



W.P.No.7334 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

W.P.No.7334 of 2020
and WMP.No.8770 of 2020

C. Sakthivel

... Petitioner

Vs.

1. The Director
Department of Handlooms and Textiles
2nd floor, Kuralagam
Chennai 600 108.
2. The Assistant Director
Handloom & Textiles
No.426, Bhavani Main Road,
Asokapuram, Erode
Erode District – 624 621.
3. The Chennimalai Industrial Weaver's
Co-op. P & S. Society Ltd.,
Rep.by the President
No.A.A.399, PRS Road,
Post Box No.38, Kumarapuri,
Chennimalai 638 051.
Erode District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus calling for the records of the 1st



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respondent in the letter having Ref.No.Na.Ka.No.22017/2018/H2, dated 02.12.2019 and quash the same and consequently direct the 1st respondent to dispose of the petitioner's Review Petition dated 07.05.2018 on merits within a reasonable period of time fixed by this Court.

For Petitioners : Mrs.Nalini Chidambaram
Senior Counsel for
M/s.G.Sarat Babu

For Respondents : Mr. Shajahan
Special Government Pleader

ORDER

The petitioner has filed the above writ petition praying for a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in the letter having Ref.No.Na.Ka.No.22017/2018/H2, dated 02.12.2019 and quash the same and consequently direct the 1st respondent to dispose of the petitioner's Review Petition dated 07.05.2018 on merits within a reasonable period of time.

2. The facts of the case in a nutshell:-

The petitioner was appointed as a Manager in the 3rd respondent Society and during the Special General Body meeting of the third respondent held on 26.12.2017, the petitioner was assaulted by one Loganathan and 8



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other members of the 3rd respondent society at the instigation of one Thirunavukarasu, the President of the 3rd respondent Society. The petitioner was on medical leave from 27.12.2017 to 30.01.2018. The third respondent issued the suspension order dated 06.01.2018 suspending the petitioner w.e.f. 28.12.2017 and a charge memo dated 18.01.2018 was issued by the 3rd respondent. It was stated in the said charge memo that the charges were based on the records and complaints mentioned in Annexure III of the said charge memo. But copies of the said documents were not enclosed along with the said Charge Memo. Therefore the petitioner by his letter dated 06.02.2018 requested the 3rd respondent to furnish copies of those documents so as to enable him to peruse those documents and send an explanation to the charge memo. The third respondent by letter dated 14.02.2018 refused to issue copies of the said documents and proceeded to conduct domestic enquiry by appointing an Advocate as an Enquiry Officer. The petitioner also requested the Enquiry officer through letters dated 23.02.2018, 02.03.2018, 13.03.2018 and 26.03.2018 to advise the 3rd respondent to furnish the copies of the documents related to the charges. Without furnishing the documents and without affording any opportunity to the petitioner to submit explanation, the enquiry officer conducted an ex-parte enquiry and submitted his report dated 04.04.2018,



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observing that except charge No.10, the other charges were proved as against the petitioner.

2.1 The third respondent issued a second show cause notice dated 05.04.2018 enclosing a copy of the enquiry report and directed the petitioner to submit his explanation within three days as to why maximum punishment should not be imposed on him. The petitioner states that the enquiry proceedings were not enclosed along with the second show cause notice. The petitioner submitted his explanation dated 09.04.2018, objecting to the disciplinary as well as domestic enquiry proceedings and requested for reinstatement into service. The third respondent issued the formal dismissal order dated 12.04.2018 dismissing the petitioner from service of the third respondent. Challenging the order of dismissal order dated 12.04.2018, the petitioner filed a revision petition in Revision Petition No.Na.Ka.No.5657/2018/E dated 07.05.2018 before the 2nd respondent under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983. The second respondent/Assistant Director, Handlooms & Textiles, Erode issued summons in the revision petition and called upon for the appearance of the third respondent. The third respondent challenged the summons issued by the 2nd



respondent by way of W.P.No.17431 of 2018 on 03.07.2018 contending that the 2nd respondent has no power to entertain the revision filed by the petitioner under Section 153 and only the 1st respondent is the competent authority to entertain the revision filed by the petitioner.

2.2 This Court by order dated 29.08.2018 in WMP.No.20710 of 2018 in W.P.No.17431 of 2018 granted status quo of all further proceedings in the Revision Petition filed by the petitioner which was pending before the 2nd respondent. The petitioner filed vakalat in W.P.No.17431 of 2018 on 18.03.2019. Due to the filing of the above writ petition, the hearing in the revision petition filed by the petitioner was delayed for more than one year. The writ petition filed by the third respondent was not listed before this Court for a long time and in the meantime the petitioner was about to attain superannuation on 31.10.2019. Hence the petitioner decided to withdraw the revision pending on the file of the 2nd respondent and present the same before the 1st respondent. The petitioner filed an interim petition in Revision Petition on 03.09.2019 before the 2nd respondent seeking permission to withdraw the revision petition filed by the petitioner pending before the 2nd respondent and to present the same before the 1st respondent. The petitioner states that the 2nd respondent issued a



letter dated 10.09.2019 stating that the Revision Petition filed by the petitioner could be considered only after the final disposal of W.P.No.17431 of 2018 pending before this Court. The 2nd respondent thereafter issued a letter dated 12.10.2019 stating that since the petitioner requested to withdraw the revision petition, the second respondent will not conduct further investigation in the Revision Petition filed by the petitioner.

2.3 The petitioner filed a memo dated 16.11.2019 before the 1st respondent under the Tamil Nadu Co-operative Societies Act, 1983 praying that the revision petition filed by the petitioner before the 2nd respondent be construed as a revision petition filed before the 1st respondent as on 07.05.2018. The 1st respondent issued a letter dated 02.12.2019 to the petitioner stating that the petitioner's Revision Petition is barred by limitation of 90 days under the Tamil Nadu Co-operative Societies Act, 1983 and the petitioner's case cannot be taken up for further consideration. W.P.No.17431 of 2018 was listed before this Court on 30.01.2020. But the counsel for the 3rd respondent without informing the counsel for the petitioner, withdrew the W.P.No.17431 of 2018 during mentioning at 10:30 a.m. on 30.01.2020. The 3rd respondent successfully prevented the petitioner from pursuing his revision petition filed before the 2nd



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respondent on 07.05.2018, by filing the W.P.No.17431 of 2018 and this Court granted an order of status quo dated 29.08.2018 of the proceedings before the 2nd respondent. Due to the delay in disposal of the writ petition, the petitioner sought to withdraw the revision petition on the file of the 2nd respondent and present the same before the 1st respondent. However the 1st respondent by the impugned order dated 02.12.2019 held that the revision petition is barred by limitation and rejected the revision petition filed by the petitioner. It is the petitioner's case that the original revision petition filed before the 2nd respondent can be entertained by the 2nd respondent. Without prejudice, even if the 2nd respondent did not have the jurisdiction to entertain the revision petition, it can only be construed that the petitioner was pursuing his remedy bonafide in a wrong forum and the time spent in pursuing the remedy in a wrong forum can be condoned under Section 14 of the Limitation Act. Aggrieved by the impugned order passed by the 1st respondent, the petitioner has filed the present writ petition.

3. The learned senior counsel appearing for the petitioner submitted that the petitioner was dismissed from service on 12.04.2018 and challenging the dismissal order the petitioner has filed Revision Petition



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No.Na.Ka.No.5657/2018/E dated 07.05.2018 before the 2nd respondent under Section 153 of Tamil Nadu Co-operative Societies Act, 1983. The first respondent is the competent authority/appropriate authority before whom the Revision Petition has to be filed. But, inadvertently the petitioner has filed the Revision Petition before the 2nd respondent. The learned senior counsel further submitted that the petitioner has filed an interim petition in Revision Petition before the 2nd respondent on 03.09.2019 seeking permission to withdraw the revision petition filed by him so as to present the same before the first respondent. The second respondent issued a letter dated 12.10.2019 to the petitioner stating that no further investigation could be done since the revision petition has been withdrawn.

4. The learned senior counsel further submitted that original Revision Petition and documents enclosed thereof were not returned by the second respondent to the petitioner. The petitioner has filed a memo dated 16.11.2019 before the 1st respondent praying that the revision petition filed by him before the 2nd respondent be construed as a revision petition filed before the 1st respondent as on 07.05.2018 itself for the purpose of limitation and dispose of the same in accordance with law or call for the original Revision Petition dated



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07.05.2018 along with documents from the file of the Assistant Director of Handlooms and Textiles, Erode/second respondent and to dispose it as per law.

The first respondent issued an impugned order dated 02.12.2019 stating that the petitioner's Revision Petition is barred by limitation of 90 days under the Tamil Nadu Co-operative Societies Act, 1983 and the Tamil Nadu Co-operative Societies Act, 1988 and the petitioner's case cannot be taken up for further consideration.

5. The learned Special Government Pleader appearing for the respondents has filed a counter affidavit filed by the first respondent dated 29.10.2020 and submitted that the dismissal order of the petitioner dated 12.04.2018 has to be challenged only before the first respondent under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 by way of Revision Petition by the petitioner. However, the Revision Petition was filed by the petitioner before the second respondent who is not the competent authority under the Tamil Nadu Co-operative Societies Act, 1983. The learned Special Government Pleader further submitted that since there is no provision under Tamil Nadu Co-operative Societies Act, 1983 and its Rules 1988 to entertain the Revision Petition under Section 153 of the Tamil Nadu Co-operative Societies



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Act submitted beyond the limitation period of 90 days and the same was informed by the first respondent by his letter dated 02.12.2019 that the representation of the petitioner could not be entertained.

6. The learned Special Government Pleader further submitted that only the first respondent who is the Director of Handlooms and Textiles is the competent authority to entertain the Revision Petition filed under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 and further submitted that the powers for Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 has not been delegated to the Assistant Director of Handlooms & Textiles, Erode who is the second respondent herein. He further submitted that filing of Revision Petition under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 beyond the limitation period of 90 days cannot be condoned in the absence of specific provision in the said Act and its Rules, empowering the Revisional authority to condone the delay, it will not be permissible or legal for the authority to entertain the revision. When the petitioner was dismissed by the order of the third respondent dated 12.04.2018, the first respondent could not entertain the representation of the petitioner in his memo dated 16.11.2019 with a prayer to entertain the Revision Petition dated 07.05.2018 filed by the



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petitioner before the 2nd respondent to be construed as a Revision Petition filed before the 1st respondent as on 07.05.2018.

7. The learned Special Government Pleader further submitted that Section 14 of the Limitation Act of 1963 is applicable to the Courts, whereas the first respondent/Director of Handlooms and Textiles being a Revisional authority under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 is a statutory authority and not a Court and there is no provision in Tamil Nadu Co-operative Societies Act, 1983 and its Rules 1988 which makes the Limitation act of 1963 applicable to the said Act and Rules.

8. Heard both sides and perused the materials available on record.

9. In the instant case, the petitioner was dismissed from service on 12.04.2018 and the petitioner is entitled to file a Revision Petition under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 before the first respondent but inadvertently the petitioner has filed the same before the second respondent on 07.05.2018. This was challenged by the third respondent by way of filing the writ petition in W.P.No.17431 of 2018 on 03.07.2018 contending



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that the second respondent does not have the powers to entertain the Revision Petition under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 filed by the petitioner, subsequently the said writ petition was dismissed as withdrawn on 30.01.2020. The period of limitation for filing the revision petition before the 1st respondent under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 is 90 days from the date of dismissal and Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 is extracted hereunder:-

“153. Revision. __ (1) The Registrar may of his own motion or on application, call for and examine the record of any officer subordinate to him or of the board or any officer of a registered society or of the competent authority constituted under sub-section (3) of section 75 and the Government may, of their own motion or on application, call for and examine the record of the Registrar, in respect of any proceedings under this Act or the rules or the bylaws not being a proceeding in respect of which an appeal to the Tribunal is provided by subsection (1) of section 152 to satisfy himself or themselves as to the regularity of such proceedings, or the correctness, legality or propriety of any decision passed or order made therein; and, if, in any case, it appears to the Registrar or the Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, he or they may pass orders accordingly: Provided that every application to the Registrar or the Government for the exercise of the powers under this section shall be preferred within ninety days from the date on which the proceedings, decision or order to which the application relates was communicated to the applicant. (2) No order prejudicial to any person shall be passed under sub-section



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(1) unless such person has been given an opportunity of making his representations. (3) The Registrar or the Government, as the case may be, may suspend the execution of the decision or order pending the exercise of his or their power under sub-section (1) in respect thereof. (4) The Registrar or the Government may award costs in any proceedings under this section to be paid either out of the funds of the society or by such party to the application for revision as the Registrar or the Government may deem fit”.

10. In this case, the petitioner was dismissed on 12.04.2018 and the Revision Petition was filed on 07.05.2018 before the second respondent which is within the period of limitation of 90 days. A memo dated 16.11.2019 was filed by the petitioner to entertain the said Revision Petition by construing that it was filed on 07.05.2018 before the first respondent for the purpose of limitation and dispose the same in accordance with the law but the same was rejected by the first respondent by impugned order dated 02.12.2019. The Revision Petition is filed within the limitation period of 90 days but before an incompetent authority namely the second respondent. Since the Revision Petition is filed within the limitation period, the same can be construed that it was filed before the first respondent as on 07.05.2018 and the same can be disposed of on merits and in accordance with law by the first respondent.



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11. The petitioner has filed the Revision Petition on 07.05.2018 before the second respondent within the limitation period of 90 days as prescribed under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983. The petitioner filed a memo dated 16.11.2019 to entertain the said Revision Petition by construing that it was filed on 07.05.2018 before the 1st respondent for the purpose of limitation. The delay period from 07.05.2018 to 16.11.2019 is hereby condoned by this Court.

12. Hence this Court is of the considered view that the Revision Petition dated 07.05.2018 filed by the petitioner under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 has to be considered on merits and in accordance with law by the first respondent.

13. In the result, the writ petition is allowed and the impugned order dated 02.12.2019 passed by the first respondent is liable to be quashed and the same is hereby quashed. The first respondent is directed to consider the



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petitioner's Revision Petition dated 07.05.2018 and pass appropriate orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is also closed.

04.08.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
dpq

To

1. The Director

Department of Handlooms and Textiles
2nd floor, Kuralagam
Chennai 600 108.

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