

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.26010 of 2003
and WPMP.No.3571 of 2006

Sp. SPL. 30, Viswanatham Primary,
Agricultural Co-operative Bank,
Rep. by its Special Officer,
Viswanatham Post, Sivakasi Via
Virudhunagar District. Petitioner

Vs.

1. Tmt.R.Radha,
C/o. S.Alagumuthu Pandian,
157, Vakil Street,
Kovilpatti.
2. Deputy Commissioner of Labour,
Appellate Authority under
Shops and Establishments Act,
Madurai. Respondents

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 2nd respondent dated
10.06.2003 made in case No.TNSE 17/02 and quash the same.

For Petitioner : Mr.A.S.Thambusamy

For Respondents : Mr.G.E.Ethirajulu, for R1
Mr.S.Suresh Kumar, G.A., for R2

O R D E R

This petition has been filed to quash the order of the 2nd
respondent dated 10.06.2003 made in case No.TNSE 17/02.

2. On a set of proved charges, the first respondent herein
was dismissed from services by an order dated 23.01.2001, by the
petitioner Society. As against the said order of dismissal dated
23.01.2001, the first respondent had filed a revision under
Section 153 of the Tamil Nadu Co-operative Societies Act before

the Joint Registrar of Cooperative Societies, Virudhunagar and through an order dated 28.01.2002 in Na.Ka.No.4214/2001 Sa.Pa, the said revision came to be dismissed on merits. As against the order of dismissal passed in the revision, the first respondent had filed an appeal before the second respondent under Section 41 (2) of the Tamilnadu Shops and Establishments Act and the second respondent through the impugned order has directed the petitioner herein to reinstate the first respondent into service.

3. In the present Writ Petition, the only ground raised by the petitioner is that when the first respondent herein had availed a statutory remedy of Revision under Section 153 of the Tamil Nadu Co-operative Societies Act, she is debarred from subsequently filing an appeal under Section 41 (2) of the Tamil Nadu Shops and Establishments Act and such an appeal is not maintainable. In support of this submission, the learned counsel for the petitioner relied upon the decision of the Hon'ble Division Bench of this Court reported in 1996 (1) LLN 244 (Dhakshinamoorthy vs. Kancheepuram Central Co-operative Bank and others).

4. The learned counsel for the first respondent, on the other hand, submitted that the appeal does not suffer from any infirmity by relying upon the decision of the other Division Bench of this Court reported in 2010 Writ L.R. 199 (The George Town Co-operative Bank Limited vs. The Deputy Commissioner of Labour [Appellate Authority]). The learned counsel for the first respondent submitted that there was no error of jurisdiction on the part of the second respondent herein in allowing the appeal under the Tamil Nadu Shops and Establishments Act.

5. By way of alternative submission, the learned counsel for the first respondent submitted that in case, this Court is of the view that such an appeal is not maintainable, liberty should be given to the petitioner to challenge the earlier order passed under Section 153 of the Tamil Nadu Co-Operative Societies Act. In support of such submission, the learned counsel submitted that the first respondent herein has put in more than 20 years of service and she has a meritorious case to challenge the charges levelled and the subsequent report of the Enquiry Officer.

6. The learned counsel for the petitioner opposed the submission made by the first respondent and stated that since the first respondent has not come to the Court with clean hands, no liberty should be given to her to challenge the Revision at this belated stage.

7. I have given careful consideration to the submissions

made by the respective counsels.

8. The counsel for the petitioner has not questioned the merits of the case, but rather raised a legal ground stating that the appeal before the second respondent herein itself is not maintainable. The decision relied upon by the petitioner in Dhakshinamoorthy case (cited supra), reads as follows:

"12. We have carefully considered the submissions of the learned counsel appearing on either side. We are of the view that the order of the learned Single Judge deserves to be sustained for more than one reason. The remedy of appeal is one to be specifically provided for and there cannot be any right to file an appeal by an implication. That apart, the avenues of remedies either by way of appeal or by way of revision or otherwise, has got to be determined with reference to the date of the order sought to be challenged in an appeal. Inasmuch as the order of dismissal in the case on hand was passed on 30 April 1979 long prior to the notification in G.O.Ms.No.1239 Labour and Employment, dated 4 August 1979, and since on the date of the order, the exemption from the provisions of S. 41 was in full force and effected, the only available avenue of appeal was the one provided under the Special Bye-law No.44 governing the conditions of service of the employees working in the first respondent-management. As a matter of fact, the appeal as per the said bye-law was to a State level officer of the Government and the Registrar of Co-operative Societies, who was the designated appellate authority also dealt with the appeal and disposed of the same by his order, dated 15 April 1980, confirming the order of the first respondent-management. While that be the position, it would be futile for the appellant to contend that he is entitled to file a further appeal. It is only in that context, the learned Single Judge was of the view that countenancing the plea of the appellant would tantamount to providing for a second appeal. The provisions for appeal contained in Sub-sec. (2) of S. 41 of the Act contemplates the filing of an appeal against the orders of the management and once taking advantage of the bye-laws, which governed the conditions of the service of the appellant, an appeal has been preferred to the designated authority and such appellate authority also disposed of finally the appeal, thereafter, it would be untenable in law to contend that the appellant can choose to challenge the orders passed on appeal also by invoking the powers under Sub-sec. (2) of S. 41 of the Act. Not only that the entitlement as per the law applicable as on the

date of the passing of the order of dismissal did not warrant recourse to the appellate provisions in Sub-sec. (2) of S. 41 of the Act, but the appellant could not be held to be entitled to avail of the appellate forum constituted under the Act, merely because long after the order of dismissal, the notification exempting the institutions like the first respondent-management from the provisions of S.41 was superseded and a prospective notification, which had the effect of applying S.41 to such institutions came to be issued. On that view of the matter, we do not find any infirmity in the reasoning of the learned Judge, taking the view that so far as the claim of the appellant is concerned, there could be no further appeal by way of a second appeal against the order passed on an appeal by the Registrar of Co-operative Societies in the absence of any specific stipulation, providing for such an appeal. Hence, we see no reason to interfere with the order of the learned Single Judge in this appeal.

13. The Writ appeal, therefore, fails and shall stand dismissed. But in the circumstances of the case, there will be no order as to costs."

9. The aforesaid observations of the Hon'ble Division Bench is self explanatory to the effect that when an employee had availed a right of appeal provided under the Special Bye-laws therein, he cannot further file an appeal under Section 41 (2) of the Shops and Establishments Act, which would amount to giving right of second appeal against the order passed by the Registrar of Co-operative Societies. Such a decision is aptly applicable to the present case also and as such, the first respondent herein having availed the remedy of revision under Section 153 of the Tamil Nadu Co-Operative Societies Act, is not entitled to file an appeal under Section 41 (2) of the Tamil Nadu Shops and Establishments Act, which is not maintainable and which ratio has been ratified in the aforesaid decision in Dhakshinamoorthy case (cited supra).

10. The decision relied upon by the learned counsel for the first respondent in 2010 Writ L.R. 199 (cited supra) is not applicable to the present case, since the ratio held therein was that the forum of the Authority under Section 41 would be available to a person employed under Co-operative Society and in that case the appeal remedy would not be interfered with. As such, the said provision will not help the first respondent herein.

11. On a perusal of the grounds raised in the appeal filed by the first respondent before the second respondent, the first respondent had disclosed that she was originally dismissed from the service on 21.03.2001 and she had chosen to file a revision on 19.04.2001 and the order in revision came to be passed on 28.01.2002. Thereafter, in about 1 and 1/2 months, the first respondent had chosen to challenge the original of the order of dismissal under an appeal under Section 41 (2) of the Tamil Nadu Shops and Establishments Act. In view of the prompt action taken to challenge the order, it cannot be said that there was a malafide intention on the part of the first respondent in failing to challenge the order passed in the revision under Section 153 of the Tamil Nadu Co-operative Societies Act.

12. The first respondent has also stated that she had put in more than 20 years of service and as such her long service cannot be brushed aside, just because an order of dismissal has been passed, where the petitioner had also chosen to challenge the same by way of revision.

13. In my view, a sympathetic approach can be extended to the first respondent by granting liberty to her to challenge the order dated 28.01.2002 passed under Section 153 of the Tamil Nadu Co-operative Societies Act. As such, the present impugned order dated 10.06.2003 directing the reinstatement of the first respondent, requires to be set-aside.

14. In the light of the above observations, the order dated 10.06.2003 passed by the second respondent herein in case No.TNSE 17/02 is set aside. Consequently, the first respondent herein is granted liberty to challenge the order dated 28.01.2002 in Na.Ka.No.4214/2001 Sa.Pa passed by the Joint Registrar of Cooperative Societies, Virudhunagar within a period of eight weeks from the date of receipt of a copy of this order.

15. With the above observations, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Special Officer,
Sp. SPL. 30, Viswanatham Primary,
Agricultural Co-operative Bank,
Viswanatham Post, Sivakasi Via
Virudhunagar District.

2. Deputy Commissioner of Labour,
Appellate Authority under
Shops and Establishments Act,
Madurai.

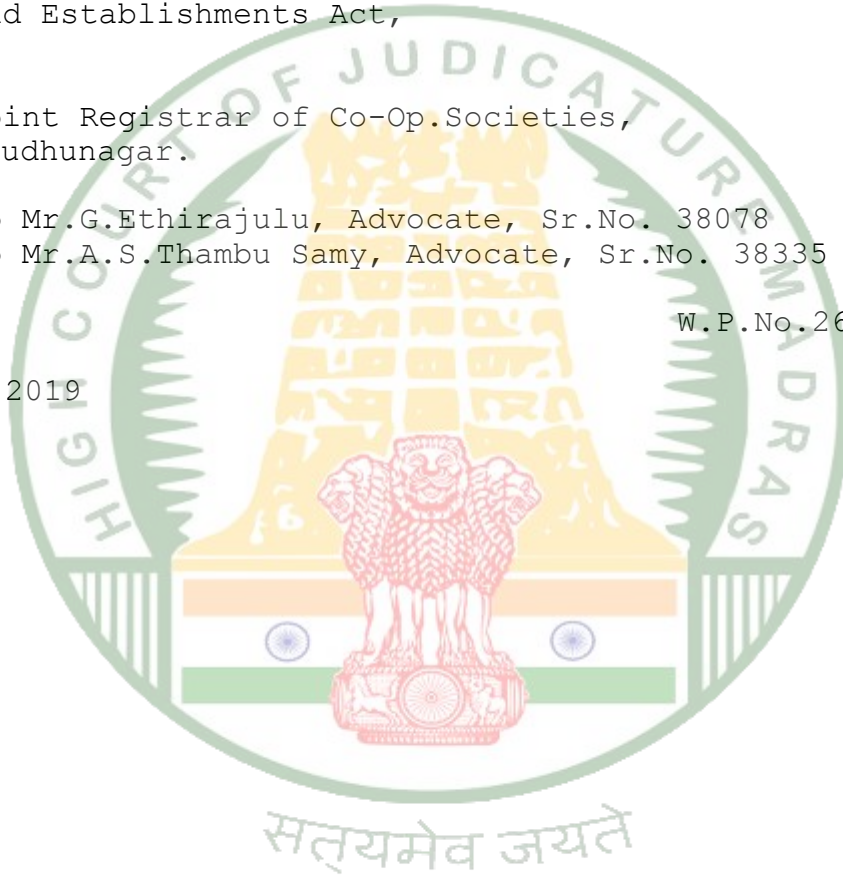
3. The Joint Registrar of Co-Op. Societies,
Virudhunagar.

+1 cc to Mr. G. Ethirajulu, Advocate, Sr.No. 38078

+1 cc to Mr. A. S. Thambu Samy, Advocate, Sr.No. 38335

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CSL/20.06.2019



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