



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2022

(Reserved on 21.04.2022)

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A(MD)No.431 of 2011

and

M.P(MD)No.1 of 2011

P.Manimaran

... Appellant

vs.

1.The Joint Registrar/Managing Director,
Sivagangai District Central Co-operative Bank Ltd.,
Sivagangai.

2.The Special Officer,
Sivagangai District Central Co-operative Bank Ltd.,
Sivagangai. ... Respondents

Appeal filed under Clause 15 of Letters Patent, against the common order dated 21.09.2010 in W.P(MD)No.11417 of 2010.

Prayer in WP(MD). 11417/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ or order or direction in the nature of certiorarified mandamus calling for the records relating to the order made in Na.Ka.No.3729/98-99/E1 dated 20.03.1999 passed by the 1st respondent confirmed in Na.Ka.No.7236/2003-2004-E1 dated 04.11.2003 and consequential order made in Na.Ka.No.7236/2003-2004/E1 dated 02.01.2009 passed by the 2nd respondent and quash the same and consequently direct the respondents to reinstate the petitioner with continuity of service with accrued benefits.

For Appellant : Mr.P.R.Prithiviraj

for Mr.D. Sadiq Raja

For R1 & R2 : Mr.R.Shanmugaraja Sethupathi

Amicus Curiae : Mr.M.Mahaboob Athiff

JUDGMENT

R.SUBRAMANIAN, J.

AND

N.SATHISH KUMAR, J.

Challenge in this appeal is to the order of the Writ Court made in W.P(MD)No.11417 of 2010 dated 21.09.2010, wherein, the Writ

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Court dismissed several writ petitions filed by the employees of various Co-operative Societies on the ground that a writ petition against a Co-operative Society is not maintainable.

2. The facts that led to the filing of the writ petition are as follows:-

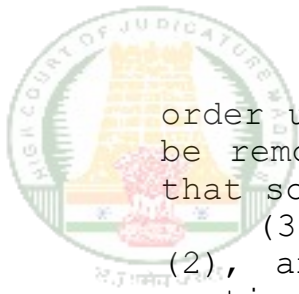
The appellant was appointed as a Junior Assistant in the services of the respondent Co-operative Society on 30.01.1995. He was placed under suspension on 03.07.1998 for actively aiding the Assistant Manager to fabricate a demand draft in the name of his close relative. A charge memo was issued to the appellant and after a domestic enquiry, he was terminated from service by order dated 20.03.1999. An appeal was preferred by the appellant before the Joint Registrar of Co-operative Societies, Sivagangai District. The said appeal came to be dismissed on 04.11.2003. There were no further proceedings challenging the order of termination. In the meantime, a prosecution was launched by the Society in C.C.No.146 of 2000. The learned Judicial Magistrate, Karaikudi, by its judgment dated 28.02.2008, acquitted the accused persons. Soon after the acquittal, the appellant made a representation to the Society/employer on 17.04.2008, seeking reinstatement into service in view of Section 77(4) of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as, 'the Act'), on the ground that he has been acquitted in the criminal case. This was followed by another representation dated 23.09.2008. The said representations were rejected by the employer on 02.01.2009, on the ground that Section 77(4) of the Act cannot be invoked by the appellant inasmuch as the offence for which he was prosecuted under the criminal law and the delinquency for which the disciplinary proceedings were taken, are one and the same.

3. Section 77 of the Act which deals with removal of paid officer or servant of the society and it reads as follows:-

'77. Removal of paid officer or servant of society-(1)

Where a paid officer or servant of a registered society has been found guilty or convicted by a competent court for an offence involving moral turpitude, the Registrar may, if in his opinion that the removal of such paid officer or servant is necessary in the public interest or in the interests of such society, after giving such officers or servant, and if such officer or servant is borne on a common cadre of service, the competent authority constituted under sub-section (3) of section 75 and in other cases, such registered society, an opportunity of making his or its representation, direct the competent authority or such registered society, as the case may be, to remove or cause to be removed such officer or servant from the service of such society.

(2) On receipt of a direction from the Registrar under sub-section (1), the competent authority or the registered society, as the case may be, shall notwithstanding any



order under sub-section (1) of section 75 remove or cause to be removed the paid officer or servant from the service of that society forthwith.

(3) Notwithstanding anything contained in sub-section (2), and without prejudice to the provisions contained in section 88, if in the opinion of the Registrar, the competent authority or the registered society, as the case may be either willfully disobeys or willfully fails to comply with any direction issued under sub-section (1), he may, by order, remove such paid officer or servant of that society.

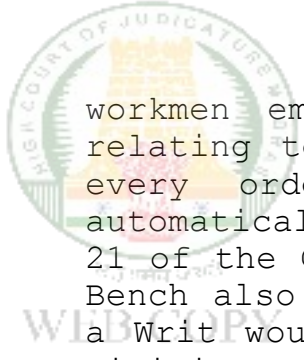
(4) Where a paid officer or servant of a registered society removed from service under subsection (2) or subsection (3) is acquitted by the competent court, or when the conviction of such officer or servant is set aside on appeal or revision by the appellate court, such officer or servant shall be reinstated to the same post held by him prior to such removal.

4. A reading of sub-section (1) of Section 77 of the Act would show that if an employee of a Co-operative Society is convicted of an offence by a Criminal Court, he could be removed from service. Such removed employee would be entitled to reinstatement, if the conviction is overturned in appeal or revision.

5. According to the learned counsel for the respondents, a cursory reading of Section 77 of the Act would show that it would apply only in cases where the criminal prosecution was independent of the services rendered by an employee in the Society. An employee who has been visited with the punishment for delinquency after a domestic inquiry, cannot invoke the provisions of Section 77(4) of the Act and seek reinstatement, as his removal was not pursuant to a conviction by a Criminal Court. Therefore, the rejection by the Society of the representations of the appellant is just and proper. He would add that the appellant has no case even on merits. The appellant, however, challenged the said order of rejection before this Court by way of a writ petition which came to be dismissed by the Writ Court on 21.09.2010 on the ground that the writ petition is not maintainable. Hence this appeal. We do not propose to enter a finding on merits as the Writ Court has not gone into the merits.

6. We have heard Mr.P.R.Prithiviraj, learned counsel appearing for the appellant, Mr.R.Shanmugaraja Sethupathi, learned counsel appearing for the respondents and Mr.M.Mahaboob Athiff, learned counsel appointed by us as Amicus Curiae to assist this Court.

7. Mr.Prithiviraj, learned counsel appearing for the appellant would contend that no doubt, a Larger Bench of this Court in **K.Marappan vs. The Deputy Registrar of Co-operative Societies, Namakkal**, reported in **2006 (4) CTC 689**, had held that a writ against a Co-operative Society would lie only under certain circumstances. In fact, the Larger Bench had taken note of the fact that many

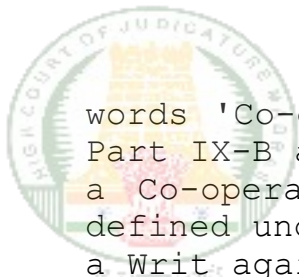


workmen employed in Co-operative Societies challenge the orders relating to their service by way of writ petitions and held that every order affecting the service of a workman would not automatically amount to an infringement of his right under Article 21 of the Constitution, enabling him to move the Court. The Larger Bench also set out certain circumstances and situations under which a Writ would lie against a Co-operative Society. Subsequently, a Division Bench of this Court in **P.Eswaramoorthy and others vs. R.J.B.Leoraj and others** reported in (2008) 5 MLJ 238, held that when the service rules of the Act and the provisions of the Act provide for a remedy under Section 153 of the Act, a Writ Court will not entertain a writ petition challenging the orders relating to service of employees in Co-operative Societies. A single Judge of this Court in **M.Mahendrarvarman and others vs. The Government of Tamil Nadu and others** reported in 2009 (5) CTC 237, held that the test laid down by the Apex Court in **Ajay Hasia vs. Khalid** reported in 1981 (1) SCC 722, has to be applied to find out whether a Co-operative Society is a State within the purview of Article 12 of the Constitution of India.

8. However, reliance is placed by Mr.Prithiviraj on a judgment of the Hon'ble Supreme Court in **Thalappalam Ser. Co-op. Bank Ltd., and others vs. State of Kerala and others** reported in 2013 (6) CTC 98, to persuade us to accept his submission that in view of the 97th amendment to the Constitution of India, a Co-operative Society though may not be a State, would be a public authority in view of the addition of a term 'Co-operative Societies' to Article 43B of the Constitution of India.

9. We do not think that we could accept the said submission since the judgment in **Thalappalam's case** arose under the Right to Information Act, 2005, wherein, the Hon'ble Supreme Court considered the scope of the definition of a term 'public authority' under Section 2(h) of the Right to Information Act, 2005. Therefore, we do not think that it will be safe to rely upon the said judgment to conclude that a Co-operative Society would be a State within Article 12 of the Constitution of India, against whom, writ petitions could be filed.

10. The learned counsel for the appellant would also invite our attention to the three Division Bench judgments of this Court namely, GVK Emergency Management and Research Institute, Kasturbha Gandhi Hospital for Women and Children vs. S.Shenbagamoorthi and 3 others [W.A(MD)No.380 of 2016, dated 24.08.2017], C.Jayaraman vs. The Special Officer, Vellore District Central Co-operative Bank Ltd., Vellore [W.A.No.116 of 2015, dated 18.06.2018], in which one of us (RSMJ) was a party and N.Krishnasamy vs. the Registrar of Cooperative Societies (Housing), Chennai and 3 others [W.A(MD) No.1581 of 2018, dated 05.12.2018], to contend that after the 97th amendment of the Constitution of India and the introduction of the



words 'Co-operative Society' in Article 43B and the introduction of Part IX-B and Articles 243-ZH to 243-ZT of the Constitution of India, a Co-operative Society would assume the character of a State as defined under Article 12 of the Constitution of India and therefore, a Writ against a Co-operative Society would lie *de hors* the decision in Marappan's case cited supra.

11. No doubt, the abovesaid three Division Bench judgments of this Court had held the said view and has observed that the dictum in Marappan's case cannot be held to be a good law in view of the 97th amendment to the Constitution of India. Unfortunately, for the petitioner, a portion of the 97th amendment to the Constitution was struck down by the Hon'ble Supreme Court in **Union of India vs. Rajendra N.Shah and another [Civil Appeal Nos.9108-9109 of 2014, dated 20.07.2021]**. In the said judgment, the Hon'ble Supreme Court had struck down the provisions of Article 243-ZH to 243-ZT excluding Article 243ZR and 243ZS which relate to multi-state Co-operative Societies and the Co-operative Societies situate in Union Territories on the ground that the concurrence of the State Legislature has not been obtained. The Hon'ble Supreme Court, had in any event, upheld the amendments to Articles 43B and 19(1)(c) of the Constitution of India.

12. In view of the said judgment of the Hon'ble Supreme Court, the position that emerges is that the right to form a Co-operative Society has been recognised as a fundamental right and nothing more. The striking down of 243-ZH to 243-ZT excluding Article 243ZR and 243ZS would lead to a situation where a Co-operative Society cannot be treated as a State or a public authority. In view of this judgment of the Hon'ble Supreme Court, in our considered opinion, the position that prevailed when the Larger Bench of this Court decided in Marappan's case, stands restored and there was no change in law in order to render the Larger Bench judgment in **Marappan's case** as no longer good law.

13. We are, therefore, of the considered opinion that three Division Bench judgments cited above which take a view that the Larger Bench judgment of this Court in Marappan's case is no longer a good law, will have to be held to be no longer a good law, in view of the recent pronouncement of the Supreme Court in **Union of India vs. Rajendra N.Shah and another [Civil Appeal Nos.9108-9109 of 2014, dated 20.07.2021]**, wherein, the Hon'ble Supreme Court had struck down the majority of the provisions, Article 243-ZH to 243-ZT of the Constitution of India.

14. In the light of the above, we see no ground to interfere with the judgment of the learned Single Judge who had dismissed the writ petition as not maintainable. Since this Court had not gone into the merits of the claim of the petitioner in the writ petition, we leave it open to the appellant/writ petitioner to challenge the order of rejection of his representations dated 17.04.2008 and 23.09.2008 seeking reinstatement in a manner known to law. If such



challenge is made, the authority before whom such challenge is made, is required to consider the same without being in any manner influenced by what has been stated by us in this order or in the order impugned in the writ petition.

15. We place on record our sincere gratitude and appreciation to Mr.M.Mahaboob Athiff, Amicus Curiae, who appeared at our instance and ably assisted us in deciding the matter where there was some kind of a cloud caused because of the conflicting views expressed by the Three Division Benches which had come into existence between the 97th amendment and the judgment of the Supreme Court in **Rajendra N.Shah's case** (supra). The test laid down for maintaining a writ petition against a Co-operative Society by the Larger Bench in Marappan's case will continue to govern the field.

16. The Writ Appeal, therefore, fails and it is accordingly dismissed. The parties are directed to bear their own costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

bala

To

1.The Joint Registrar/Managing Director,
Sivagangai District Central Co-operative Bank Ltd.,
Sivagangai.

2.The Special Officer,
Sivagangai District Central Co-operative Bank Ltd.,
Sivagangai.

+1 CC to M/s.D. SHANMUGARAJA SETHUPATHI, Advocate (SR-22477[F]
dated 29/04/2022)

+2 CC to M/s.D. SADIQ RAJA, Advocate (SR-23122[F] dated 02/05/2022
SR-20410[F] dated 22/04/2022)

W.A(MD)No.431 of 2011

DATED : 29.04.2022

MGJ(24.05.2022) 6P 6C