



W.P.No.14982 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

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1. The Chairman,  
Tamil Nadu Co-operative Milk Producers' Federation Limited,  
Aavin Illam, Madhavaram Milk Colony,  
Chennai – 600 051.
  2. The Managing Director,  
Tamil Nadu Co-operative Milk Producers' Federation Limited,  
Aavin Illam, Madhavaram Milk Colony,  
Chennai – 600 051. ...Petitioners
- Vs.
1. The Special Deputy Commissioner of Labour,  
Chennai.
  2. G.Nirmala ...Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records in TNSE-1/17/2010 dated 05.11.2015 on the file of the first respondent and quash the same as null and void and not binding upon the petitioners.



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For Petitioners : Mr.S.Balasubramanian

For Respondents : Mr.S.John J.Raja Singh, AGP, for R1  
: Mr.Mithel Reddy, Legal Aid Counsel, for R2

### **ORDER**

This Writ petition has been filed seeking to quash the order of the 1<sup>st</sup> respondent dated 05.11.2015 passed in TNSE-1/17/2010.

2. The case of the petitioners is that, the husband of the 2<sup>nd</sup> respondent namely one M.Gopal joined in the petitioner federation in 1984 as a Senior Marketing Manager. The nature of job assigned to him was to coordinate with various purchasers and give instructions to various affiliated district milk unions to supply milk products such as ghee, butter, milk powder, etc., after the order was approved by him. The prices of the milk products are fixed by the Product Review Committee, however, the petitioner federation is vested with the discretion to change the price of the milk products depending upon the market demand and supply. The Director of Vigilance and Anti Corruption conducted an investigation into the grave irregularities in the sale of skimmed milk powder and ghee to certain private packers, in



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evading payment of sales tax by these parties, and in showing undue favouritism by the said M.Gopal to the private packers. Thereby, a charge memo dated 14.08.1991 came to be issued to the then Managing Director of the petitioner federation, however, the charges were dropped against him on 17.12.1993, pursuant to the orders of the Government. Further, a charge memo dated 30.03.1994 and another charge memo dated 29.03.1995 came to be issued as against the said M.Gopal along with another person namely one L.A.Irudayaraj with similar charges, for which, the said M.Gopal gave his detailed explanation on 10.07.1995, denying the charges. However, being not satisfied with the explanation offered, the petitioner federation proceeded to conduct an inquiry and the said M.Gopal was suspended from service on 26.04.1996. It is relevant to point out that the date of superannuation of the said M.Gopal was 30.4.1996 and the enquiry was completed only on 24.08.1999 and the report of the Enquiry Officer dated 08.09.1999 revealed that the said L.A.Irudayaraj was exonerated from the charges and that the said M.Gopal was found guilty of the charges. Thereafter, the petitioner federation issued the second show cause notice dated 08.06.2000 to the said M.Gopal, to which also, he gave his



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explanation on 12.07.2000. However, being not satisfied with the explanation, punishment of dismissal from service was imposed on him vide order dated 31.01.2001 apart from directing him to remit to the petitioner federation a sum of Rs.14,18,602/- towards loss. Aggrieved by the same, the said M.Gopal filed a statutory appeal before the Board of the petitioner federation, however, the Board was not constituted and the appeal could not be decided. Hence, challenging the said dismissal order, the said M.Gopal filed W.P.No.20978 of 2001 and this Court, by order dated 13.08.2010, dismissed the said writ petition granting liberty to him to prefer an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947. Pursuant to the orders of this Court, the said M.Gopal filed an appeal before the 1<sup>st</sup> respondent and after contest, the 1<sup>st</sup> respondent, by the impugned order, allowed by the appeal filed by the said M.Gopal by setting aside the order of termination dated 31.01.2001 on the ground that the prices were finally fixed by the Product Review Committee, that all the decisions were taken only with the concurrence of the then Managing Director, that the said M.Gopal obeyed the directions of his superior, that the Product Unions and the Audit Department had not objected to the price



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fixing and that the said M.Gopal was victimized badly affecting his reputation. Challenging the same, the petitioners are before this Court.

3. Learned counsel for the petitioners submitted that, pursuant to the investigation conducted by the Director of Vigilance and Anti Corruption into the grave irregularities in the sale of skimmed milk powder and ghee to certain private packers and in evading payment of sales tax by these parties, the said M.Gopal/husband of the 2<sup>nd</sup> respondent was suspended from service on 26.04.1996 and subsequently, after conclusion of the enquiry proceedings, as the said M.Gopal was found to be guilty of the charges, he was dismissed from service by order dated 31.01.2001 and was directed to remit to the petitioner federation a sum of Rs.14,18,602/-. Aggrieved by the said dismissal, the said M.Gopal, pursuant to the order of this Court dated 13.08.2010 made in W.P.No.20978 of 2001, filed an appeal before the 1<sup>st</sup> respondent, who in turn allowed the said appeal by setting aside the order of termination dated 31.01.2001, which is not sustainable, since as against the order of dismissal, there is an effective remedy appeal as well as revisional remedy available under the Co-operative Societies Act before the competent



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authority, however, without considering the same, the 1<sup>st</sup> respondent without any jurisdiction entertained the appeal filed by the husband of the 2<sup>nd</sup> respondent and by going one step ahead, had mechanically allowed the same, which is wholly unsustainable. Further, due to the grave irregularities committed by the 2<sup>nd</sup> respondent's husband in the sale of skimmed milk powder and ghee to certain private packers and the undue favouritism shown by the husband of the 2<sup>nd</sup> respondent to the private packers, the petitioner federation incurred huge loss and thereby, he was dismissed from service. While so, without considering any of the above said facts, the 1<sup>st</sup> respondent, allowed the appeal filed by the said M.Gopal, which is *per se* illegal. Accordingly, he prayed for appropriate orders.

4. Mr.Mithel Reddy, the learned legal aid counsel, who has been appointed by this Court vide order dated 11.08.2023, appearing on behalf of the 2<sup>nd</sup> respondent submitted that, though it is the major contention of the learned counsel for the petitioner federation that, the 1<sup>st</sup> respondent has no jurisdiction to entertain the appeal filed by the said M.Gopal, however, the same was elaborately discussed by this Court in catena of decisions reported



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in 2000 (III) CTC 738, (2008) 4 L.W. 883 and 2012 (4) CTC 257, where it has been held that for person employed in managerial capacity, the provisions of the Shops Act will apply and that the remedies available both under the provisions of the Tamil Nadu Co-operative Societies Act as well as under the Industrial Disputes Act would be available.

5. It is the further submission of the learned counsel that though the departmental proceedings has been initiated as against the then Managing Director of the petitioner federation, however, the charges were dropped against him on 17.12.1993, pursuant to the orders of the Government and decided to proceed with conducting an inquiry only as against the said M.Gopal and as a result, he was suspended from service on 26.04.1996 and after completion of enquiry, the Enquiry Officer submitted the report dated 08.09.1999, based on which, the said M.Gopal was held guilty of the charges. Thereafter, the petitioner federation by order dated 31.01.2001 dismissed only the said M.Gopal from service, which is wholly unsustainable and it is a clear act of discrimination shown by the petitioner federation and the petitioner federation is not vested with such



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discriminatory power and it has to decide the issue in a balanced and equal manner in respect of all erred employees.

6. In this regard, the learned counsel relied on various decisions of this Court which clearly lays down the principle that *when the gravity of charges are the same against different employees in different capacity, the disciplinary authority cannot impose different punishment for different delinquents, and it is a clear act of discrimination. Further, when action is taken against several employees for similar delinquency, dropping of charges against the other person, while punishing only one individual and not imposing any punishment on the other individual is a clear act of discrimination, is grossly illegal.*

7. Therefore, it is the submission of the learned counsel that the appeal filed before the 1<sup>st</sup> respondent who is well within the jurisdiction to entertain the appeal filed by the said M.Gopal, vis., the husband of the 2<sup>nd</sup> respondent, and also taking into consideration the act of discrimination meted out to the delinquent, the 1<sup>st</sup> respondent, keeping all those facts in



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mind, passed the present impugned order, which does not warrant interference of this Court. Accordingly, he prayed for dismissal of this Writ petition.

8. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record as also the various decisions relied on by the learned legal aid counsel representing the 2<sup>nd</sup> respondent.

9. Before advertng to the issues on hand, a bird's eye view of the decisions relied on by the learned counsel for the 2<sup>nd</sup> respondent and the ratio laid therein could be seen so as to have a holistic consideration of the case.

10. On the issue of jurisdiction of the 1<sup>st</sup> respondent to entertain the appeal filed by the said Gopal, the following decisions were relied on by the learned counsel and the relevant portion of the said decisions are extracted hereunder :-

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**(i) The Management of Madras Atomic Power Project Employees Consumers Co-operative Societies Limited, Kalpakkam Vs. The Deputy Commissioner of Labour (Appeal), Madras and Ors. Reported in 2000 (III) CTC 738:**

“7.Now I shall consider the question regarding jurisdiction. Even according to the petitioner, the second respondent herein was working as an Assistant Manager at the stores of the petitioner at the relevant time. Though the 2nd respondent was designated as Manager, it is specifically stated by the second respondent that he is a person employed within the meaning of Section 2(12) of the Shops Act and as such he is entitled to claim relief under the Shops Act for his illegal termination. The Courts have taken a view that any person entitled to claim relief under Section 2A of the Industrial Disputes Act, 1947 can claim relief under section 41(2) of the shops Act also. Initially the second respondent joined the petitioner society in a clerical capacity and thereafter he was promoted as Assistant manager, section 2(6) of the Shops Act defines "establishment" as follows:-

*" 2. Definitions ---In this Act, unless there is anything repugnant in the subject of context-*

*(6) "establishment" means a shop, commercial establishment, restaurant, eating-house, residential hotel, theatre or any place of public amusement or entertainment and includes such establishment as the State Government may by notification declare to be an establishment for the purposes of this Act."*

Though Co-operative Societies are exempted from certain provisions of the Act, it is clear from the notification of the government of Tamil Nadu No.11 (2)/LE/5671/79, Published in the Tamil Nadu Government Gazette part II, Section 2, dated the 14th October, 1987, at page 774, the Governor of Tamil Nadu exempted permanently all societies registered or deemed



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to be registered under the Tamil nadu Co-operative Societies Act, 1961(Tamil Nadu Act 53 of 1951) from the provisions of the Tamil Nadu Shops Act XXXVI of 1947, except section 31, 43, 50 and 51 of the Said Act subject to the condition that the said societies shall exhibit their name boards in Tamil and wherever other language are used the versions to those languages shall be belong the Tamil versions. It is clear that Section 41 of the Shops Act, which speaks about dispensation with the services of a person, is applicable to the Co-operative societies. No doubt, Mr.N. Jothi, by pointing out Section 2(19) of the Tamil Nadu Co-operative Societies Act,1983, as well as the fact that second respondent being a manager and class I Officer would contend that and in view, of section 90 and 152 of the Tamil Nadu Co-operative Societies Act, 1983, the only remedy open to the second respondent is to go before the Registrar to ventilate his grievances. The said contention cannot be accepted. I have already stated that even according to the petitioner, at the relevant time, he was serving as Assistant Manager at the Stores. Section 90 of the Tamil Nadu Co-operative Societies Act speaks about disputes as follows:-

" 90 Disputes:- (1) If any disputes touching the constitution of the Board or the Management or the business of a registered society ( other than a dispute regarding disciplinary action taken by the competent authority constituted under sub-section (3) of the Section 75 or the Registrar or the Society or its Board against a paid servant of the Society) arises-

*(a) among members, past members and persons claiming through members, past members and deceased members, or*

*(b) between a member, past member or person claiming through a member, past, members or deceased member and the society, its Board or any officer, agent or servant of the*



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*Society, or*

*(c) between the society or its board and any past board, any officer, agent or servant, or any past officer, past agent or past servant, or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased servant of the society, or*

*(d) between the society and any other registered society, such dispute shall be referred to the Registrar decision."*

Before considering the claim of the petitioner, it is also relevant to refer section 4(1)(a) of the Shops Act. As per section 4(1)(a), a person employed in any establishment in a position of Management cannot seek assistance under the provisions of the Shops Act. However, the State Government is competent to include any establishment within the purview of the Shops Act by way of Notification in the Gazette. Even as early as on 5-10-1966 the Government have issued a Notification stating that all the provisions of the Shops Act apply to the class of persons mentioned in clause (a) of sub-section (1) of section 4 of the Act. The said Notification reads as follows:-

**"Application of provisions of Tamil Nadu Shops and Establishments Act to certain class of persons.**

(G.O.Ms.No. 4074, Industries, Labour and Housing (Labour).  
5th October. 1966,)

II-1 No. 4489 of 1966,-In exercise of the powers conferred by section 5 of the Madras Shops and Establishments Act. 1947 (Madras Act XXXVI of 1947), the Governor of Madras hereby applies all the provisions of the said Act to the



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class of persons mentioned in clause (a) of sub-section (1) of section 4."

It is clear that even persons employed in the position of management, are also covered by the provisions of the Shops Act.

8. Now I shall consider whether the contention that the second respondent has to go before the Registrar of Co-operative societies to ventilate his grievances is acceptable? I have already referred to section 90 of the Co-operative Societies Act, Section 152 of the said Act deals with appeals. A reading of Section 90 would clearly show that if the dispute is, with regard to disciplinary action of the person concerned, who is a paid servant of the Society, the same cannot be decided by the Registrar. This aspect was considered by a Division Bench of this Court in the case of A, Natarajan and others v. R.C.S. and others, 1991 (II) LLJ 296. After considering the very same provision viz., section 90 of the Tamil Nadu Co-operative Societies Act, the Bench has concluded thus:-

*"13. We would have made our own endeavours to Understand the implications and effect of the qualifying words.*

*"other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society"*

and tried to understand the scope ambit of the word "business, had we not been aware of a Judgment of the Supreme Court in Co-operative Central Bank Ltd. v. Industrial Tribunal, Hyderabad, 1969 (II) LLJ 698 dealing with similar phraseology in section 61 of the Andhra Pradesh co-operative Societies Act, 1964. The Supreme Court made a thorough examination of the law on the subject to hold that a dispute between the employees of the society on the one hand and the administration of the society on the other hand, will not be covered by the expression "touching the business of the society". In the said Judgment, the



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supreme Court has said (P.705):

"It is true that section 61 by itself does not contain any clear indication that the Registrar cannot entertain a dispute relating to alteration of conditions of service of the employees of a registered society; but the meaning given to the expression touching the business of the society, in our opinion, makes it very doubtful whether a dispute in respect of alteration of conditions of service can be held to be covered by this expression, since the word "business" is equated with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its object, such as laying down the conditions of service of its employees, can be said to be part of its business, it would appear that a dispute relating to conditions of service of the workmen employed by the society cannot be held to be a dispute touching the business of the society,"

14. Once this is understood that the dispute raised by the petitioners does not fall under Section 73 (1) of the Act, for we are bound to follow the law as stated by the supreme Court, it is obvious that the petitioners made a mistake of law in going to the Registrar or the Deputy Registrar with a petition for adjudication of the dispute under section 73 (1) of the Act. since the Deputy Registrar had no jurisdiction to entertain the dispute, it is obvious, there was no proceeding or order from which any appeal could be preferred



before the Tribunal under section 96 of the Act."

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It is clear that the question raised by the second respondent is not one touching the constitution of the committee of the management of the society. It is also not a dispute touching the business of the society, accordingly the second respondent cannot be compelled to go before the Registrar. In *Somasundaram v. Liyakat Ali*, , S.S.Subramani, J., has held that orders regarding inter-se seniority between employees of Co-operative societies is not an order passed under the Act and such seniority cannot be decided under the co-operative societies Act.

9. While considering section 61 of the Andhra Pradesh Co-operative Societies Act, which is similar to section 90 of the Tamil Nadu Co-operative Societies Act, the Hon'ble Supreme Court in *Co-operative Central Bank v. Additional I.T.*, 1969 (II) LLJ 698; has held that the jurisdiction of the Industrial Tribunal to adjudicate on the industrial disputes under Section 10 (1) (d) was not barred by the provisions of section 61 of the Andhra Pradesh Co-operative societies Act. They further held that Section 61 of the co-operative societies Act requires reference of a dispute to the Registrar, only if the dispute is capable of being resolved by the Registrar or his nominee and further that; such dispute between the co-operative society and employee touches the business of the society; They also held that both the, conditions are not satisfied, accordingly such dispute relief could not possibly be granted by the Registrar.

10. In *Oriental Bank v. The Commissioner of Labour*, 1982 (I) LLJ. 354 a learned Judge of this Court (E. Padmanabhan, J.), after considering Section 4(1)(c) of the Shops Act and after referring to a notification issued by the Government of Tamil Nadu pursuant to the power conferred under Section 5 of the Act, has made the following observation:

*" ..... the provisions of the Act (shops Act)  
are applicable to persons employed in any shop*



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*in a position of management...*

*This was not disputed by the learned counsel for the petitioner. In these circumstances, it must necessarily follow that the 3rd respondent being a person employed within the meaning of section 2(12) of the Act would be entitled to maintain an appeal under sec. 41(2) of the (Shops) Act."*

11. In *L. Subbien v. The Deputy Commissioner of Labour, Coimbatore*, 1993 (I) M.L.J. 9 (SN), Srinivasan, J., (as he then was) has held that,

"section 4(1)(a) of the Tamil Nadu Shops and Establishments Act provides that nothing contained the Act shall apply only to the persons employed in any establishment in a position of management. But Section 5 thereof empowers the Government to issue a notification applying all or any of the provisions of the Act to any class of persons or establishments mentioned in Sec.4 of the Act, other than those mentioned in Clauses (e) and (f) of sub-sec. (1). Thus, with regard to section 4(1)(a) of the Act, the Government is entitled to issue a notification to the effect that the Act will apply to persons covered by the said sub-section. The Government has issued a notification G.O.Ms. No. 4074, Industrial Labour and Housing (Labour), dated 5th October, 1966 by exercising the powers conferred under Section 5 of the Act, applying all the provisions of the Act to the clause of persons mentioned in clause (a) of sub-section (1) of section 4. Thus, the Act applied to all persons who are employed in any establishment in



a position of management. Hence, the Act will apply to the petitioner also, though he is employed as a supervisor, in a position of management. Hence, the first respondent is clearly wrong in dismissing the appeal of the petitioner on that ground."

12. It is clear that even though at the relevant time, the second respondent was working as Assistant Manager, in view of the Notification of the Government of Tamil Nadu as referred above and in the light of the various decisions mentioned above, I am unable to accept the argument of Mr. N. Jothi, learned counsel for the petitioner and I hold that the provisions of the Shops Act apply to the second respondent though he is employed as an Assistant Manager in a position of management and the appeal filed by him under section 41(2) of the Shops Act is maintainable."

***(ii) P.Eswaramoorthy & 15 Others Vs. R.J.B.Leoraj and Ors., reported in (2008) 4 L.W. 883:***

"24. In the light of the above legal journey through various decisions of this Court as well as of the Supreme Court, the following propositions will emerge:-

(a) Section 90 of the 1983 Act providing for settlement of disputes will not include a dispute between a servant of a Co-operative Society and its Management. Therefore, no dispute can be referred to the Registrar or his nominee under Section 90 and consequently, no appeal will lie to the Tribunal under Section 152.

(b) Section 153 of 1983 Act is a departure from Section 97 of the 1961 Act and it is wider in nature. Power has been specifically conferred on



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the revisional authority under Section 153 to call for and examine the record of any proceeding under the Act or the Rules or the bye-laws of any officer subordinate to the Registrar or of the Board of Director or any officer of a registered society or of the competent authority constituted under Section 75(3) of the 1983 Act. Therefore, the employees of a Co-operative Society can approach the Registrar or any competent authority under Section 153 to revise any order passed by the Co-operative Society relating to disciplinary action taken against him or denial of promotion or wrong fixation of seniority, etc.

(c) There is no implied ouster of the jurisdiction of the power of the Labour Court / Industrial Tribunal to deal with similar matters if disputes are raised before them by workmen or employees covered by those provisions. Both remedies are available.

(d) The decision in *Somasundaram v. Liyakat Ali* [1997 (1) CTC 4 = 1998 (2) LLJ 719] may not be a good law. The employees therein filed a Civil Suit regarding promotion issue. As remedy for the aggrieved parties in that case are available either under Section 153 or by an industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947, they could not have gone before the Civil Court. Therefore, the bar under Section 156 of the Co-operative Societies Act as well as the implied ouster of jurisdiction of the Civil Court by the provisions of the I.D. Act will directly apply and the suit is barred.

(e) The decision of P. Sathasivam, J. (as he



then was) in K. Radhakrishnan v. Additional Registrar [2000 (ii) CTC 147] upholding the right of revision under Section 153 has laid the correct position of law. Likewise, the judgment of P.Sathasivam, J. (as he then was) in The Management of Madras Atomic Power Project Employees' Consumers (Co-operative Stores Limited, Kalpakkam rep. by its Special Officer v. The Deputy Commissioner of Labour (Appeal) Madras # 6 and 2 others [2000 (III) CTC 738 = 2000 (2) LLJ 1451] holding that Section 90 of the 1983 Act is not available for employees of Co-operative Societies against the orders of termination has been correctly decided.”

***(iii) L.Justine Vs. Registrar of Co-operative Societies, Chennai and Ors., reported in 2003 1 L.L.N 315”***

“11. In view of the rival contentions, following issues arise for consideration:

(i) whether the writ petitions are maintainable?

(ii) whether the cooperative societies are covered by the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 as also the Industrial Disputes Act, 1947?

(iii) whether G.O. Ms. No.86, dated 12.3.2001 aims at regularising all the staff appointed to cooperative societies regardless of any defect or any violation of the Rule 149 of the Tamil Nadu Cooperative Societies Rules, 1988, as amended in 1995?

(iv) in the alternative, are the illegal appointees entitled for statutory protection of regularisation and permanent



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status by virtue of Section 3 of the Permanency Act subject to their completion of 480 man days in a continuous period of 2 years? And

(v) whether personnel not covered by clause (iv) are entitled for protection under the Industrial Disputes Act, 1947?

**Issue No. (i)**

12. In *M.THANIKKACHALAM and OTHERS v. MADURANTAKAM AGRICULTURAL PRODUCERS COOPERATIVE MARKETING SOCIETY & OTHERS* (supra), a Five Judge Bench of this Court was dealing with a batch of writ petitions arising under the Tamil Nadu Cooperative Societies Act and because of the divergent views of the learned single Judges and the Division Benches, the matter was referred to the Full Bench of 5 Judges. Surveying the case law on the subject, it was held that the cooperative society is a body, which, after having come into existence, is governed in accordance with the provisions of the statute and normally a writ petition is not maintainable against the cooperative society but there are exceptions like violation of statutory provisions or principles of natural justice, etc. and that each case depends upon the facts and circumstances of its own. In this batch, question of issuance of any writ against any cooperative society does not arise at all. What is needed is the interpretation of intricate questions of law and not against any questions of fact relating to conditions of service between the cooperative society and its employee. If an employee is regularly and legally appointed but has been divested of his posts or is kept under suspension or any action is taken in the course of discharge of his functions, then it is a dispute inter se between the cooperative society and its employee. Such is not the situation in the instant cases. The cases on hand invite a broader and comprehensive adjudication regarding the fate of thousands of employees and



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in the face of Government's unequivocal stand that such appointments are illegal and only concession given is the exemption from the purview of the employment exchange and not relaxing or condoning any other requirement, the said interpretation cannot be left to the cooperative societies or any statutory authority under the Act. Further, the applicability or otherwise of Permanency Act of 1981 or the Industrial Disputes Act also cannot be the subject matter of adjudication by any statutory authority. Such matters have to be decided only by this Court and the appropriate remedy is the invocation of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

### Issue No. (ii)

13. The Permanency Act of 1981 is also an Act enacted by the State and received the President's assent. Section 3 of the Act contains *non obstante* clause and provides protection to workmen, who are in continuous service for a continuous period of 480 days in a period of 24 calendar months in an industrial establishment, thus conferring a status of permanency. 'Industrial establishment' is defined in sub-Section (3) of Section 2 of the Act and in clause (e) thereof, an 'establishment' as defined in clause 2(6) of the Tamil Nadu Shops and Establishments Act, 1947, is defined to be an industrial establishment. If we go to Section 2 (6) of the Tamil Nadu Shops and Establishments Act, it is clear that the word 'establishment' therein takes in cooperative society also. As such, there cannot be any doubt regarding the applicability of the Permanency Act of 1981. The word, 'industry' defined in Section 2 (j) (q) under the Industrial Disputes Act, 1947 also makes the cooperative societies susceptible to the Act of 1947. Thus, all such workmen belonging to a class and are afforded protection, are entitled for the benefits of the Permanency Act of 1981 as also the Industrial Disputes Act of 1947.



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11. From the above decisions, it is clear that this Court, placing reliance on the ratio laid down by the Apex Court as also this Court has conclusively held that the jurisdiction of the 1<sup>st</sup> respondent is not ousted merely because an appellate and revisional remedy is available. It has been further held that persons in Managerial capacity could very well maintain an appeal before the Shops and Establishment authority. Further, liberty was granted by this Court to the said Gopal to move the 1<sup>st</sup> respondent against the order of punishment imposed upon him. Such being the case, the jurisdiction of the 1<sup>st</sup> respondent is well in tact and does not stand ousted and rightly the 1<sup>st</sup> respondent has entertained the appeal and passed the order, which cannot be found fault with. Therefore, the contention on jurisdiction raised by the petitioner deserves to be negated.

12. On the contention of the learned counsel for the 2<sup>nd</sup> respondent on the question of discrimination in the disciplinary enquiry only against the delinquent while discharging the Managing Director from the charges, reliance was placed on the following decisions :-



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**WEB COPY (i) *Tata Engineering & Locomotive Co. Ltd., Vs. Jitendra Pd. Singh and Another reported in (2001) 10 SCC 530:***

*“Drunkenness, fighting or riotous or disorderly or indecent behavior or any act subversive of discipline or efficiency.”*

2. On an inquiry being held, the inquiry authority found that the allegation of misconduct is proved and the disciplinary authority on consideration of the report of the inquiry authority and the other relevant material dismissed the first respondent from service. Thereafter, a reference to the Labour Court at the instance of the first respondent was made. The Labour Court, though held on a preliminary question that the disciplinary inquiry conducted against the first respondent is valid, came to the conclusion after perusing the documentary and oral evidence on record that the dismissal was not justified and held that he was entitled to reinstatement with full back-wages with continuity in service and other consequential benefits. A writ petition was filed in the High Court which was allowed but on the basis of certain offer made, the learned single Judge also directed that the appellant shall pay, to the first respondent, salary from the date of discharge till the date of the order in a lump sum of Rs. 50,000/-. Thereupon, both the management and the workman filed two appeals. In the appeals several questions were raised as to whether the act attributed to the first respondent would amount to misconduct at all which will entail a disciplinary inquiry at the instance of the management to end up with his dismissal; strong reliance was placed on *Glaxo Laboratories v. The Presiding Officer, Labour Court, Meerut and Ors.* . Ultimately, however, the two learned Judges agreed on the aspect of the matter that the question whether on misconduct, attributed to the workman there should have been causal connection between misconduct and employment of the workman may not be of much significance when such acts have taken place within premises of the factory should be decided in



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an appropriate case. What influenced the Court in deciding the matter is that:

“Since as many as three workmen on almost identical charges were found guilty of misconduct in connection with the same incident, though in separate proceedings, and one was punished with only one month's suspension, and the other was ultimately reinstated in view of the findings recorded by the Labour Court and affirmed by the High Court and the Supreme Court, it would be denial of justice to the appellant if he alone is singled out for punishment by way of dismissal from service.”

3. As the judgment is rested upon this position, whatever other views may have been expressed in the course of the judgment may be of no significance. In that view of the matter, we think there is no need to interfere with the order made by the High Court, that too in a proceeding arising under Article 136 of the Constitution. Hence, we decline to interfere with the order made by the High Court. The appeals are dismissed accordingly.”

***(ii) State of Uttar Pradesh and Ors. Vs. Raj Pal Singh reported in (2010) 5 SCC 783:***

“5. Though, on principle, the ratio in aforesaid cases would ordinarily apply, but in the case in hand, the High Court appears to have considered the nature of charges leveled against the 5 employees who stood charged on account of the incident that happened on the same day and then the High Court came to the conclusion that since the gravity of charges was the same, it was not open for the disciplinary authority to impose different punishments for different delinquents. The reasonings given by the High Court cannot be faulted with since the State is not able to indicate as to any difference in the delinquency of these



employees.

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6. It is undoubtedly open for the disciplinary authority to deal with the delinquency and once charges are established, to award appropriate punishment. But when the charges are same and identical in relation to one and the same incident, then to deal with the delinquents differently in the award of punishment, would be discriminatory. In this view of the matter, we see no infirmity with the impugned order requiring our interference under Article 136 of the Constitution.

13. It is not in dispute that initially charges were levelled against the Managing Director, the husband of the 2<sup>nd</sup> respondent, viz., Gopal and against one Irudhayaraj. However, curiously, the charges against the Managing Director were dropped and the enquiry was conducted against the said Gopal and Irudhayaraj. In the enquiry, the husband of the 2<sup>nd</sup> respondent alone was found guilty while the said Irudhayaraj was exonerated.

14. Scanning through all the materials placed before it, the 1<sup>st</sup> respondent has given a categorical finding that the husband of the 2<sup>nd</sup> respondent had acted in the proper manner and only after obtaining all the permissions from the higher authority, had passed orders, within his power



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and he had not acted in a *mala fide* manner. The 1<sup>st</sup> respondent has further gone on to hold that there are no materials before the enquiry officer to find the said Gopal alone guilty of the charges. Therefore, rightly, the 1<sup>st</sup> respondent has set aside the punishment imposed on the said Gopal.

15. It is to be pointed out that while charges were framed against three persons, only the husband of the 2<sup>nd</sup> respondent was alone found to be guilty. There is no iota of material on the basis of which the charges against the Managing Director was dropped and also there is no material before the enquiry officer to give two separate findings, viz., one finding the said Gopal guilty while on the same set of materials exonerating the said Irudhayaraj. The above act of the petitioner and the enquiry report clearly shows the discriminatory act perpetrated by the petitioner against the said Gopal, who has been found to have not committed any irregularity by the 1<sup>st</sup> respondent.

16. Further, it is to be pointed out that the petitioner is canvassing the plea of lack of jurisdiction alone against the 1<sup>st</sup> respondent and has not raised any qualms about the findings rendered by the 1<sup>st</sup> respondent. Once



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this Court holds that the 1<sup>st</sup> respondent has jurisdiction to entertain the appeal filed by the said Gopal, necessarily, in the alternative, the petitioner ought to have attacked the findings as well. However, curiously, the petitioner has rested its case on lack of jurisdiction and not on the question of findings.

17. This Court having held that the 1<sup>st</sup> respondent is well within its jurisdiction to entertain the appeal filed by the said Gopal, in the absence of any attack on the findings rendered by the 1<sup>st</sup> respondent, which, in effect, would only mean that the findings are not of any concern to the petitioner, applying the above said ratio laid down by the Apex Court and by this Court in the aforesaid decisions, necessarily, the writ petition filed by the petitioner deserves to be dismissed.

18. Accordingly, the writ petition stands dismissed confirming the order passed by the 1<sup>st</sup> respondent. In the circumstances of the case, there shall be no order as to costs.



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19. This Court, while places on record the appreciation for Mr.Mithel Reddy, the legal aid counsel appointed by this Court to canvass the case of the 2<sup>nd</sup> respondent, in taking strenuous and earnest efforts to defend the case for the 2<sup>nd</sup> respondent, further, directs the Member Secretary, Tamil Nadu State Legal Services Authority to pay a sum of Rs.6,000/- as legal aid remuneration to the said Mr.Mithel Reddy.

20. Registry is directed to mark a copy of this order to the Member Secretary, Tamil Nadu State Legal Services Authority, Chennai, for the purpose of paying the remuneration to the legal aid counsel appointed by this Court.

**16.08.2023**

skt

Index : Yes/No  
NCC : Yes/No  
Speaking Order : Yes/No

To

The Special Deputy Commissioner of Labour,  
Chennai.

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**M.DHANDAPANI, J.**

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