

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.16119 of 2019
& WMP.No.15874 of 2019

S.Kandasamy

.. Petitioner

Vs

1. The Joint Registrar of Co-operative Societies,
Villupuram Zone,
Villupuram

2.The Management
Pennagar Primary Agricultural Co-operative Credit Society,
rep. by its Secretary,
Pennagaram,
Gingi Taluk,
Villupuram 604 001.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to quash the order of the first respondent dated 05.04.2019 bearing Na.Ka.No.1715/2019/Sa/Pa as illegal, arbitrary and contrary to law and consequently direct the first respondent to entertain the revision petition preferred by the petitioner dated 01.04.2019 under Section 153 of the Tamil Nadu Co-operative Societies Act and pass orders on its merits and in accordance with law.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.L.P.Shanmugasundaram, Spl.G.P.

ORDER

This writ petition has been filed seeking for issuance of a Writ of a Certiorarified Mandamus to quash the order of the first respondent dated 05.04.2019 bearing Na.Ka.No.1715/2019/Sa/Pa as illegal, arbitrary and contrary to law and consequently direct the first respondent to entertain the revision petition preferred by the petitioner dated 01.04.2019 under Section 153 of the Tamil Nadu Co-operative Societies Act and pass orders on its merits and in accordance with law.

2. The case of the petitioner is that he joined in the service of the second respondent Society as Watchman in the year 1992. He retired from service on attaining the age of superannuation on 31.01.2018. The petitioner has been representing to the Secretary of the second respondent Society, seeking to fix his salary in terms of Government Order and pay the same. However, the Secretary of the second respondent Society did not take any proper action on his representations. According to the petitioner, the Secretary had fixed the pay scale in respect of certain employees on higher side and to his whims and fancies, but not fixed the same pay scale in respect of the petitioner herein. According to the petitioner, the person who was appointed along with him, has been paid higher wages despite that employee dismissed from service and reinstated after 20 years.

3. While so, even after retirement of the petitioner, the remaining retiral benefits which were required to be paid/settled are not paid to him in view of the fact that the earlier Secretary, has failed to hand over the account books and service register of the petitioner to his successor, with a mala fide intention. The petitioner therefore, submitted number of representations on 03.08.2018, 06.09.2018, 03.10.2018 and 05.10.2018 respectively to the first respondent requesting him to secure his service register from the Secretary of the second respondent and settle his terminal benefits. However, till date, the first respondent has not taken any action to secure the records including service register pertaining to the petitioner. Since the second respondent did not take any action in regard to the petitioner's representations, and the said terminal benefits which are deemed to be payable to the petitioner were not paid, he preferred a revision petition to the first respondent dated 01.04.2019 under Section 153 of the Tamil Nadu Co-operative Societies Act (herein after referred to as 'the Act') and sought for a direction to the second respondent to pay his terminal benefits viz., Gratuity, Provident Fund, Leave Wages etc., along with interest @ 10% per annum. However, the first respondent instead of deciding revision petition on its merits, has passed impugned order on 05.04.2019, returning the revision petition by saying that the relief can be obtained by raising a dispute under Section 90 of the Act. The said order passed by the first respondent, is put to challenge in the present writ petition.

4. M/s.Balan Haridas, learned counsel for the petitioner would submit that in respect of service dispute, only a revision would lie under Section 153 of the Act. Section 90 deals with only the dispute regarding the Constitution of the Board or the Management or the business of a registered society

and not a service dispute of the employee of the Society.
Section 90 is extracted here under:

90.Disputes:-(1) If any dispute touching the constitution of the board or the management or the business of a registered society (other than a dispute regarding disciplinary action taken by the competent authority constituted under sub-section (3) of section 75 or the Registrar or the society or its board against a paid servant of the society) arises-

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its board or any officer, agent or servant of the society, or

(c) between the society or its board and any past board, any officer, agent or servant, or any past officer, past agent or past servant, or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased servant of the society, or

(d) between the society and any other registered society, such dispute shall be referred to the Registrar for decision.

5. Therefore, the learned counsel would submit that the authority has completely mis-directed himself by rejecting the representations made by the petitioner, who claimed the relief under Section 153 of the Act. The learned counsel for the petitioner would also rely on a decision of the Hon'ble Supreme Court of India reported in 2017(2) LLN 24 (SC) in the case of The Maharashtra State Co-operative Housing Finance Corporation Ltd., Vs. Prabhakar Sitaram Bhadange. In the said decision, the Hon'ble Supreme Court of India has dealt with the same issue. The learned counsel would draw the attention of this Court to paragraph nos.10 & 11 of the aforesaid judgment, which are extracted hereunder:

'10. A reading of the provisions of Section 91 would show that there are two essential requirements for conferment of exclusive jurisdiction on the Cooperative Court which need to be satisfied:

(i) the first requirement is that disputes should be 'disputes touching' the constitution of the society or elections or committee or its

officers or conduct of general meetings or management of society, or business of the society; and

(ii) the second requirement is that such a dispute is to be referred to the Cooperative Court by 'enumerated persons' as specified under sub- section (1) of Section 91.

11. When we read the provision in the aforesaid manner, we arrive at a firm conclusion that service dispute between the employees of such cooperative society and the management of the society are not covered by the aforesaid provision. The context in which the word 'officers' is used is altogether different, namely, election of the committee or its officers. Thus, the word 'officers' has reference to elections. It is in the same hue expression 'officer' occurs second time as well.'

Therefore, he would submit that the issue is directly covered by the above decision and in any case, the provision itself is clear as service disputes cannot fall within the purview of Section 90 of the Act.

6. Mr.L.P.Shanmugasundaram, learned Special Government Pleader takes notice for the respondents and he has no quarrell with the legal submissions made on behalf of the petitioner.

7. Be that as it may, on a reading of Section 90, it is very clear that the dispute touching the constitution of the Board or the Management or the business of a registered society alone will lie within the purview of Section 90 and not service dispute of the present nature, where the petitioner is claiming settlement of his terminal benefits viz., Gratuity, Provident Fund, Leave Wages etc.

8. Hence, the order passed by the first respondent directing the petitioner to approach the authority under Section 90 of the Act per se is illegal and the same amounted to misreading of the section and wrong understanding of the provisions of the Act. Therefore, this Court is in agreement with the submissions made on behalf of the learned counsel for the petitioner, that the proper course is available to the petitioner is only by filing a revision under Section 153 of the Act.

9. In the said circumstances, the impugned order passed by the first respondent dated 05.04.2019 bearing Na.Ka.No.1715/2019/Sa/Pa is hereby set aside and the first

respondent is directed to consider the representations submitted by the petitioner on 03.08.2018, 06.09.2018, 03.10.2018 and 05.10.2018 respectively and also the revision petition dated 01.04.2019 preferred by him under Section 153 of the Tamil Nadu Co-operative Societies Act and pass appropriate orders on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

10. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

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To

1. The Joint Registrar of Co-operative Societies,
Villupuram Zone,
Villupuram

+1 CC to Mr.L.P.Shanmugasundaram, Advocate sr 55747

+1 CC to Mr. Balan Haridas, Advocate sr 55584

+1 CC to The Spl. Govt. Pleader (CO OP) sr 56459.

W.P.No.16119 of 2019

AD(CO)

SP(14/09/2019)

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