

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.15687 of 2019

1.G.Chitra
2.G.Gejalakshmi
3.G.Jeyabarathi
4.V.G.Venkatesh

..Petitioners

vs

The Management,
T.1659, Panjanidhi Kottai Primary
Agricultural Co-operative Credit Society Ltd.,
Vagakku Street,
Panchanidhi Kottai(Post) 614904
Orathanadu Taluk,
Tanjore District.

..Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the order dated 13.07.2017 made in I.A.No.117/2016 in C.P.No.26/2015, on the file of Labour Court, Cuddalore and quash the same.

For Petitioners : Mr.S.Umapathy

For Respondent : Mr.R.Bala Ramesh
Special Government Pleader

O R D E R

The writ on hand is filed challenging the order dated 13.07.2017 made in I.A.No.117 of 2016 in C.P.No.26 of 2015.

2. The learned counsel for the petitioners state that the 1st petitioner is the mother of the 3rd petitioner and the 2nd and 4th petitioners are the sister and brother of the 3rd petitioner and all the petitioners are the legal heirs of Mr.V.Ganesan, who was working as Secretary of the respondent Cooperative Society and retired from service on 30.06.2014. The Secretary of the society namely Mr.V.Ganesan died on 28.11.2015.

3. The grievances of the writ petitioners are that the terminal and retirement benefits due to the employee has not been settled. In fact, the Computation Petition was filed by the deceased employee himself before the Labour Court, Cuddalore,

claiming Rs.9,27,714.50 towards his retirement benefits. During the pendency of the Computation Petition bearing C.P.No.26 of 2015, the father of the 3rd respondent, the deceased employee died on 28.11.2015. The petitioners have applied for Legal Heir Certificate and meanwhile, the claim petition No.26 of 2005 was posted on 19.05.2016, the petitioners were not in station and went to their native Village for performing Pooja for their family deity. At that point of time, the C.P filed by the deceased employee was dismissed for not taking steps in C.P.No.26 of 2015. The writ petitioners were unable to take steps immediately. Thus, the petitioners have filed petition to condone the delay of 33 days in filing the set aside petition and the said petition to condone the delay to file the set aside petition in respect of the Exparte order is dismissed in order dated 13.07.2017, against which, the present writ petition is filed.

4. The learned counsel for the respondent opposed the contentions by stating that the deceased employee was not at all a workman within the definition of 'Industrial Disputes Act', [hereinafter referred to as 'ID Act'] as he was holding the Post of Secretary of the Cooperative society and head of administration in the office and was working in the managerial cadre. Thus, the deceased employee was not a workman and therefore, the claim petition filed under Section 33 (C) (2) before the Labour Court is not maintainable.

5. Considering the claims set out in the writ petition as well as the pleadings, this Court is of the considered opinion that condoning the delay of 33 days in filing the petition to set aside the Exparte order may not be an issue at all. Delay can be condoned and as the delay is meagre. If it is a mere delay, this Court would not have any objection in condoning the delay and to set aside the Exparte decree, so that the Labour Court can proceed with the proceedings on merits and in accordance with law. The Labour Court also considered the fact that the deceased employee was not a workman within the meaning of the ID Act. The deceased employee was holding the Post of Secretary of the Cooperative societies, which is a managerial cadre. Thus, the claim petition itself cannot be entertained at all. When the Labour Court has considered the merit regarding the maintainability of the petition, this Court has to consider the same also.

6. As far as the Cooperative Societies are concerned, a Society is registered under the Provisions of Tamil Nadu Cooperative Societies Act, 1983. The Society has its own By-laws and service conditions, which all are approved by the Registrar of Cooperative Societies under the provisions of the Tamil Nadu Cooperative Societies Act. The service conditions of the

employees of the Cooperative Societies are governed under Rule 149 of the Tamil Nadu Cooperative Societies Rules. Thus, the special By-laws in respect of the service rights are to be followed for the purpose of deciding the service matters of the employees of the Cooperative societies. The legal principle is that in the event of any special statute or rules, then the same alone will prevail over and the general law cannot have any application. As far as the Cooperative societies are concerned, the Cooperative societies Act as well as the Rules enumerates the service conditions to be adopted and followed in respect of the employees of the Cooperative societies and consequently, the special By-laws are approved by the Registrar for each society, so as to follow the same in the matter of service conditions of these employees of the Cooperative Societies.

7. This being the factum, the provisions of the Cooperative societies Act, Rules and the special By-laws will prevail over the general law and in respect of the cooperative societies, the special provisions would be applicable and therefore, the very petition filed under the ID Act deserves no merit consideration. This apart, the deceased employee was holding the post of Secretary and the Secretary of the society is in a managerial cadre and therefore, would not fall under the definition of the workman under the ID Act. When the Labour Court also found that the deceased employee was not a workman and therefore, the Interlocutory Application was rejected.

8. This being the factum, this Court is of the considered opinion that there is no infirmity as such in respect of the finding of the Labour Court that the Secretary of a Cooperative society is not a workman within the meaning of the ID Act. This apart, condoning the delay of 33 days in filing set aside petition, would not serve any purpose in view of the fact that the Labour Court also found that the deceased employee is not a workman within the definition of the ID Act. When such a finding is made by the Labour Court, this Court is not inclined to condone the delay as the petitioners have not established that the deceased employee was not a workman within the definition of the provisions of the ID Act. When the maintainability of the claim petition itself is in question and the Labour Court also decided as a preliminary issue that the petition cannot be entertained. In view of the fact that the deceased employee was not a workman, this Court is not inclined to interfere with the order passed by the Labour Court.

9. This apart, the writ petitioners are having an efficacious alternate remedy under the provisions of the Tamil Nadu Cooperative Societies Act. In respect of the employees of the Cooperative societies, they are at liberty to approach the competent authorities under Section 153 of the Tamil Nadu

Cooperative Societies Act for the redressal of their grievances. Thereafter, a review provision is available under Section 154 of the Act and thereafter, they can file a writ petition under Article 226 of the Constitution of India. When these alternate remedies are available to the employees of the Cooperative Societies, the Labour Court is right in not entertaining the claim petition under the provisions of the ID Act. When the efficacious alternate remedy is provided under the Special Act namely the Tamil Nadu Cooperative Societies Act, the employees are bound to exhaust the remedies in the manner prescribed and contrarily, they cannot approach the Labour Court under the ID Act when the Special By-laws are in force in respect of the service conditions of the employees of the Cooperative societies.

10. This being the factum, there is no infirmity as such in respect of the order passed by the Labour Court dated 13.07.2017 made in I.D.No.117/2016 in C.P.No.26/2015 is confirmed and accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Management,
T.1659, Panjanidhi Kottai Primary
Agricultural Co-operative Credit Society Ltd.,
Vagakku Street,
Panchanidhi Kottai(Post) 614904
Orathanadu Taluk,
Tanjore District.

2.The Labour Court,
Cuddalore.

+1 cc to M/s.R.Bala Ramesh, Advocate Sr.No. 78656

+1 cc to M/s.S.Umapathy, Advocate Sr.No.78769

AKM/26.09.19/4P-5C /

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