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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.39803 of 2015
and
M.P.Nos.1 & 2 of 2015

M.Rama

...Petitioner

Vs.

1. Joint Registrar,
Co-operative Department,
Villupuram Zone,
Villupuram.
2. The Chairman & Managing Director,
Central Co-operative Bank Limited,
Villupuram, Villupuram District.
3. The General Manager,
Central Co-operative Bank Ltd.,
Villupuram, Villupuram District.
4. Assistant General Manager,
Central Co-operative Bank Ltd.,
Villupuram, Villupuram District.

...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent in his proceedings in Na.Ka.No.4509/2015/Sapa dated 10.09.2015 and quash the same as illegal, unlawful and consequently direct the first respondent to grant all terminal and retirement benefits to the petitioner and her family and appoint the petitioner as a Sub-staff in anyone of the branches at Villupuram Central Co-operative Bank under compassionate appointment.

For Petitioner : M/s.M.E.Rani Selvam

For Respondents: Mr.C.Selvaraj,
Additional Government Pleader



ORDER

The petitioner herein, is a widow of one late V.Murthy, who was employed under the Central Co-operative Bank Limited, Villupuram District. On 29.06.2012, he was transferred to another Branch to which place, he did not report. On the charges of unauthorised absence, a charge sheet dated 18.04.2013 was issued. Based on the proven charges, the petitioner's husband was dismissed from service on 25.02.2015.

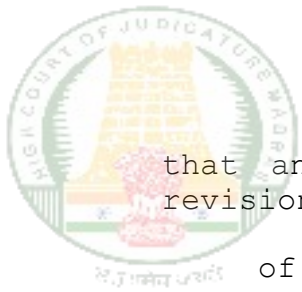
2. Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter called as 'The Act'), provides for remedy of filing a revision against the dismissal order, within a period of 90 days. However, before the expiry of the 90 days period for preferring the revision, the petitioner's husband expired on 04.04.2015. In these circumstances, when the petitioner herein, sought for disbursement of the DCRG benefits of her husband, as well as the compassionate appointment before this Court in W.P.No.19235 of 2015, this Court had passed an order dated 01.07.2015, rejecting her claim by stating that she cannot claim for compassionate appointment and other benefits, since her husband was dismissed from services and thereby, granted liberty to the petitioner to challenge the dismissal order.

3. In this background, when the petitioner herein, had preferred a revision under Section 153 of the Act on 07.08.2015, the same was rejected on 10.09.2015 through the impugned order, stating that since the petitioner herein is not an 'aggrieved person', she cannot prefer the revision. Challenging this order, the present Writ Petition has been filed.

4. Section 152 of the Act, provides for filing of an appeal against certain decisions or Awards passed under the Act by any 'aggrieved persons'. Barring the provisions against which an appeal can be filed, Section 153 of the Act provides for a revision either suo motu by the Registrar or by an application made. Section 153 of the Act does not specify as to who can file a revision under Section 153 of the Act.

5. Apparently, when some of the orders and Awards passed under the Act are subject to an appeal under Section 152 of the Act by an 'aggrieved person', the remaining orders which is not subsequently provided under Section 152 of the Act, can be reviewed through an application under Section 153 of the Act by an 'aggrieved person'.

6. Whether any aggrieved person can file a revision under Section 153 of the Act, came up for consideration before this Court in the case of 'N.P.Palanisamy Vs. State of Tamil Nadu & others' reported in '2012 (4) CTC 257' and this Court had held



that any 'aggrieved person' would be entitled to maintain a revision in the following manner:-

"17. Section 153 of the Act empowers the Registrar of the Co-operative Societies to entertain a Revision on an Application not only from an aggrieved person but from anyone. It further empowers the Registrar to revise an order on his own motion. If we incidentally compare Section 152 of the Act with Section 153 of the Act, it comes to light that an Appeal as against any award or order can be made to the Appellate Authority only by an aggrieved person.

18. As I have already stated, a Revision need not be filed only by an aggrieved person. Per contra, it can be filed by any person. In a given case, suppose, a person who is not aggrieved by the order prefers a Revision, one may not expect him to adhere to the time prescribed in the Proviso. It may happen that because of some collusion between the authority and the person interested in the case, both of them may not think of filing a Revision to the Registrar. If the Proviso is construed as mandatory so as to disable a third party to file a Revision as against the said order after the time prescribed, then ultimately, an illegal order may get perpetuated and that would not have been the intention of the legislature. A statute requires to be interpreted so as to advance the cause of justice and to achieve the very object of the Act. Any interruption which will cause damage to the very cause of justice or object of the Act shall be opposed to the rule of law."

7. Likewise, in the case of 'M.Mayakal Vs. The District Forest Officer' passed in W.P.No.25915 of 2006 dated 05.11.2008, the learned Single Judge of this Court had placed reliance on various decisions of the Hon'ble Supreme Court and held that the legal heirs of the deceased Government Servant would be entitled to ventilate the grievances of the deceased employee. Relevant portion of the order reads as follows:-

"24. In *Indrani bai v. Union of India* reported in 1994 Supp (2) SCC 256, following a disciplinary proceedings, a government servant, an employee of a gun carriage factory at Jabalpur, was dismissed from service and the appeal before the statutory authority ended in dismissal. His wife made a representation for payment of gratuity, other retiral benefits and also sought for an alternative employment. As the deceased was dismissed from service on the ground of some delinquency, she was denied pension and employment assistance on compassionate grounds. When the rejection



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order was challenged, the Central Administrative Tribunal dismissed the case. On appeal, the Supreme Court, going through the pleadings, found that the deceased employee was denied a reasonable opportunity, violating Article 311(2) of the Constitution of India. In that circumstances, the Supreme Court, at Paragraph 6, held as follows:

"It is a clear case that the delinquent had not been afforded a fair opportunity, much less a reasonable opportunity to defend himself. That has resulted in violation of the principles of natural justice and fair play offending Articles 41, 21 and 311(2) of the Constitution. The orders of dismissal as confirmed by the appellate authority are accordingly quashed. The respondents are directed to be grant to the appellant the pensionary benefits according to rules and also to consider her case for suitable appointment on any post to which she may be eligible for rehabilitation, on compassionate ground. The respondents are further directed to pay the full salary payable to the deceased delinquent to the appellant from the date on which he was kept under suspension till date on which he would have attained superannuation or 28.02.1985, the proceeding date of his death whichever is earlier, with all consequential benefits after deducting the subsistence allowance already paid, right from the date of suspension order till date of dismissal. The exercise should be done within three months from the date of the receipt of the order."

25. In *Sudha Shrivastava v. C & A General of India* reported in 1996 (1) SCC 63, the Supreme Court considered whether a legal heir of a civil servant, who was prosecuted in a Court of law, but ultimately acquitted, though by that time he was no more, can be permitted to continue the proceedings before the Court and claim retrospective promotion of the deceased and other consequential monetary benefits. The deceased government servant was a member of Indian Audit and Accounts Services (Class.I). On account of the prosecution launched by the department under the Prevention of Corruption Act, his promotion was kept under sealed cover. The Special Judge convicted the government servant and sentenced him to undergo simple imprisonment for two years. An appeal was preferred by him and during the pendency of the appeal, he died. On



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application, the legal representatives of the deceased government servant were impleaded. Ultimately, the High Court allowed the appeal and the conviction and sentence were set aside. Thereafter, the widow sent representations to the State Government claiming retrospective promotion and benefits to her, which was rejected by the State. The Central Administrative Tribunal, Patna Bench, Patna held that a civil servant could not claim promotion as a matter of right and any benefit which would have arisen as a result of the promotion, could only have accrued to the officer himself and not to his legal heirs, if he had died before the judgment of acquittal was delivered. On appeal, the Supreme Court held that, "whatever the rights the deceased had, as a result of this "sealed cover", the procedure having been followed, stood established as on that date. Along with the right to work in the higher post, if he was to be promoted, he would have also got a right to salary in the higher scale. The effect of the acquittal of the appellant's husband must be regarded as if he had been wrongly convicted. He, therefore, would have had a right to have been placed in the higher scale of pay, if he had been selected for promotion and this is a right which would devolve on the legal heirs, if during the pendency of the proceedings, the said employee expired.

26. In the above reported case, the Supreme Court held that even otherwise, if the husband of the appellant therein was not to be promoted, he would certainly be entitled to receive the salary in the lower post till the date of his death. In the above circumstances, the Supreme Court set aside the order of the Central Administrative Tribunal and the official respondent was directed to open the sealed cover and grant all the benefits to the widow in the light of the observations made in the judgment.

27. A Full bench of the Central Administrative Tribunal, Mumbai in Smt. Vidhata Wd/o. Late Ramnayan Verma v. Union of India reported in 1998 (2) ATJ 506, after considering the difference between the right to file and right to continue the Original Application or appeal by the legal representatives or heirs of the deceased employee, with reference to Section 19 of the Administrative Tribunal Act, held that the legal representatives were not competent to file a fresh application under Section 19 of the Act. However, another Full Bench of the Central Administrative Tribunal, Calcutta in Mrs. Chandra Kala Pradhan v. Union



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of India reported in 1997-2001 A.T.Full Bench Judgments 406, differing the views of the Mumbai Full Bench and considering the Full Bench decision of the Supreme Court in Rameshwar Manjhi v. Sangramgarh Colliery reported in 1994 (1) SCC 292, in a case where the Apex Court upheld the rights of the legal representatives to continue the proceedings for adjudication, referred the matter to a larger bench of the Calcutta Central Administrative Tribunal. After considering the rival submissions, the larger bench of the Calcutta Tribunal in Mrs.Chandra Kala Pradhan v. Union of India reported in 1997-20001 A.T.Full Bench Judgments 410 held as follows:

"The aforesaid issue, in our view, has already been answered by the Apex Court in the case of Sudha Srivastava (Smt.) v. Comptroller and Auditor General of India, (1996) 1 SCC 63, which decision had arisen out of a claim filed before the Central Administrative Tribunal. Application in that case had been filed before the Central Government employee before the Central Administrative Tribunal and the decision of the Supreme Court in this behalf has already been reproduced in Para 8 of the aforesaid order. The Supreme Court in that case had implicitly upheld the jurisdiction of the Tribunal to entertain an application filed by an heir of a deceased government employee."

28. In Sudha Srivastava's case (cited supra), a widow of a Government servant has sought for retrospective promotion and the consequential benefits due and payable to her husband, whose name was considered for promotion and kept in sealed cover. The Supreme Court, having regard to his consideration for promotion before conviction, has taken the view that the government servant had already accrued a right and therefore, even after his death, the legal representatives could maintain a lis, for monetary benefits, which he would have earned, had he been alive and continued in service.

29. The Supreme Court in Rameshwar Manjhi's case has held that the maxim "actio personalis moritur cum persona" depends upon the 'relief claimed'. I have already taken the view that the order of removal, written on 31.05.1994 and kept in the Office file, without actual service or communication to the Government servant in the manner known to law would not come into operation and in such circumstances, the



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petitioner is entitled to institute and maintain the Original Application before the Tamil Nadu Administrative Tribunal to vindicate her grievance that her husband had been removed without following the principles of natural justice and consequently, seek for retiral benefits due and payable to the deceased government servant."

8. On an overall consideration of the decisions referred above, the petitioner would be deemed to be an 'aggrieved person' to challenge the order of dismissal of her husband under Section 153 of the Act and therefore, the impugned order rejecting the petitioner's application on the sole ground that she is not an 'aggrieved person', cannot be sustained.

9. In the light of the above, the impugned order dated 10.09.2015 passed by the first respondent in his proceedings in Na.Ka.No.4509/2015/Sapa, is set aside and the matter is remitted back to the first respondent. The first respondent herein, shall take up the petitioner's appeal dated 07.08.2015 on file and by following the procedure contemplated under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983, adjudicate the application, after extending due opportunity to the petitioner and pass appropriate orders on its own merits and in accordance with law, within a period of three (3) months from the date on which the review is taken up on file.

10. With the above directions, this Writ Petition stands allowed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. Joint Registrar,
Co-operative Department,
Villupuram Zone, Villupuram.
2. The Chairman & Managing Director,
Central Co-operative Bank Limited,
Villupuram, Villupuram District.



3. The General Manager,
Central Co-operative Bank Ltd.,
Villupuram, Villupuram District.

4. Assistant General Manager,
Central Co-operative Bank Ltd.,
Villupuram, Villupuram District.

+1cc to the Government Pleader, S.R.No.28641

W.P.No.39803 of 2015

CA(CO)
RGA(25/05/2022)