Additional Government Pleader appearing for the respondents.

6. The petitioners' revision under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 along with a petition to condone the delay has been returned on the ground that the said application has been filed beyond 90 days. However, the respondent concerned, without assigning any reason in the impugned order dated 28.06.2018, except noting down the reason that the application has been filed beyond 90 days, passed the order, which is impugned in this writ petition.

7. This Court while dealing with the similar issue in the case of P.Ravi vs. The Joint Registrar of Cooperatives, Madurai Region, Madurai, reported in 2017 (2) CTC 584 has been proposed to hold as under:

"17. However, in the present case, admittedly, the petitioner had submitted an application to condone the delay of 265 days in filing the revision



and the said factor is found place in the original files produced by the learned Government Advocate. When that being the position, the revisional authority ie., the respondent herein ought to have considered the said application for condonation of delay by invoking Section 5 of the Limitation Act.

18. Moreover, when similar situation arises out of the Cooperative Societies Act, this Court by earlier order made in W.P.No.7279/2010 in the matter of Sethuramalingam v. the Deputy Registrar of Cooperative Societies, Madurai, had held that application under Section 5 of the Limitation Act can be entertained while considering the revision filed under Section 153 of the Act.

19. Following the said decision, this Court by yet another order, in W.P.(MD) No.452/2012 dated 26.03.2013 in the matter of M.Chelladurai v. the Joint Registrar of Cooperative Societies, Virudhunagar, has also held that the dismissal of the revision on the ground of limitation is unsustainable. The relevant portion of the order made in W.P.No.452/2012 is reproduced herein for better appreciation of the issue:

?3. The matter is squarely covered by a decision of this Court dated 08.06.2010, made in W.P.No.7279 of 2010 (Sethuramalingam v. The Deputy Registrar of Co-operative Societies, Madurai Circle, Madurai and another). Paragraph 2 of the said order is extracted hereunder:-

?2.Considering the fact that the order passed by the 2nd respondent which is challenged in the writ petition, a revisional remedy is provided under Section 153 of the Act which is equally efficacious remedy, I am not inclined to entertain the writ petition. Hence, the writ petition is dismissed and the petitioner if so advised can work out his remedy under the provision of the Tamil Nadu Co-operative Societies Act. It is submitted by the Writ petitioner that under Section 153 of the Tamil nadu Co-operative Societies Act the revision has to be filed within 90 days and in this case more than 90 days has passed. Even though under Section 153 of the Tamil Nadu Co-operative Societies Act the revision to be filed within 90 days, the Act does not exclude the application of Section 5 of the Limitation Act and if so advised the petitioner can also file under Section 5 of the Limitation Act to condone the delay in filing the revision along with the revision.?

<https://hcservices.ecourts.gov.in/Inservice> 4. In these circumstances, the impugned order is set aside and the petitioner is permitted to re-submit the revision petition, within a period of two weeks



from the date of receipt of a copy of this order, along with condone delay application to condone the delay in filing the revision petition to the first respondent and the first respondent is directed to entertain and dispose the same on merits and in accordance with law. The writ petition is disposed of in the above terms. No costs.?

20. In view of the said decisions of this Court, where an uniform stand consistently have been taken, even in the absence of specific provisions for entertaining the application to condone the delay by invoking Section 5 of the limitation Act, the same can be entertained for the ends of justice.

21. Therefore, in this case also, even though there is a petition to condone the delay of 265 days in filing the revision, the same was not entertained and on the ground of limitation, the revision petition was dismissed by the respondent. Therefore, the order impugned is unsustainable, in view of the aforesaid settled legal position. Hence, this Court has no hesitation to quash the said order and accordingly, the impugned order is quashed and the writ petition is allowed.

22. The respondent is directed to take up the condone delay petition filed by the petitioner and after deciding the same, the revision petition of the petitioner can also be decided on merits and the needful shall be done by the respondent within a period of three months from the date of receipt of this order. No costs."

8. Finding that the above judgment is squarely applicable to the present case and following the same, the petitioners are permitted to re-present the revision under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983, within a period of one week from the date of receipt of a copy of this order and on filing such revision, the respondents are directed to decide the same on merits and in accordance with law.

Sd/-

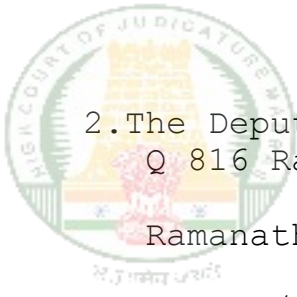
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar(CS-I)

To

<https://hcservices.courts.gov.in/hcservices>
The Joint Registrar of Co-operative Society (Review Officer),
Ramanathapuram, Ramanathapuram District.



2.The Deputy Registrar / Managing Director,
Q 816 Ramanad District Consumer Co-operative
Wholesale Store Limited,
Ramanathapuram, Ramanathapuram District.

+1CC to M/s.Ajmal Associates, Advocate, SR.No.81202

+1CC to the Special Government Pleader SR.No.80976

W.P.(MD)No.18530 of 2018
29.08.2018

SM

ES/SKN/RSK/SAR 1/02.11.2018/5P/5C