

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, THE CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.NO.234 OF 2020
AND
C.M.P.NO.3860 OF 2020

1. The Registrar of Co-operative Societies (Housing), Veppery, Chennai 600 007.
 2. The Deputy Registrar of Co-operative Societies (Housing), Cuddalore.
 3. SA.HS.56, Vridhachalam Taluk Co-operative Housing Society Ltd., Rep. by its President, No.11, Kattukoodalur Road, Thiru.Vee.Kaa. Nagar, Vridhachalam 606 001.
- .. Appellants/Respondent
- vs-
- N.Ravichandran .. Respondent/Petitioner

Appeal filed under Clause 15 of the Letters Patent against the order dated 14.10.2019 passed in W.P.No.25073 of 2019 on the file of this Court. सत्यमेव जयते

W.P.No.25073 of 2019:-

This Petition filed under Article 226 of the Constitution of India, for issuance of a writ of certiorarified mandamus calling for the records of the 2nd respondent in Na.Ka.No.677/2019 Ki.Vi.thi. dated .07.2019 quash the same and direct the respondents to pay the petitioners retirement benefits i-e payment of Gratuity of Rs.14,24,800/- Employees Provident Fund (EPF own) Rs.1,51,287/- Employees Provident Fund (Society Contribution) Rs.5,81,422/- Leave Salary of Rs.6,08,000/- and Security Deposit of Rs.440/- Totally Rs.25,65,949/- with 12 percentage interest.

For Appellants : Mr.L.P.Shanmugasundaram
Spl.G.P.

For Respondent : Mr.M.S.Palanisamy

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Heard learned counsel for the appellants.

2.Appellants 1 and 2 are the Registrar and Deputy Registrar of Co-operative Societies (Housing) and the third appellant is the Society, where the respondent petitioner was working as a Secretary.

3.The writ petition was filed claiming that the petitioner's retiral benefits cannot be withheld on account of the instructions issued by appellants 1 and 2 by the third appellant. The writ petition has been allowed by the impugned judgment dated 14.10.2019 holding that unless there were any disciplinary proceedings pending or surcharge proceedings pending arising out of an enquiry under Sections 81/82 or Section 87 of the Tamilnadu Co-operative Societies Act, 1983, no such action for withholding the retiral benefits was permissible in law. The learned single Judge allowed the writ petition.

4.The present appeal has been filed jointly by the Registrar and the Deputy Registrar along with the Co-operative Society where the respondent petitioner was working as a Secretary. The learned single Judge has extracted a part of the counter-affidavit filed by the third appellant who was the third respondent in the writ petition, wherein it is stated that the respondent petitioner had fixed his pay and allowance from January 1996 to July 2019 in violation of the circular of the Registrar dated 22.02.1995 thereby causing a huge financial loss to the appellant no.3 Society. In essence, the amount drawn was Rs.92,96,850/-, whereas it ought to be Rs.53,23,360/-.

5.The contention raised on behalf of the learned counsel for the appellants is two-fold, one on the maintainability of the writ petition and the second on the merits of the matter.

6.On the issue of maintainability, learned counsel for the appellants has cited several judgments, but the main judgment which would govern the field is the Five Judges Full Bench judgment of this Court in the case of K.Marappan vs. The Deputy Registrar of Co-operative Societies, Namakkal Circle,

(2006) 4 CTC 689. It is urged by Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing for the appellants that the respondent petitioner was an employee whose service conditions were governed by a set of bye-laws of the appellant no.3 Society and therefore, the post retiral benefits which are part of the service conditions cannot be enforced through a writ petition. He has specifically relied on paragraph 21 (vi) of the Full Bench pronouncement.

7.On this issue, learned counsel for the respondent petitioner, Mr.M.S.Palanisamy, has countered the aforesaid submissions contending that Gratuity and Provident Fund are part of statutory benefits as envisaged under Sections 78 and 79 of the Tamilnadu Cooperative Societies Act, 1983. He, therefore, submits that an order that was under challenge issued by the Deputy Registrar being in violation of such provisions, a writ petition was maintainable. He has relied on the same Full Bench judgment and has invited the attention of the Court to Clause (iv) of paragraph 21 to urge that the said Full Bench decision supports the cause of the respondent petitioner.

8.In order to resolve this preliminary question of maintainability of the writ petition, it would be appropriate to extract paragraph 21 of the Full Bench decision in K.Marappan's case (supra), which is gainfully reproduced hereinunder:-

"21. From the above discussion, the following propositions emerge:

- i. If a particular co-operative society can be characterised as a 'State' within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be 'an authority' within the meaning and for the purpose of Article 226 of the Constitution. In such a situation, an order passed by a society in violation of the bye-laws can be corrected by way of Writ Petition;
- ii. Applying the tests in Ajay Hasia it is held that a co-operative society carrying on banking business cannot be termed as an instrumentality of the State within the meaning of Article 12 of the Constitution;
- iii. Even if a society cannot be characterised as a 'State' within the meaning of Article 12 of the Constitution, 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.
- v. Where a Special Officer is appointed in respect of a co-operative society which cannot be characterised as a 'State' a writ would lie when the case falls under Clauses (iii) and (iv) above.
- vi. The bye-laws made by a co-operative society registered under the Tamil Nadu Co-operative Societies Act, 1983 do not have the force of law. Hence, where a society cannot be characterised as a 'State', the service conditions of its employees governed by its bye-laws cannot be enforced through a Writ Petition.
- vii. In the absence of special circumstances, the Court will not ordinarily exercise power under Article 226 of the Constitution of India when the Act provides for an alternative remedy.
- viii. The decision in M. Thanikkachalam v. Madhuranthagam Agricultural Co-operative Society, 2000 (4) CTC 556, is no longer good law, in view of the decision of the Seven-Judge Bench of the Supreme Court in Pradeep Kumar Biswas case and the other decisions referred to here before."

9. On a perusal of Clause (iv) of Para 21 as quoted above, it is evident that a writ petition has been held to be maintainable if a complaint is made with regard to violation of statutory provisions or for compliance of such provisions. On the other hand, Clause (vi) thereof indicates that the service conditions of employees that are governed by bye-laws cannot be enforced through a writ petition.

10. Having compared and assessed the rival submissions, we find that the respondent petitioner had come up before this Court for the enforcement of his rights which stand protected under Sections 78 and 79 through a Statute, namely, The Tamilnadu Co-operative Societies Act, 1983. The said provisions are reproduced hereinunder:-

"78. Provident Fund.- (1) A registered society not being an establishment to which the Employees' Provident Funds and Miscellaneous Provision Act, 1952 (Central Act XIX of 1952) applies, may establish a provident fund for the benefit of its employees to which shall be credited all contributions made by the employees and the society in accordance with the by-laws.

(2) A provident fund established by a registered society under sub-section (1) shall be invested in the financing bank, but shall not -

- (a) be used in the business of the society;
- (b) form part of the assets of the society;
- (c) be liable to attachment or be subject to any other process of any court of other authority.

79. Gratuity Fund.- (1) A registered society not being an establishment to which the Payment of Gratuity Act, 1972 (Central Act 39 of 1972) applies, may provide by its by-laws for payment of gratuity to the employees at such rates and on such conditions as may be specified in the by-laws and such society may establish a gratuity fund or make other arrangements for the purpose.

(2) A gratuity fund, if any, established by a registered society under sub-section (1) shall be invested in the financing bank, but shall not-

- (a) be used in the business of the society;
- (b) form part of the assets of the society;
- (c) be liable to attachment or be subject to any other process of any court or other authority."

11.The order that was impugned in the writ petition was passed by the Deputy Registrar calling upon the Society not to permit the respondent petitioner to retire from service, the consequence whereof is that the respondent petitioner will not be able to receive his benefits including Provident Fund and Gratuity that are statutorily controlled by Sections 78 and 79 of the 1983 Act.

12.In our considered opinion, this part of the service condition of the respondent petitioner being subject to a statutory provision, is such a service condition which is governed by a Statute and therefore, paragraph 21 (iv) of the Five Judges Full Bench judgment in the case of K.Marappan would directly apply on the facts of the present case. This is not a case where the bye-laws of the Society or the service conditions contained therein are being only sought to be enforced. The relief claimed in the writ petition is squarely on the above count and therefore, the respondent petitioner was entitled to maintain a writ petition with regard to his claim of Provident Fund and Gratuity, which is governed by the provisions of Sections 78 and 79 of the 1983 Act aforesaid.

13.Consequently, the preliminary objection of maintainability of writ petition is answered against the appellants.

14.Coming to the merits of the case, on the question of withholding part of any of those benefits, the argument of the learned counsel for the respondent petitioner is that there is no power vested with the Deputy Registrar to issue any direction, the consequence whereof may be to withhold statutory payments. In the absence of any such power, the Society itself cannot withhold the same on the ground of any such direction issued by the Deputy Registrar.

15.However, from the counter-affidavit of appellant no.3 filed before the learned single Judge, we find that there is an allegation of violation of a circular on the basis whereof the contention is that the payments sought to be received by the respondent petitioner is in excess of to what he was entitled and in violation of the said circular. The learned single Judge does not appear to have entered into this controversy or rendered any opinion on the merits of the matter. We, therefore, find that the said issue has to be resolved on the basis of the claim and counter-claim by the respective parties and to that extent, we find that it would be appropriate that the matter is remitted back to the learned single Judge inasmuch as the relief claim by the respondent petitioner was not only with regard to his payment of Gratuity and Provident Fund, but

also with regard to certain other benefits. This, therefore, had to be decided on merits after assessing the facts stated by the respondent petitioner in the writ petition, the reply thereto by the appellants and any other material that would be necessary for the purpose of any such direction in case it is permissible in law.

16. We, therefore, hold that the contention of the appellants that the writ petition was not maintainable deserves rejection, but at the same time, we allow the appeal and set aside the impugned judgment dated 14.10.2019 and remit the matter back to the learned single Judge for deciding the same on merits keeping in view the nature of the claim made by the appellants as also any other material which may be found on record as expeditiously as possible.

The Writ Appeal is, therefore, allowed in part and W.P.No.25073 of 2019 is restored to its original status, with a request to the learned single Judge to dispose of the same at the earliest, which shall be listed before the learned single Judge in the first week of November, 2020. No costs. Consequently, C.M.P.No.3860 of 2020 is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sra

To

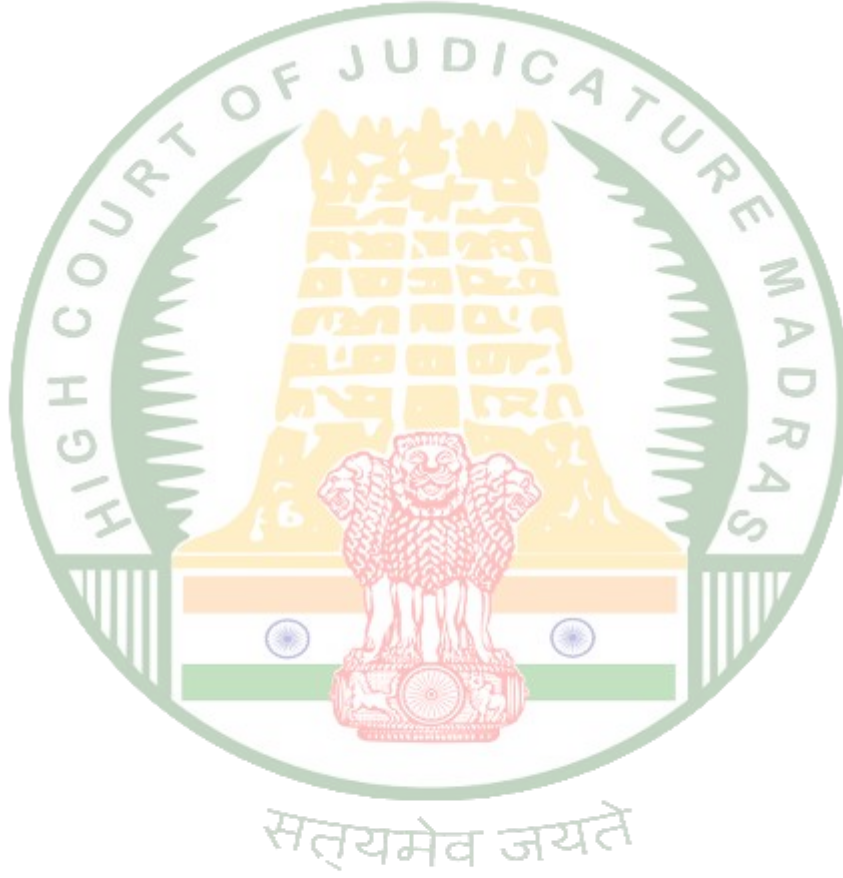
1. The Registrar of Co-operative Societies (Housing), Veppery, Chennai 600 007.
2. The Deputy Registrar of Co-operative Societies (Housing), Cuddalore.
3. The President, SA.HS.56, Vridhachalam Taluk Co-operative Housing Society Ltd., Rep. by its President, No.11, Kattukoodalur Road, Thiru.Vee.Kaa. Nagar, Vridhachalam 606 001.

Copy To
The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.M.S.Palanisamy, Advocate in SR.No.34182
+1cc to the Special Government Pleader, S.R.No.34095

W.A.No.234 of 2020

SR(CO)
CS/02/11/2020



WEB COPY