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W.A.(MD)Nos.1161 of 2013 & 1233 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)Nos.1161 of 2013 & 1233 of 2016

and

M.P.(MD)No.2 of 2013

in

W.A.(MD)No.1161 of 2013

The Special Officer / Management,
DD.116. Dindigul Co-operative Primary Agricultural
and Rural Development Bank Limited,
No.58, New Agraharam, Dindigul-624 001.

K.Sathyamurthy

... Appellant
in W.A.(MD)No.1161 of 2013
... Appellants
in W.A.(MD)No.1233 of 2016

Vs.

1.The Joint Registrar of Co-operative Societies,
Dindigul Region, Dindigul-624 004.

2.K.Sathyamurthy

... Respondents
in W.A.(MD)No.1161 of 2013

1.The Joint Registrar of Co-operative Societies,
Dindigul Region, Dindigul-624 004.

2.The Dindigul Co-operative Primary Agricultural
and Rural Development Bank Limited,



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No.D.D.116, rep. by its Special Officer / Administration,
58, New Agraharam, Dindigul-624 001.

... Respondents

in W.A.(MD)No.1233 of 2016

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COMMON PRAYER: Writ Appeals filed under Clause 15 of Letters Patent, praying this Court to set aside the common order dated 22.02.2013 made in W.P.(MD)Nos.6508 of 2005 and 2544 of 2006 on the file of this Court.

For Appellant : Mr.S.Seenivasagam
(in W.A.(MD)No.1161 of 2013)

For Appellant : Mr.R.Pon Karthikeyan
(in W.A.(MD)No.1233 of 2016)

For R1 : Mr.R.Ragaventhiran,
(in both W.As.) Government Advocate

For R2 : Mr.R.Pon Karthikeyan
(in W.A.(MD)No.1161 of 2013)

For R2 : Mr.S.Seenivasagam
(in W.A.(MD)No.1233 of 2016)

COMMON JUDGMENT

(Judgment of the Court was delivered by ***R.SURESH KUMAR, J.***)

These Writ Appeals have been directed against the common order passed by the Writ Court dated 22.02.2013 made in W.P.(MD)Nos.6508 of 2005 and 2544 of 2006.



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2.The appellant in W.A.(MD)No.1233 of 2016 was an employee of the appellant in W.A.(MD)No.1161 of 2013, namely, Dindigul Co-operative Primary Agricultural and Rural Development Bank Limited.

3.The said employee was dismissed from service on 18.08.1998 by the Bank in a culmination of disciplinary action. Aggrieved over the said order of the dismissal, the employee approached this Court and filed Writ Petition, where it seems that this Court directed the employee to go before the revisional authority under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the Act').

4.Pursuant to the said directive issued by this Court, driving the employee to go before the revisional authority, which, in fact, was the correct legal position, as the aggrieved parties arising out of any orders passed under the provisions of the Act, to file a revision before the revisional authority under Section 153 of the Act, the employee filed a revision petition in Revision Petition No.36 of 2003, which was decided by the Joint Registrar of Co-operative Societies, Dindigul Region, by order dated 26.12.2003, thereby the order of dismissal was set aside by the



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revisional authority on the ground of illegality and against the principles of natural justice and consequently, directed the Bank to reinstate the employee into service, however, backwages were denied and also awarded punishment of stoppage of increment of the employee for two years with cumulative effect.

5. Aggrieved over the said order passed by the revisional authority dated 26.12.2003, even though the employee was reinstated on 30.01.2004, since backwages for the non-working period was denied by the said order of the revisional authority and punishment of stoppage of increment for two years with cumulative effect was awarded, the employee filed a revision petition under Section 154 of the Act. The said revision petition was also dismissed by confirming the order passed by the revisional authority.

6. Challenging both the orders ie., the order passed by the revisional authority under Section 153 of the Act as well as the order passed in the revision petition under Section 154 of the Act, both the employee as well as the Bank filed separate Writ Petitions. The employee filed W.P.(MD)No.6508 of 2005, whereas the Bank filed W.P.(MD)No.2544 of



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2006. Both the Writ Petitions were heard together by the learned Single Judge of the Writ Court, who passed a common order on 22.02.2013. In the said common order, the learned Single Judge has held that in exercise of its power, this Court under Article 226 of Constitution of India did not propose to convert itself as an appellate authority over the findings of the revisional authority, which is a fact finding authority. Thus, the order passed by the revisional authority is being a reasoned order and without any perversity or illegality, the same did not call for any interference at the hands of this Court and therefore, on that ground both the Writ Petitions were dismissed as devoid of merits.

7. Aggrieved over the said order passed by the Writ Court dated 22.02.2013, whereby the Writ Petitions filed by both the employee as well as the Bank were dismissed, they preferred these Intra-Court Appeals, where against W.P.(MD)No.2544 of 2006, W.A.(MD)No.1161 of 2013 has been filed and against W.P.(MD)No.6508 of 2005, W.A.(MD)No.1233 of 2016 has been filed. That is how these Writ Appeals came up for consideration before this Bench.



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8.We have heard the learned counsel for the Bank and the learned counsel for the employee.

9.The learned counsel for the employee submitted that when the revisional authority found that the order passed by the disciplinary authority, dismissing the services of the employee, was found to be unlawful on the ground of violation of principles of natural justice and based on which, the very punishment itself was set aside, the revisional authority could not have gone further to impose punishment. Even though it is a minor punishment of cut in increment for two years with cumulative effect, that is beyond the jurisdiction of the revisional authority. Therefore, that aspect had been agitated by the employee before the Writ Court, which was not considered by the learned Single Judge in proper perspective. Hence, the learned counsel for the employee would submit that the employee is entitled to get the benefits de hors the punishment of cut in increment for two years and also the employee is entitled to get benefit of backwages for non-working period. Further, he would submit that the employee though retired long back and he is now aged about 74 years, he



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has not been paid any retirement benefits. Therefore, that also should be paid to him.

10.However, on the other hand, the learned counsel for the Bank, instead of arguing the case on merits, has made submissions by raising preliminary issue that the learned Single Judge, who passed the order impugned, erred in giving such finding, despite the ground was raised before him that the revisional authority under Section 153 of the Act does not have power to entertain such kind of revisions arising out of the disciplinary action taken against the employee, who is not a common cadre employee, but the employee of the Society alone.

11.He would further enlarging his arguments state that under Section 153 of the Act, the power of the revisional authority is only limited to certain cases and in respect of other cases like the present one, which was projected by the employee concerned, it ought to have been agitated before the other forum like Labour Court and not before the revisional authority under Section 153 of the Act.



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12.In this context, though a specific ground was raised by the Society in Ground 'E' in the Writ Petition, that was not considered in proper perspective by the learned Single Judge and a finding was given by the learned Single Judge on this point by taking note of the earlier judgment of the Division Bench of this Court in the matter of ***P.Eswaramoorthy and 15 others Vs. R.J.B.Leoraj and 10 others*** reported in ***2008 (6) CTC 770***.

13.The said judgment had been taken into aid by the learned Single Judge and paragraph 24 ie., operative portion of the said judgment was quoted, where the learned Single Judge had taken only the point (b) of paragraph 24, but other points have not been taken note of, especially (a). Therefore, there is a dichotomy between them. Whenever the dispute arises, the employee, who is a common cadre alone would avail remedy of revision under Section 153 of the Act and others have to necessarily go before other forum especially, before the Labour Court, Industrial Tribunal to raise within the meaning of Industrial Disputes Act, 1947.



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14.We have considered the said submissions made on either side.

Insofar as the point raised by the learned counsel for the Bank is concerned, the issue as to whether the power vested with the Registrar of Co-operative Societies under Section 153 of the Act is wide power or limited power is no more *res-integra*.

15.The language used in Section 153 of the Act is very clear and unambiguous.

16.After having gone through the said provisions, even though we stated before the learned counsel for the Bank that the point as to the jurisdiction and power of the revisional authority under Section 153 of the Act has already been held in the judgment of the Division Bench of this Court cited supra, despite that the learned counsel for the Bank is continuously pressing upon the said point without having any substance on the legal backing.

17.Insofar as the judgment of the Division Bench in ***P.Eswaramoorthy's*** case is concerned, this issue along with other issues



had been considered and wide spectrum of propositions have been culled out by the Division Bench in paragraph 24, which reads thus:-

“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 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



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Section 90 of the 1983 Act is not available for employees of Co-operative Societies against the orders of termination has been correctly decided.”

18.As the law has been declared in those points, having been taken note of the same, the learned Single Judge in fact extracted paragraph 24 of the said judgment and ultimately, concluded that the power of the revisional authority under Section 153 of the Act is wide and unambiguous. Therefore, there could be no restrictions on anyone to state that no revision can be filed against such order like disciplinary authority's orders unmindful of the facts, whether the employee is a common cadre or the employee of the society alone. This dichotomy between common cadre and the employee of the society has not been specifically mentioned in Section 153 of the Act and this has been discussed in paragraph 24 of the said judgment of the Division Bench in ***P.Eswaramoorthy's*** case, which made it clear that the employee of the society can approach the Registrar or any competent authority under Section 153 of the Act to revise any order passed by the Co-operative Society relating to the disciplinary action taken against him or denial of promotion or wrong fixation of seniority etc.. Therefore, the



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Division Bench in ***P.Eswaramoorthy's*** case has declared the law that it is open to the employee to approach either the revisional authority under Section 153 of the Act or any other competent authority. Therefore, the option is always there on the aggrieved party, here is an employee.

19. Moreover, it is further to be noted that at the first instance the employee had approached this Court by filing Writ Petition against the order passed by the disciplinary authority. However, this Court did not entertain the said Writ Petition and disposed of the same by driving the employee to approach the revisional authority under Section 153 of the Act. That is how the employee approached the revisional authority and filed a revision, which was ordered mainly in favour of the employee, except denial of backwages as well as minor punishment of cut in increment. As against which, he filed a revision under Section 154 of the Act and that was also concluded, confirming the order of the revisional authority. Only against such order, the employee as well as the Bank filed separate Writ Petitions as stated supra. Therefore, the approach on the part of the employee before the revisional authority, apart from his right to have such approach before the revisional authority, has been made pursuant to the directive issued by this Court in the first round of litigation.



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20.Secondly, before the revisional authority that point has not been raised and the Bank admitted its jurisdiction before the revisional authority. Thereafter, when the review was filed even before that authority, the jurisdiction has been admitted. Therefore, only on the merits if at all the Bank aggrieved, it could have filed Writ Petition, which, in fact, filed. Further, in that Writ Petition, first time the ground has been raised saying that the Registrar does not have power under Section 153 of the Act to entertain such disciplinary proceedings by way of revision. That was also considered and a clear answer has been given by the learned Single Judge by taking the aid of the judgment of the Division Bench of this Court in ***P.Eswaramoorthy's*** case as cited supra.

21.When that being the position, the learned counsel for the Bank, despite this Court repeatedly pointed out all this legal position, has made vein attempt by taking precious and considerable judicial time of this Court. Therefore, we are of the view that the said plea raised by the learned counsel for the Bank / appellant in W.A.(MD)No.1161 of 2013, who is the respondent in other Writ Appeal, can be rejected and the Writ Appeal can be dismissed with some costs.



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22.Insofar as the plea raised by the employee that once the revisional authority has set aside the punishment awarded against the employee on the ground that it is against the principles of natural justice, the entire punishment shall go is concerned, if the prior punishment is vanished, the question of giving any minimum punishment even does not arise. Therefore, the punishment of cut in increment for two years awarded by the revisional authority confirmed by the review authority is against the settled principles of law and therefore, he seeks interference of the order passed by the revisional authority, which has been confirmed by the Writ Court. The learned counsel has also made submissions that during the non-working period, since the very punishment has been found out as against the principles of natural justice and reinstatement also has been ordered, which has been accepted by the Society, the employee is entitled for backwages.

23.We have considered the said plea raised by the learned counsel for the employee.



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24. Though the revisional authority found that the punishment awarded against the employee is against the principles of natural justice, certainly, the revisional authority could have remitted the matter back to the disciplinary authority for further enquiry or de novo enquiry giving opportunity of hearing to the employee.

25. Further, such an option has not been given to the employer. The revisional authority directed the employer to reinstate the employee directly.

26. Therefore, the employee after this length of time cannot seek for even de nova enquiry. If such enquiry is ordered now, at this juncture, we do not know what would be the final result of such enquiry, as the employee is already aged about 74 years and he was already reinstated and served for the rest of the period and peacefully retired. Therefore, he need not press the said issue of the backwages for the non-working period, since that period has been denied backwages by adopting the principle of 'No Work No Pay', which, in fact, the correct approach on the part of the revisional authority as well as the review authority.



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27.However, insofar as the complaint that has been made by the learned counsel for the employee that the retirement benefits even though, for which, he is entitled to, are not so far disbursed, is concerned, that aspect can be looked into by the appellant Bank and if at all such retirement benefits are due payable to the employee, that can be calculated and be paid, otherwise if retirement benefits had already been paid, communication to that effect with calculation memo be made by the Bank communicating the same to the employee.

28.In view of the aforesaid discussions, we are inclined to dispose of these Writ Appeals on the following terms that both the Writ Appeals fail therefore, they are deserved to be dismissed, accordingly, dismissed. However, insofar as the dismissal of W.A.(MD)No.1161 of 2013 is concerned, for the reasons stated and discussed herein above, we are inclined to impose cost of Rs.10,000/- (Rupees Ten Thousand Only) on the appellant Bank, which shall be paid to the High Court Legal Services Authority attached with this Bench, within a period of one month from the date of receipt of a copy of this judgment. Insofar as the complaint made by



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the employee that still some more retirement benefits have not been paid is concerned, there shall be a direction to the appellant Bank to look into the said aspect and if anything is still to be paid by way of retirement benefits, the same can be calculated and paid within a period of one month, otherwise if it has been paid, communication to that effect be sent by the Bank to the employee with the necessary supporting documents, including the calculation memo within a period of one month from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) & (K.K.R.K, J.)

23.06.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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R.SURESH KUMAR, J.
AND
K.K.RAMAKRISHNAN, J.
MYR

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