

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

W.P.No.9889 of 2013
and M.P.No.1 of 2013

R.Sakthivel
..Petitioner

Vs

- 1.The Joint Registrar of
Cooperative Societies
Cuddalore Region
Cuddalore District
 - 2.The Deputy Registrar of
Cooperative Societies
Cuddalore Region
Cuddalore District
 - 3.The Special Officer
F.C.2830 Cuddalore District Public Health Department
Employees Cooperative Credit Society Ltd
Appavu Street, Pudupalayam
Cuddalore District
 - 4.The Labour Officer
Cuddalore, Cuddalore District
- Respondents ..

Prayer:- This Writ Petition is filed, under Article 226 of Constitution of India, to issue a writ of Mandamus directing the respondents to forthwith implement the order passed by the 4th respondent in his proceeding Na.Ka.No.345/10 dated 31.01.2011.

For Petitioner : Mr.P.Ganesan
For Respondents :
for R2 : Mrs.P.Girija, Govt.Advocate for

R1 & R2

Mr.L.P.Shanmughasundaram,
Spl.G.P. for R3

ORDER

The case of the Petitioner is that pursuant to the settlement dated 31.01.2011, between the Management and the Workman that was signed under Section 12(3) of the Industrial Disputes Act, 1947, the petitioner ought to have been provided with an employment and that the petitioner was asked to report for work on 01.02.2011. Even though the petitioner has communicated the settlement and requested the Management to provide employment by letter dated 29.07.2011, the petitioner was informed that he will be provided with employment, however, no order is passed by the 1st respondent as per the recommendation of the 2nd, 3rd and 4th respondents. Hence the Petitioner has come forward with the present writ petition.

2. The respondents filed a detailed counter and submitted that the Writ Petition is not maintainable in view of the Larger Bench Judgment of this court in the case of K.Marappan Vs. the Deputy Registrar of Cooperative Societies [(2006) 4 MLJ 641]. The petitioner was appointed on Daily Wages Basis with effect from 23.11.1998 without assigning any designation and thereafter, he was appointed as Clerk on a consolidated monthly pay with effect from 01.03.2001. The Petitioner's service conditions is governed as per the Special By-law, which reads as follows:-

"(1) subject to the budget allotment sanctioned by the general body, the strength of the establishment of the society and the scale of pay admissible shall be fixed from time to time, by the Committee with the approval of the Registrar of Cooperative Societies".

3. It is submitted that the cadre strength is only one and that the petitioner cannot be appointed as there is already Secretary engaged in terms of the cadre strength as per by-law applicable to the society. As there is no approved cadre strength in the Special by-law, the petitioner could not be reinstated in service. It is further stated that the 3rd respondent, without the knowledge of the 1st and 2nd respondents, entered into a settlement with the petitioner, without obtaining approval of cadre strength in the special by-law of the society, which has no legal effect and could not be implemented and hence the relief sought for by the petitioner is not maintainable and sought for dismissal of the writ petition.

4. It is seen that the Petitioner also filed a Revision under Section 153 of Cooperative Societies Act as early as on 23.08.2007 and the Revisional Authority passed the order on 28.01.2008, confirming the retrenchment order passed by the Special Officer.

5. The further case of the Petitioner is that, on his retrenchment from service by the respondents-Cooperative

Society, he raised a revision under Section 153 of the Cooperative Societies Act, before the 1st respondent, who dismissed the same by order dated 28.01.2008, which resulted in approaching the Labour Court under Section 2(A) of the Industrial Disputes Act, 1947 and before the 4th respondent, 12 (3) settlement was arrived at, on 31.01.2011, thereby, the respondents 1 to 3 agreed to provide employment to the Petitioner. As such, the respondent-Cooperative Credit Society is not at all justified in not providing employment to the Petitioner, even after the settlement dated 31.01.2011. However, on the other hand, the Special Officer of the Cooperative Credit Society, having got the successful order in the Revision filed by the Petitioner dated 28.01.2008 under Section 153 of the Cooperative Societies Act, has chosen to enter into the settlement under Section 12(3) of the ID Act dated 31.01.2011. In any event, the settlement has legal sanctity in the eye of law. It is no doubt true that writ will not lie against a Cooperative Society as per the Larger Bench Judgment of this court in the case of K.Marappan Vs.The Deputy Registrar of Cooperative Societies [(2006) 4 MLJ 641 = (2004) 4 CTC 689], but there was certain exception carved in the judgment and the portions are extracted below:-

" (iii) Even if a society cannot be characterised as a State within the meaning of Article 12 of the Constitution, even so a writ would lie against it to enforce a statutory public duty cast upon the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a person or an authority within the meaning of Article 226 of the Constitution and what is material is the nature of the statutory duty placed upon it and the Court will enforce such statutory public duty. Although it is not easy to define what a public function or public duty is, it can reasonably said that such functions are similar to or closely related to those performable by the State in its sovereign capacity.

(iv) A society, which is not a State would not normally be amenable to the writ jurisdiction under Article 226 of the Constitution, but in certain circumstances, a writ may issue to such private bodies or persons as there may be statutory provisions which need to be complied with by all concerned including societies. If they violate such statutory provisions a writ would be issued for compliance of those provisions."

When there is a settlement which has got a statutory force, the respondent-Cooperative Society, is bound to implement the same. Though the petitioner has got the alternative remedy of

preferring complaint under Section 29 of the I.D.Act, 1947, it is time consuming process as the Government will have to sanction prosecution against the officials falling under Section 32 of the ID Act so as to bring the issue to a logical end. However, the sanctioning authority, being a wing of the Government, may not even sanction the prosecution, which will result in multiplication of litigations at the hands of the workman before this court.

6. In the decision reported in The Life Insurance Corporation of India Vs. D.J.Bahadur and others reported in 1980 AIR 2181, it is held that an Award or a Settlement would continue to be in force till such time the same is substituted by another Award or Settlement.

7. As settlement dated 31.01.2011 is in force, if there is any violation, the Government will have to sanction the prosecution against the officials under Section 32 of the I.D.Act, 1947, to prosecute the officials and in case of continuance of offences, the consequences will have to follow. That apart, the Supreme Court in yet another judgment reported in (2001) 9 SCC 99 (Tamil Nadu State Transport Corporation Vs. Neethivilangan, Kumbakonam) has held that the writ petition is maintainable to implement the Award. Applying the same principle to implement the settlement, writ is maintainable, as situation in this case is monstrous.

8. Employment within the meaning of Article 300-A of the Constitution of India, is a property and it cannot be deprived except in accordance with law. In this case, employment has been deprived in the garb of retrenchment and the said order has been confirmed by the Deputy Registrar of Cooperative Society on 28.01.2008 in the revision filed by the petitioner. In such circumstances, there is no reason as to why the Special Officer has agreed to provide employment by entering into the settlement dated 31.01.2011 principally under section 12(3) of the ID Act. It could have been because, he would have thought to give quietus to the unemployment problem by taking shelter under by-law quoting cadre strength to be fixed in various posts apart from the Secretary. The relevant bye law is extracted as under:-

"Regulations covering the cadre strength, scale of pay of employees and Appointing Authority for each of the categories of employees and qualifications for categories of employees not included in the Special ByLaws.

(Framed under Special bylaws 1 and 3)

1.The employees of the society/Bank shall come under the categories indicated below and the strength of employees in each category shall not exceed the number noted against that category.

The actual number of categories and the strength of employees in each category have to be decided with reference to each type of Society and also with reference to the transaction and the workload in each society.

Sl.No	Category of post	No. of post
i)	Secretary	1
ii)	Accountant/Cashier	To be fixed
iii)	Clerks	"
(iv)	Peons	"
v)	Watchmen	"

9. In the light of the above reasonings, I am of the view that the settlement need to be implemented and the benefits has to be extended to the petitioner within two months from the date of receipt of a copy of this order. This will not preclude the Government from initiating action against the officials under Section 29 of the ID Act for prosecuting those persons falling under Section 32 for not complying with the settlement dated 31.01.2011 entered under section 12(3) of the I.D.Act, 1947, while considering the case of the employee for prosecution, as laid down by the Honourable Apex Court in 1997 (1) LLJ 994 [Rajkumar Gupta Vs. Lt.Governor, Delhi]. Time limit for sanctioning prosecution is 45 days from the date of receipt of the order, if the settlement is not complied with.

10. The Writ Petition is allowed on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

nvsri

To

1.The Joint Registrar of Cooperative Societies
Cuddalore Region, Cuddalore District

2.The Deputy Registrar of Cooperative Societies
Cuddalore Region, Cuddalore District

3.The Special Officer, F.C.2830 Cuddalore District Public Health
Department, Employees Cooperative Credit Society Ltd
Appavu Street, Pudupalayam, Cuddalore District

4.The Labour Officer, Cuddalore, Cuddalore District

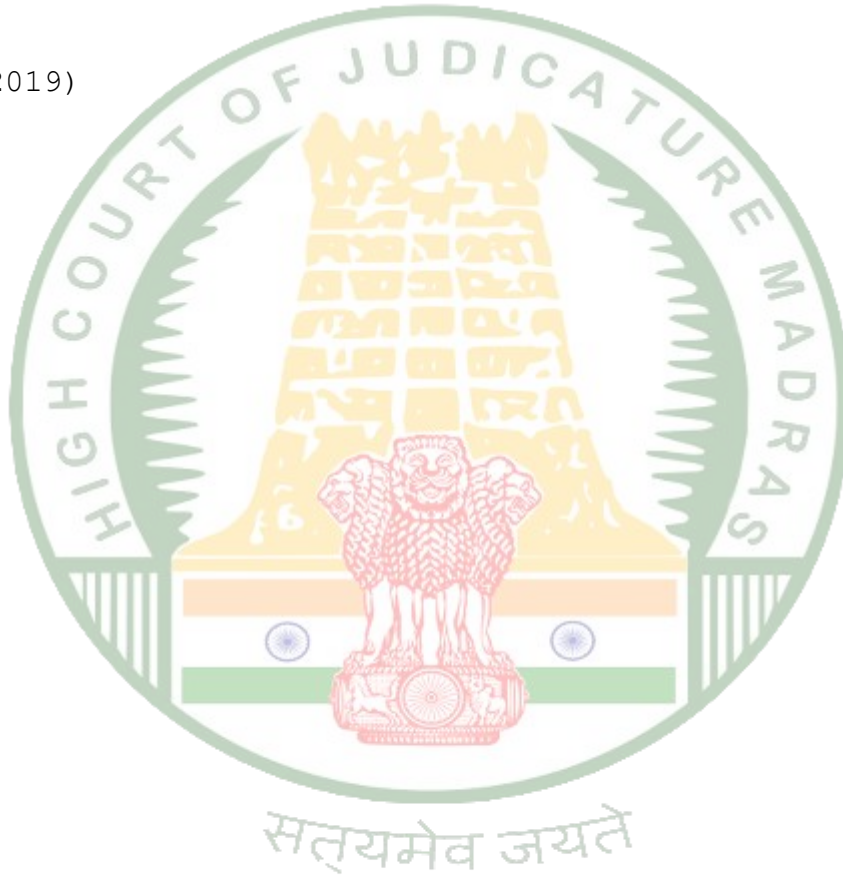
+1 CC to Mr.L.P.Shanmughasundaram, Advocate sr 60538.

+1 CC to Govt. Pleader sr 60204.

+1 CC to Mr.M. Kaviveerappan, Advocate sr 59794.

W.P.No.9889 of 2013

SP(29/08/2019)



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