IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
14~09~2023	04~10~2023

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.Nos.17181, 17191 & 17194 of 2023 &

W.M.P.Nos.16363, 16364, 16365, 16366, 16369 & 16370 of 2023

R.Ganapathy ... Petitioner in W.P.No.17181 of 2023

S.Anbalagan ... Petitioner in W.P.No.17191 of 2023

R.Gunasekaran ... Petitioner in W.P.No.17194 of 2023

Vs

1. The Registrar of Co-operative Societies,
   Government of Puducherry,
   Co-operative Department, VVP Nagar,
   Thattanchavadi Post, Puducherry – 605 009.

2. The Administrator,
   Puducherry Co-operative Urban Bank Ltd. P.14,
   No.197, Jawaharlal Nehru Street, Puducherry – 605 001.

3. The Managing Director,
   Puducherry Co-operative Bank Limited,
   No.194, Jawaharlal Nehru Street, Puducherry – 605 001.

4. The Reserve Bank of India,
   No.16, Rajaji Salai, Fort Glacis, Chennai – 600 001.
5. Union of India, Rep. by its Secretary,

Co-operative Department, Puducherry. ... Respondents in all WPs

COMMON PRAYER: Writ Petition filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records leading to the issuance of the impugned Direction dated 6.11.2019 issued by the fist respondent herein in No.RCS/Planning / Circular/ 2018 / 448 under section 81(1) of the Puducherry Co-operative societies Act 1972 and the consequential approval of the amendment of Rule No.35(1) of the Service Regulations of the Pondicherry co-operative Urban Bank Ltd. No.P.14 by the first respondent on 28.1.2021 vide No.5 /12/1/2 / RCS / CR / H/1999/ Vol-III / 14 and consequential Notice dated 29.05.2023 issued by the 3rd respondent vide PCUB / Estt. / 19-Vol- 2/ 2023 to the petitioner herein and quash the same.

For petitioner in all WPs : Mr.P.Chandrasekar

For Respondents in all WPs : Mr.R.Sreedhar
Additional Government Pleader [Pondy] – R1 & R2

Mr.V.Balamurugane – R3

COMMON ORDER

These Writ Petitions have been filed to quash the impugned Direction dated 6.11.2019 issued by the fist respondent under section 81(1) of the

Puducherry Co-operative societies Act 1972 and the consequential approval of the amendment of Rule No.35(1) of the Service Regulations of the Pondicherry Co-operative Urban Bank Ltd., by the first respondent on 28.1.2021 and consequential notice dated 29.05.2023 issued by the third respondent to the petitioner and quash the same.

2. The petitioners were working as Deputy Managers in the Pondicherry Co-operative Urban Bank Limited. It is the contention of the petitioners that in the year 1998, the Government of India took a policy decision to increase the retirement age of Central Government employees from 58 to 60 years on the recommendation of the 5th Central Pay Commission. In order to implement the policy decision of the Government of India, the Ministry of Co-operative Department, Puducherry made an announcement in the 9th session of 10th Legislative Assembly that the retirement age of all the employees of Co-operative Societies will be increased from 58 to 60 years. In order to implement the said announcement, Service Regulation No.35[1] of the Bank was amended increasing the retirement age from 58 years to 60 years. When the matter stood thus, the petitioner received a notice dated 29.05.2023. It is the case of the petitioner that pursuant to the direction of the first respondent dated 6.11.2019, Rule 35[1] was amended wherein the retirement age has been reduced from 60

to 58 years in pursuance to the direction issued by the Registry on 06.11.2019. Hence, it is the contention of the learned counsel appearing for the writ petitioners that the first respondent has no powers to issue a direction to increase or decrease the age of the employees of the Co-operative Banks under Section 81[1] of the Puducherry Co-operative Societies Act, 1972. Further the service conditions of the employees of the Co-operative Bank vest with the Government of Puducherry as per Section 167 of the Co-operative Societies Act, 1972. Therefore, the amendment reducing the age of retirement cannot be sustained in the eye of law.

3. It is the contention of the respondents in the counter that as per Section 33 [1] [b] [ii] of Puducherry Co-operative Societies Act, 1972, the Registrar of Co-operative Societies has appointed an Administrator in the place of Committee of Management and the Administrator is empowered to exercise all the powers of the Board of Directors as specified in the bye-laws of the respective Co-operative Societies. The Registrar of Co-operative Societies by directions in RCS/Plg/Circular 2018/448 dated 06.11.2019 withdrew the option given to the management for enhancing the age retirement/superannuation from 58 to 60 years. The third respondent on gathering that the financial position of the bank was on the decline and the Reserve Bank of India has placed the bank

under Supervisory Action Framework, for incurring loss for two consecutive years and having accumulated loss of huge quantum, has decided to curtail the age of retirement / superannuation from 60 to 58 years, so as to prevent the further decline of the financial status of the bank. The bye laws have been amended and the amendment was brought with the concurrence of all the employees of the bank. It is also stated that the Reserve Bank of India has jurisdiction to control the functioning of the third respondent and it cannot be said that the respondent has no jurisdiction to interfere with the enhancement of the age of retirement from 58 to 60 years and reduce the retirement age from 60 to 58 years. Hence, opposed the Writ Petition.

4. It is the contention of the learned Senior Counsel appearing for the petitioners that when the State has a taken policy decision to increase the age of retirement from 58 to 60 years, the same has been implemented by the Registrar of Co-operative Societies, by the impugned Order dated 06.11.2019. The Registrar has no powers to withdraw the enhancement of the retirement age and to amend the bye laws with regard to enhancement of the age of retirement. Hence, it is the contention of the learned Senior Counsel that the direction is against S.81 of the Co-operative Societies Act and no permission has been obtained from Reserve Bank of India. It is his further contention that as per

S.167 of the Puducherry Co-operative Societies Act, 1972 only the State Government has control over regulating service conditions of the employees of the Bank. Therefore, it is his further contention that now the retirement age of the employees sought to be reduced from 60 to 58 years and the same is not valid in the eye of law.

5. The learned counsel appearing for the third respondent would submit that since similarly situated persons have filed a writ petition and obtained an interim Order and superannuated, the petitioners have filed the present Writ Petitions to create a cause of action. It is his further contention that reduction of the retirement age is a policy decision of the second and third respondents considering the financial viability. According to them, the impugned direction has been passed in the year 2019 and the petitioners are well aware of the direction and the same has been sought to be implemented in the year 2019 itself. However, the Registrar has not approved the same immediately. He has, in fact, required unanimous decision from all the employees and sought a revised proposal to the office by his letter dated 17.08.2020. Hence, it is his contention that all unions unanimously agreed to reduce the retirement age from 60 to 58 years. Only after the consensus arrived among all the unions, the regulation has been amended and approved by the Registrar. Rule 35 of the

Service Regulations governing the service conditions of the employees of the Puducherry Co-operatie Urbn Bank Ltd. has been amended and the retirement age of the employees has been reduced to 58 years. Hence, it is their contention that, the Reserve Bank of India concurrence is required only with regard to the business activities of the Societies in financial matters. Therefore, with regard to the service conditions of the staffs, no such approval from the Reserve Bank of India is required. Hence, it is his contention that in an earlier round of litigation, infact the Pondicherry Co-operative Urban Bank Employees Welfare Union has challenged the enhancement of the retirement age from 58 to 60 years in a Writ Petition in W.P.No.19712 of 2010 and this Court has clearly held that the Administrator is absolutely competent to pass a resolution by way of amending the regulation. Hence, it is his contention that the Writ Petitions are devoid of merits and the same have to be dismissed.

6. I have perused entire materials. The petitioner challenges the directions issued by the Registrar on 06.11.2019 and consequential resolution passed later. It is relevant to note that originally as per the Bye Laws, the retirement age of the Co-operative Society employees is 58 years. This fact has not been disputed. Thereafter, it appears that on the basis of the statement made by the Co-operative Minister in the floor of assembly to increase the age

on 29.04.1999, the retirement age has been increased and the direction has been issued by the Registrar of Co-operative Societies to enhance the age of retirement of the employees from 58 to 60 years governing the service conditions of the employees and the second respondent has passed a resolution on 17.08.2010 and enhanced the age limit from 58 to 60 years and it was approved by the first respondent. Rule 35 of the Service Regulation governs the retirement age of all the employees. Originally, prior to resolution, retirement age was 58 except for last grade employees, whose retirement age is 60 years. The resolution was approved on 25.08.2010. Thereafter, the same has been challenged in an earlier Writ Petition in W.P.No.19712 of 2010 by the Pondicherry Co-operative Urban Bank Employees Welfare Union which has been dismissed by this Court. In the above Writ Petition, this Court in paragraphs 11, 12 and 13 has held as follows :

> "11.A perusal of the said provision would show that under Section 33(2) of the Act, the administrator subject to the control of the Registrar has power to exercise all or any of the functions of the committee. Therefore, it cannot be said that administrator, namely, the second respondent does not have the

power or authority to pass the resolution. The reliance made by the learned counsel for the petitioner on the definition of 'Board' stipulated under the subsidiary regulation cannot be accepted. The definition of 'Board' as mentioned in subsidiary regulation is extracted hereunder:

"BOARD" means The Board of Directors constituted as per the provisions of the Bye-Laws of the Bank."

12. The said definition speaks only about the constitution of the 'Board'. It does not say that the powers of the 'Board' cannot be exercised by the administrator. If such a contention is accepted then the second respondent will not have any power even to take any action. In this connection, it is useful to refer Bye-law 47, which speaks about the over-riding effect of the Act and Rules. The said Bye-law is extracted hereunder:

"47.Over-riding effect of the Act and Rules: In all matters touching the constitution or business of the Bank, the provisions of the Pondicherry Co-operative Societies Act 1972 and the Rules framed there under shall prevail over the Bye-laws of the Bank."

13.A conjoint reading of Section 33(1) read with the definition of 'Board' under the regulation and regulation 46 which speaks about the power to amend as well as the Bye-law 47 would clearly establish the fact that the second respondent being the administrator is having absolute competency to pass a resolution by way of amending the regulation. Further, the Bye-law 47 itself is very specific that in all matters touching the constitution or business of the Bank, the provisions of the Act and Rules shall prevail over the Bye-law. Therefore, inasmuch as the regulation having been framed under the Bye-laws that too by the second respondent, there is absolutely no basis for holding that the second respondent does not have the power or authority to pass the resolution as approved by the first respondent."

7. In the above judgment, this Court has infact held that the administrator is having absolute competency to pass a resolution by way of amending the regulation. The service conditions of the employees are governed by the regulations. These facts are not disputed. Though the retirement age was enhanced in the year 2010, the impugned direction has been issued on

06.11.2019 by the Registrar by taking note of the fact that since the age was increased 20 years back, to pass a resolution. Due to financial position, the Registrar decided to withdraw the option given to enhancement of retirement age from 58 to 60 years. Pursuant to the same, the Managing Director on 04.12.2019, sent a communication to the Registrar of Co-operative Societies stating that since the Bank is placed under Supervisory Action Framework by the Reserve Bank of India and instructed the bank to reduce the staff strength and administrative cost as loss has been raised up to 9.10 crores, decided to curtail the retirement age from 60 years to 58 years and the resolution in this regard has been passed by the Administrator in the meeting held on 30.11.2019 to amend the Subsidiary Regulation No.35[1] governing the service condition of the employees of the Puducherry Co-operative Urban Bank Limited and sought approval.

8. It is relevant to note that the Registrar has not approved the resolution passed by the Administrator immediately. However, the Registrar by letter dated 13.08.2020 requested the Managing Director to amend the regulation since some of the Trade Unions are against the proposal to reduce the retirement age from 60 to 58 years and to submit the revised proposal to the Registrar. A perusal of the records produced by the respondents reveals that all the unions

unanimously agreed to reduce the retirement age from 60 to 58 years to reduce the financial burden of the society. The Puducherry Cooperative Bank Employees Association passed a resolution to effect that they unanimously agreed to reduce the retirement age from 60 to 58 years on 23.04.2020 and Puducherry Co-operative Department has also agreed to reduce the retirement age from 60 to 58 years on 23.04.2020. Thereafter, it appears that the meeting has been conveyed with all the unions on 21.01.2021 in the bank head office premises. After consensus arrived, the amendment to regulation No.35 to reduce the retirement age of all the bank employees to 58 years have been approved by the Registrar on 28.01.2021. Thereafter, notice was issued on 03.02.2021. The said amendment took effect from 01.04.2021 and informed to all the staffs that staffs of the bank would be retired on attaining the age of 58 years. Therefore when the service conditions of the employees are governed by the regulations and the power is also vested to the Administrator to amend the regulation and the decision has been taken with the consent of the all the unions of the bank, now the contention of the writ petitioners that the approval of the Reserve Bank of India has not been obtained cannot be countenanced at this stage.

9. It is relevant to note that the decision to withdraw the option to reduce the age of retirement has been taken in the year 2019 by the Registrar and the amendment has also been made in the same year and sent for approval. The petitioners are infact fence sitter and they are aware of all the proceedings. Some of the employees have challenged the notice in Writ Petitions in W.P.Nos.9314 and 9319 of 2021 and this Court has granted interim Order for a period of six months and they have continued till the date of their superannuation in May 2022 and April 2022. The petitioners also, in order to take the same benefit have filed these Writ Petitions. It is relevant to note that the entire service conditions is governed by the regulations and it can be amended and the amendment is made with the consent of all the trade unions and the petitioners cannot challenge the same belatedly. Other contention that the approval of the Reserve Bank of India has not been obtained under section 81 of the Co-operative Societies Act . It is relevant to extract Section 81 of the Co-operative Societies Act, which reads as follows :

> 81. Registrar's power to give directions in the public interest, etc.- (1) Subject to the rules made in that behalf, where the Registrar is satisfied that in the public interest or for the purposes of securing proper implementation of co-operative

production and other development programmes, approved or undertaken by the Government or to secure the proper management of the business of the society generally, or for preventing the affairs of the society being conducted in a manner detrimental to the interests of the members, or of the depositors or the creditors thereof, it is necessary to issue directions to any class of societies generally or to any society or societies in particular, he may issue directions to them from time to time, and all societies or the society concerned, as the case may be, shall be bound to comply with such directions:

Provided that in so far as co-operative banks are concerned, the Registrar shall exercise the powers only with prior consultation with the Reserve Bank of India.

10. A careful perusal of the proviso for the above section makes it clear that the Registrar shall exercise the powers only with prior consultation with the Reserve Bank of India. Hence, this Court is of the view that such an approval is required only in respect of the business transaction relating to the banking business of the society. The Banking Regulation Act which have been made applicable to the Co-operative Societies in part V of the Said Act does not

specify any permission specifically with regard to the service condition of the employees of such institution. In the absence of any special provision directing the approval in respect of service matters, the contention that the approval of the Reserve Bank of India is required does not have any merits. Further the age of superannuation is always governed by the regulations applicable to the Society and when the Co-operative Society has taken a policy decision amending the regulation, the same cannot be challenged at a belated stage.

11. Yet another contention of the learned counsel for the petitioner that only the Government has power under section 167 of the Puducherry Co-operative Societies Act to regulate the service of the employees of the Bank. It is relevant to extract Section 167 of the Puducherry Co-operative Societies Act which reads as follows :

> "167. Officers and employees of societies.- The Government may, in consultation with the Council.- (a) make rules for regulating the qualifications, duties and responsibilities, remuneration, allowances and other conditions of service of the officers and servants of different classes of societies;
>
> (b) constitute boards for the recruitment of officers and

servants required by the societies and to advise on matters relating to service conditions; and

(c) direct any apex or central society to constitute and maintain a pool or common cadre of personnel to work as officers in the affiliated societies."

The above section makes it clear that the Government may, in consultation with the Council, make rules for regulating the qualifications, duties and responsibilities, remuneration, allowances and other conditions of service of the officers and servants of different classes of societies. No materials whatsoever has been placed to show that the Government has framed relevant service conditions of the employees of the co-operative Society. Admittedly, in this case, only regulations and bye laws are governing the service conditions of the employees of the Co-operative society. The second respondent being an Administrator has power under Section 33[1] of the Co-operative Societies Act and the resolution has also been passed. The petitioners, who are the fence sitters, wanted to take advantage of the interim Orders that has been availed by the persons who had filed earlier Writ Petition, has filed the present Writ Petitions. In such view of the matter, when the resolution has been passed after obtaining consent of all the stake holders, namely Unions of all the employees, I do not find any merits in these Writ Petitions.

12. Accordingly, these Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

.10.2023

Index:Yes/No

Neutral Citation : Yes/No

vrc

To,

1. The Registrar of Co-operative Societies,
   Government of Puducherry,
   Co-operative Department, VVP Nagar,
   Thattanchavadi Post, Puducherry – 605 009.

2. The Administrator,
   Puducherry Co-operative Urban Bank Ltd. P.14,
   No.197, Jawaharlal Nehru Street, Puducherry – 605 001.

3. The Managing Director,
   Puducherry Co-operative Bank Limited,
   No.194, Jawaharlal Nehru Street, Puducherry – 605 001.

4. The Reserve Bank of India,
   No.16, Rajaji Salai, Fort Glacis, Chennai – 600 001.

5. Union of India, Rep. by its Secretary,
   Co-operative Department, Puducherry.

N.SATHISH KUMAR, J.

vrc

Order in
W.P.Nos.17181, 17191 & 17194 of 2023

04.10.2023