

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.11351 OF 2022

1. Laxman Dattatray Jadhav
Age : 62 yrs, Occu : Retired,
R/o. Lokamanya Nagar Hudco Road,
Parbhani
2. Bhagwan Bhimrao Khawale
Age : 60 yrs, Occu : Retired,
R/o. Borwand, Tq. and Dist. Parbhani
3. Tukaram Laxman Gavhane
Age : 60 yrs, Occu : Retired,
R/o. Satkar Colony Wasmat Road,
Parbhani
4. Sayyad Allauddin Sayyad Rajesab
Age : 62 yrs, Occu : Retired,
R/o. Mumtaj Nagar Dhar Road, Parbhani
5. Sayyad Miskin Sayyad Husen
Age : 61 yrs, Occu : Retired,
R/o. At post Pathra, Tq. & Dist. Parbhani ..Petitioners

Versus

1. Taluka Co-operative Election Officer and
the Assistant Registrar Co-operative Societies,
Tal. Parbhani, Dist. Parbhani
2. Sinchan Karmachari Sahkari Patsanstha
Ltd, Parbhani through its Secretary
3. Sunil Dnyaneshwar Kakade
Age : 40 yrs, Occu : Service,
R/o. Kakade Nagar, Parbhani,
Tq. and Dist. Parbhani .. Respondents

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Mr. Kamlakar J. Suryawanshi, Advocate for the petitioners.
Mr. S.K. Kadam, Advocate for respondent no.1

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 16-11-2022

PRONOUNCED ON : 22-11-2022

JUDGMENT :

. Rule. Rule is made returnable forthwith. The learned advocate Mr. S.K. Kadam waives notice on behalf of respondent no.1. At the joint request of the parties, the matter is heard finally at the admission stage.

2. The issue that has attracted the attention of this court is, whether an employee can continue as member of Salary Earners' Credit Co-operative Society and whether his name can be continued in voters list after his retirement from service.

3. The issue arises on account of order dated 12.11.2022 passed by the Taluka Co-operative Election Officer and the Assistant Registrar of Co-operative Societies, Parbhani directing deletion of names of petitioners from voters list on account of their retirements from service.

4. Brief facts of the case are that Sinchan Karmachari Sahakari Patsanstha Ltd., Parbhani has been established *inter alia* with the objective of making available credit facilities to its members. It is registered as a Salary Earners' Credit Co-operative Society. The

members of the society are employees of Irrigation Department of the Government of Maharashtra. Five petitioners were employees of the Irrigation Department and also members of the society. They were also elected on the Board of Directors of the Society.

5. Petitioners have retired from service. A complaint dated 16.07.2019 was made alleging that they continued to function on the Board of Directors despite their retirements. On that application, an order came to be passed on 18.11.2019 by the Assistant Registrar of Co-operative Societies, Parbhani *inter alia* removing them from the posts of Director. On an appeal being preferred by them before the Divisional Joint Registrar of Co-operative Societies, Aurangabad, order of the Assistant Registrar came to be set aside. The complainants, at whose instance the Assistant Registrar had passed order removing petitioners from the post of Director, filed Writ Petition No.6178 of 2020 which came to be disposed of on 18.08.2022 granting liberty to them to prefer a revision before the State Government under Section 154 of the Maharashtra Co-operative Societies Act, 1960 (in short 'Act of 1960'). This is how the petitioners continued to hold the post of Directors of the Society.

6. As the term of Board of Directors of the Society had

come to an end, elections for appointment of new Board of Directors are scheduled to be held. By letter dated 29.10.2022 a provisional voters' list was published inviting objections. It included names of petitioners. Respondent no.3 objected to inclusion of their names in the provisional voters list and sought deletion of their names. After submission of replies and after conducting hearings, the Taluka Co-operative Election Officer and Assistant Registrar of Co-operative Societies, Parbhani passed order dated 12.11.2022 deleting the names of petitioners from final voters list on the ground that they had retired from service. It is held that retired employees can be treated as nominal members of the Society under the provisions of Section 144-5A of the Act of 1960. It is further held that under the provisions of Section 24 (2), nominal members are not entitled to vote. On these grounds, the names of petitioners have been deleted from the voters list. The order dated 12.11.2022 is the subject matter of challenge in the present petition.

7. Mr. Suryawanshi, the learned counsel for the petitioners would submit that the membership of petitioners has not been terminated under Section 11 of the Act of 1960. That they continue not only as members, but also as Directors of the Society. Placing heavy reliance on the order passed by the Divisional Joint Registrar,

Co-operative Societies, Aurangabad dated 10.02.2020

Mr. Suryawanshi would contend that the issue with regard to continuance of petitioners as members as well as Directors has been finally settled and the same cannot be reopened. He would further submit that the Election Officer can otherwise not decide any issue about membership of petitioners.

8. Referring to the provisions of Byelaw no. D-1.1 of the Byelaws of the Society, Mr. Suryawanshi would contend that the same applies only for the purpose of admission of a new member and that the Byelaw D-1.1 is irrelevant for deciding whether a person would continue to be a member or not. Relying on Byelaw D-1.2, Mr. Suryawanshi would contend that the petitioners have not attracted any of the eventualities under that Byelaw for becoming ineligible as members. He would further contend that the provisions of Section 144-5A of the Act of 1960, which is referred to in the impugned order, has no application on the issue of eligibility as member or deletion of names from voters list. He would submit that the said provision deals with acceptance of deposits from members / non-members. Mr. Suryawanshi would further contend that the petitioners are active members and not nominal members of the Society and therefore provisions under Sections 24 and 27 of the Act

of 1960 have no application.

9. In support of his contentions that the Election Officer has no power to go into issue of eligibility of the person as a member and that the such power can be exercised only by the Registrar under Section 11 of the Act of 1960, Mr. Suryawanshi would rely upon the following judgments:

- (i) **Dhondiba Parshuram Lakade and Others Vs. Someshwar Sahakari Sakhar Karkhana Ltd and Others**, [1979 Mh.L.J. 311]
- (ii) **Prataprao Govindrao Patil and another vs. The State of Maharashtra and others**, Writ Petition No.2491 of 2021 decided on 08.02.2021.
- (iii) **Nitin vs. Prataprao Govindrao Patil and Ors**, order of the Supreme Court dated 18.03.2021 upholding the judgment of this Court in **Prataprao Govindrao Patil** (*supra*).
- (iv) **Suresh Ambadasrao Varpudkar vs. District Co-operative Election Officer & Others**, Writ Petition No.3454 of 2015 decided on 27.03.2015

10. On the other hand, Mr. Kadam, the learned counsel for respondent no.1 would oppose the petition. He would submit that the very objective of the Society is to extend credit facilities to the employees with an arrangement of recovery of installments and due amounts through salary. That upon retirement of an employee, the Society cannot recover the amount of loan and can therefore no longer extend any credit facility to a retired employee. He would

therefore submit that such a retired employee cannot continue as an active member of the Society and is required to be treated as a nominal member within the meaning of Section 144-5A of the Act of 1960. He would therefore submit that a nominal member is not entitled to vote under the provisions of Section 27 and therefore the names of petitioners have rightly been deleted from the voters list. He prays for dismissal of the petition.

11. Considering the order that I propose to pass, I did not deem it necessary to issue notice to respondent no.3, upon whose complaint the impugned order has been passed.

12. After having heard the learned counsel for the parties, it is clear that the Society has been registered as a Salary Earners' Credit Co-operative Society. Therefore, ordinarily only a salary earning employee should remain as an active member of the Society. Whether a retired employee can also remain as an active member of the Society for the purpose of contesting elections and voting, that is the issue involved in the present petition.

13. It would be necessary to first examine the Byelaws of the Society. Under Byelaw D-1.1, only a permanent employee can be

admitted as a member of the Society. Admittedly, petitioners, having retired from service, are no longer permanent employees of the establishment. Faced with this difficulty, Mr. Suryawanshi has contended that Byelaw D-1.1 applies only for the purpose of admission of an employee as a new member of the Society and that the same would have no application to the issue of termination of membership. I am unable to agree. If a person is not eligible to be admitted as a member of the Society, upon losing status as a permanent employee, he would acquire ineligibility to continue as a member. If such a contention is accepted, a permanently appointed employee admitted as a new member would continue to hold membership even if he resigns from service. I am therefore of the view that the requirement of being a permanent employee is applicable both for admission of a new member as well as for continuing as an active member. The contention therefore deserves summary rejection.

14. One must also bear in mind the objective behind establishment of a Salary Earners' Credit Co-operative Society, the objective being to extend credit facilities to the employees in service. As rightly submitted by Mr. Kadam, there is an inbuilt mechanism of recovery of installments / loans from the salaries of the employees in

service. After their retirement, since the Society cannot recover its dues, no credit facilities can be extended to them. This is one more reason why only a serving employee should ideally remain as an active member of the Society.

15. Heavy reliance is placed by Mr. Suryawanshi on the previous proceedings relating to removal of petitioners from the post of Director of the Society. It is his case that the issue with regard to petitioners' membership of the Society is finally concluded by order dated 10.02.2020 passed by the Divisional Joint Registrar. However, perusal of that order would indicate that the Divisional Joint Registrar has not recorded any finding to the effect that petitioners continued to remain as active members of the Society, despite their retirements from service. The Divisional Joint Registrar has not examined the provisions of Byelaws nor distinction between an active and a nominal member. He was essentially determining validity of order of Assistant Registrar removing Petitioners from Board of Directors. The order of the Assistant Registrar is set aside on various counts including jurisdiction. Therefore, order passed by the Divisional Joint Registrar cannot be cited to contend that the issue of entitlement of petitioners to continue as active members of the society has either been decided or that it has attained finality in any

manner.

16. Now, I turn to the submission of Mr. Suryawanshi that the Election Officer does not have jurisdiction to decide the issue of eligibility of petitioners to continue as a members of the Society. In support of his contentions, Mr. Suryawanshi has relied upon the above listed judgments. I agree with this submission of Mr. Suryawanshi. However, perusal of the order passed by the Election Officer would indicate that he has nowhere recorded a finding that petitioners have ceased to be members of the Society. What is held essentially is that they would now continue to be nominal members of the Society after their retirement from service. This findings has been recorded by referring to the provisions of Section 144-5A of the Act of 1960, which reads thus:

“144-5A. Prohibition on accepting deposit from non-members.

Notwithstanding anything contained in any Act, a non-agricultural co-operative credit society shall not accept deposit from any person who is not its member. If any society which has accepted deposit from non-members, before the date of commencement of the said Amendment Act, 2017, it shall either enroll them as members or refund deposits of all non-members within two years from commencement of the said Amendment Act, 2017.

Provided that, the salary earners’ credit co-operative society may accept deposits voluntarily from their members after their retirement by enrolling them as nominal members.

Explanation.- For the purposes of this section,
 “member” does not include nominal member.”
(emphasis supplied)

17. The concept of nominal membership is recognized under
 Section 24 of the Act which reads thus:

“24. [Nominal and associate member]

(1) Notwithstanding anything contained in
 section 22, a society may admit any person as a
 [nominal or associate member].

(2) A nominal member shall not be entitled to
 any share in any form whatsoever in the profits or
 assets of the society as such member. A nominal
 member shall ordinarily not have any of the privileges
 and rights of a member, but such a member, or an
 associate member, may, subject to the provisions of
 sub-section (8) of section 27, have such privileges and
 rights and be subject to such liabilities of a member, as
 may be specified in the by-laws of the society.”

18. The provision about entitlement of members to vote is dealt
 with under Section 27, Sub Section 8 of reads thus:

“27. Voting powers of members

[(1) to (7)]

(8) No nominal member shall have the right to
 vote [and no such member shall be eligible to be a
 member of a committee or for appointment as a
 representative of the society on any other society].’

(9) to (12)”

19. Thus the concept of nominal membership after

retirement of an employee is recognized by the Act. Thus objective behind registration of a salary earners' credit cooperative society together with the provision under Section 144-5A of the Act on 1960, would indicate that an active member can continue to remain in a capacity as a nominal member after his retirement. In his capacity as a nominal member, he can make voluntary deposits with a salary earners' credit cooperative society. However under Sub Section 8 of Section 27 of the Act of 1960, such a nominal member does not enjoy the privilege of voting. The cumulative reading of the above provisions would lead to an inescapable conclusion that after retirement of an employee, he can continue only as a nominal member of a salary earners' credit cooperative society and he is not entitled to vote.

20. Even otherwise, considering the broad objective behind establishment of a Salary Earners' Credit Co-operative Society, in my view, accepting the contentions of the petitioners would lead to an absurd situation where a retired employee would indefinitely continue as member, contest elections and occupy positions in the management committee. Since the Society will not be in a position to extend any credit facilities to a retired employee, continuation of his membership with the Society would be only for the purpose of

participation in the elections. This would completely defeat the very objective behind establishment of the Society. A retired employee does not earn any salary and cannot remain an active member of the Salary Earners' Credit Co-operative Society. The interpretation sought to be placed by Petitioners which leads to absurdity will have to be avoided and the one that subserves the objective behind establishment of such society needs to be upheld. The Election Officer has therefore rightly held the petitioners to be nominal members of the Society.

21. The judgments cited by Mr. Suryawanshi are of no avail as the Election Officer has nowhere cancelled the membership of the petitioners. All that he has done is to treat petitioners as nominal members of the society.

22. In the result, I do not find that any error is committed by the Election Officer while passing the impugned order. The petition, being devoid of any merits, deserves to be dismissed and is accordingly dismissed without any orders as to costs. Rule is discharged.

(SANDEEP V. MARNE, J.)