

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2020

CORAM:

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No. 23049 of 2014

and

M.P. No. 1 of 2014 and 24024 of 2017

M.Ganesan

..Petitioner

Vs

1. The Registrar of Co-Operative Societies,
Kilpauk, Chennai -600010

2.The Joint Registrar of Co-operative Societies,
Dharmapuri Circle, Dharmapuri - 636 701.

3. The Deputy Registrar of Co-operative Societies,
Dharmapuri Region, Dharmapuri - 636701

4. The President,
DD-90, Bommahalli Primary Agricultural
Co-operative Credit Society,
Bommahalli Village, Kariamangalam Post,
Palacode Taluk, Dharmapuri District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the entire records of the 3rd respondent in his proceedings Na.Ka.No. 2537/2014 Sa.Pa.2 dated 09.07.2014 and quash the same as illegal and without jurisdiction.

For Petitioner : M/s M.Geetha, D.Baskar

For Respondents : Mrs. T.Girija, AGP - For R1 to R3
Mr.L.P. Shanmugasundaram - For R4

O R D E R

The prayer sought for in the Writ Petition is to call for the entire records of the 3rd respondent in his proceedings Na.Ka.No. 2537/2014 Sa.Pa.2 dated 09.07.2014 and quash the same as illegal and without jurisdiction.

2. Brief facts of the case is that the petitioner was appointed as Trainee Sales Assistant in the Tamil Nadu Civil Supplies Co-operation in the year 1984 and subsequently transferred and posted as Trainee Bill Clerk in the 4th respondent Co-operative Society. As per bye-laws, the petitioner's pay came to be refixed by the 4th respondent w.e.f. 01.01.2010 and arrears was also paid to the petitioner. Suddenly, the 3rd respondent without any notice ordered an enquiry under Section 81 of the Tamil Nadu Co-operative Act and obtained a report stating that the 4th respondent has given promotion to the employees in an irregular manner and paid the arrears of salary without prior permission of the department contrary to G.O. Ms.No. 185 dated 29.12.2010, thereby caused financial loss of Rs.3,14,816/- to the Society and issued impugned notice dated 09.07.2014. Challenging the same, present writ petition is filed.

3. Heard both sides and perused the documents available on record.

4. The learned counsel for the petitioner submitted that the show cause notice issued under Section 87 of Tamil Nadu Co-operative Societies Act by the 3rd respondent is violative of the Provision of Section 136-D (2) (iv) and 136 -D (25) of the Tamil Nadu Co-operative Societies Act 1983 inserted by Tamil Nadu Ordinance No.8/2008 and hence it is non-est in the eye of law, since the Government or the Registrar have no jurisdiction to interfere with the functioning or administration of the Society. Therefore, the same is liable to be set aside as it is without jurisdiction.

5. On the other hand, the learned Additional Government Pleader submitted that the writ petitioner has challenged the show cause notice issued by the 3rd respondent under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983. If the writ petitioner has any grievance, he should submit his explanation to the show cause notice and adjudicate there itself. Challenging the show cause notice is not maintainable as per the judgment of the Hon'ble Supreme Court and this Court reported in 2005(3) CTC 513 in the case of Digivision Electronics Ltd., Vs.Indian Bank,

which held that challenging the show cause notice is premature.

6. The learned Additional Government Pleader further submitted that enquiry under Section 81 was conducted and a report was also submitted on 22.05.2014. Based on the report, Section 87 surcharge proceedings were initiated and show cause notice was issued. Therefore, there is no irregularity or illegality in the above procedure. Further while conducting the enquiry, the enquiry officer gave opportunity to the petitioner and the petitioner submitted his statement. Then only the report was submitted by the enquiry officer to the 3rd respondent.

7. The learned Additional Government Pleader relied upon the order of this Court made in W.P.No. 9104 of 2009 dated 15.02.2010 wherein the similar issue has been considered and observed as follows;

"9. According to the petitioner, as per Section 136-D(2) (iv), this special provision will apply in respect of personnel policy, staffing, recruitment, posting and remuneration to staff. Therefore, disciplinary action initiated against him by the Cadre Authority will also stand vanished. He also stated that by the Act, the Common Cadre System should be abolished and the petitioner is not under the control of the Common Cadre Authority.

10. The learned counsel further stated that by virtue of Section 136-D(25), neither the Government nor the Registrar can do anything or take action or issue any order or direction which may have the effect of curtailing any of the freedoms or powers given under this Chapter to any short term co-operative credit structure society.

11. It must also be noted that subsequently, the Common Cadre system of Secretary of PACB itself came to be abolished vide G.O.Ms.No. 122, Co-operation Food and Consumer Protection (CN1) Department, dated 04.07.2008. In that G.O. While repelling the Common Cadre System, in paragraph 8, the Government had observed as follows:

"8. In respect of cases which are pending

till the date of issue of the order, the cadre authority shall continue to deal with such cases till its finalisation"

.....

14. At the time when the charge memo was framed against the petitioner, the petitioner was very much part of the common cadre system. He cannot take advantage of insertion of new chapter in the Co-operative Societies Act. The contentions raised are not supportable by the new provisions. On the other hand, G.O.Ms.No. 122, dated 04.07.2008 only preserves the right of the society to continue with the disciplinary action.

15. Even as per the Common Cadre Regulations, in case of removal/dismissal and against the order of common cadre authority, an appeal will lie to the Registrar. Therefore, if any order adverse to the petitioner is passed, he has to move the appropriate authority under the Act and not to rush to this Court even at the stage of show cause notice by raising untenable contentions.

16. In the light of the above, the writ petition will stand dismissed. However, there will be no order as to costs. There is no impediment for the society to proceed with the disciplinary action taken against the petitioner."

8. The issue involved in the present case is also challenging the provision of section 136-D(2) (iv) and 136-D (25) of the Tamil Nadu Co-operative Societies Act 1983. Since the said issue has already been decided by this Court in the aforesaid Order and also not maintainable as per decision rendered by the Hon'ble Supreme Court, there is no point for consideration to interfere with the show cause notice issued by the authorities concerned. The impugned order passed by the 3rd respondent in its proceedings Na.Ka.No. 2537/2014 Sa.Pa.2 dated 09.07.2014 cannot be interfered with.

8. In the light of the above, the writ petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition are closed.

9. It is open to the respondent to issue fresh notice to the petitioner to submit his explanation and proceed

with the enquiry on merits, in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ak

To

1. The Registrar of Co-Operative Societies,
Kilpauk, Chennai -600010
2. The Joint Registrar of Co-operative Societies,
Dharmapuri Circle, Dharmapuri - 636 701.
3. The Deputy Registrar of Co-operative Societies,
Dharmapuri Region, Dharmapuri - 636701
4. The President,
DD-90, Bommahalli Primary Agricultural
Co-operative Credit Society,
Bommahalli Village, Kariamangalam Post,
Palacode Taluk, Dharmapuri District.

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.9718
+1cc to Mr.R.Thamarai Selvan, Advocate, S.R.No.9276
+1cc to the Spl Government Pleader(Co-Op), S.R.No.9474

W.P.No. 23049 of 2014
and

M.P. No. 1 of 2014 and 24024 of 2017

BR(CO)
CB(31/07/2020)

WEB COPY