



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6908 OF 2021

1. Aurangabad District Co-operative Societies Group Secretaries, Association, Laxmi Apartment, Nirala Bazar, Aurangabad, Through its President, Maroti S/o. Tanaji Jadhav, Age. 52 years, Occu. Service, R/o. Parijatnagar, N-4, CIDCO, Aurangabad, District Aurangabad.
 2. Vijay Bapurao Fasate, Age. 45 years, Occu. Service, R/o. Bidkin, Taluka Paithan, District Aurangabad.
 3. Subhash Faulchand Bainade, Age. 42 years, Occu. Service, R/o. Anand Vihar, Paithan Road, Aurangabad, District Aurangabad.
 4. Pradeep Vitthalrao Harde, Age. 39 years, Occu. Service, Harsool, Aurangabad, District Aurangabad.
- ... Petitioners.

Versus

1. The State of Maharashtra, Through the Secretary for Co-operation Department, Mantralaya, Mumbai.
2. The Commissioner for Co-operation and the Registrar, Co-operative Societies, Maharashtra State, Pune, 2nd Floor, New Central Building, Opposite B.J. Medical College Camp, Pune 411 001.
3. The Regional Joint Director, Co-operative Societies, Aurangabad Division, Aurangabad.

4. The District Deputy Registrar,
Co-operative Societies, Aurangabad,
District Aurangabad.
5. District Supervisory Committee,
C/o. Office of the District Deputy Registrar,
Co-operative Societies and The President of District
Supervisory Committee, Shakti Sahakar Building,
Opposite Kartiki Hotel, C.B.S. Road, Aurangabad.
6. Aurangabad Zilla Dekh Rekh Sahakari Sanstha Limited,
Aurangabad, Laxmi Apartment, Nirala Bazar,
Aurangabad. Through its Secretary.
7. The Aurangabad District Central
Co-operative Bank Limited,
Adalat Road, Aurangabad,
Through its Managing Director. ... Respondents.

...

Advocate for Petitioners : Mr. V.H. Dighe
 AGP for Respondent Nos. 1 to 5 : Mr. N.S. Tekale
 Advocate for Respondent No. 6 : Mr. S.B. Kakde
 Advocate for Respondent No. 7 : Mr. K.J. Suryawanshi

...

**CORAM : S.G. MEHARE &
 SHAILESH P. BRAHME, JJ.**

**RESERVED ON : 11 NOVEMBER 2024
 PRONOUNCED ON : 19 NOVEMBER 2024**

JUDGMENT [*Per : Shailesh P. Brahme, J.*] :

1. Rule. Rule is made returnable forthwith with the consent of the parties.
2. The petitioners seek implementation of directions/ orders dated 26.03.2021 issued by respondent no. 3 / Regional Joint Director, Co-operative Societies, Aurangabad, and also

directions for disbursement of arrears of salary to the group secretaries in the Aurangabad District.

3. Petitioner no. 1 is an Association, espousing the cause of group secretaries who are deprived of arrears of salary despite repetitive directions issued by the Competent Authority under Section 79 (1) of Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'Act' for the sake brevity and convenience). The group secretaries 359 in number are the members of petitioner no. 1 who are the beneficiaries. Petitioner nos. 2 to 4 are the office bearers of petitioner no. 1.

4. It is the case of the petitioners that the entitlement of the arrears of salary has already been decided by the co-ordinate bench in the matter of *Aurangabad District Co-operative Societies Group Secretaries Association Versus The State of Maharashtra and Others*, in Writ Petition No. 11124/2010 vide judgment and order 24.02.2011. The directions given by the co-ordinate bench were not complied with. The petitioners were required to make representations from time to time claiming disbursement of arrears of salary. By communication dated 19.09.2019, respondent no. 4 / District Deputy Registrar recommended the entitlement of the petitioners. Respondent no. 5/Committee also directed respondent no. 7 / Bank to comply with the directions vide letter dated 24.03.2021. On 17.03.2021, respondent no. 4 / District Deputy Registrar requested the Regional Joint Registrar to take steps under Section 79 (1) of the Act. Lastly, respondent no. 3/Regional Joint Director by communication dated 26.03.2021 directed respondent no. 7 / Bank to comply with the orders of the High

Court passed in Writ Petition No. 11124/2010 and 9525/2010 and to submit the compliance report.

5. Learned counsel Mr. V.H. Dighe appearing for the petitioners submits that respondent no. 7 / Bank is liable to disburse the arrears of salary of the members of petitioner no. 1 in view of the directions dated 06.12.2010. He would submit that respondent no. 7 / Bank had preferred Writ Petition No. 3836/2022 challenging the directions dated 06.12.2010 as well as 26.03.2021 issued Section 79 (1) of the Act. The division bench dismissed the Writ Petition by judgment and order dated 22.02.2024. He would submit that having suffered adjudication twice, there is no excuse for respondent no. 7 / Bank to deny the payment of the arrears of salary.

6. The learned counsel would also point out the order dated 22.02.2024 passed in the present Writ Petition. In pursuance of the said order, it is contended that the petitioners have filed affidavit along with the chart of break up of the arrears. The members those who are in service are entitled to receive Rs. 14.83 Crores and Rs. 3.25 Crores for those who are superannuated/died from respondent no. 7 / Bank. It is submitted that respondent no. 7 / Bank has failed to comply with the orders of the High Court and disburse the arrears without any valid reasons.

7. Learned counsel further submits that the corrigendum issued to the earlier directions on 15.03.2022 deleting clause 4 from the original direction dated 06.12.2010 was prospective. The reliance is placed on the order passed in the similarly situated

claims in Writ Petition No. 9525/2010. It is further submitted that respondent no. 7 though received an amount of Rs. 350 Crores approximately under the loan waiver scheme failed to obey the orders. He tenders on record the rough calculations of the balance amount of Rs. 20,13,90,665/- as an outstanding amount.

8. Respondent no. 7 / Bank is the contesting party and has filed an affidavit-in-reply. Learned counsel Mr. K.G. Suryawanshi appearing for it submits that the writ petition is not maintainable as respondent no. 6 is not a State within the meaning of Article 12 of the Constitution of India. It is submitted that Writ Petition No. 8049/2015 was on earlier occasion dismissed. It is vehemently submitted that the members of petitioner no. 1 / Association are not entitled to the arrears of salary. There are disputed questions of facts. It is further submitted that there is no employer-employee relationship between the members of petitioner no. 1 and respondent no. 7 / Bank. Respondent no. 6 / Co-operative Society has engaged the services of the members of petitioner no. 1. The service conditions are regulated by the bye-laws of respondent no.6. It is liable to disburse the salary.

9. Learned counsel would further submit that vide corrigendum dated 15.03.2022 earlier clause 4 of direction dated 06.12.2010 was deleted. In view of the said amended directions, the petitioners are not entitled to receive the arrears of salary. He would submit that respondent no. 7 / Bank already credited its contribution and for that purpose the chart showing the crediting of the amount of Rs. 28.83 Crores is brought to our notice. It is submitted that respondent no. 6 / Co-operative Society is not

disbursing the amount to members of petitioner no. 1 despite having corpus in the account. It is further submitted that the members of petitioner no. 1 have failed to discharge their duties. Some of them are not working and still they are claiming arrears which would be unjust enrichment.

10. Learned counsel tenders on record the judgments passed in the matters of *S.S. Rana Versus Registrar, Co-operative Societies and Another*, **2006 AIR SCW 3723** and *Solapur District Co-operative Versus State of Maharashtra*, in Writ Petition No. 5758/2021. It is submitted that Section 69 A was deleted on 14.02.2013 and hence, respondent no. 7 / Bank is not liable. The new modalities introduced by direction dated 15.03.2022 are in vogue and respondent no. 7 / Bank has been contributing.

11. Learned AGP appearing for respondent nos. 1 to 4 adopts the submissions of respondent no. 7. He would submit that the members of respondent no. 1 are incompetent and failed to recover the loan. After taking the feedback, the new directions were issued on 15.03.2022 deleting clause 4 of the direction dated 06.12.2010. Reliance is placed on the order dated 17.10.2016 passed in Writ Petition No. 8049/2015.

12. Learned counsel Mr. S.B. Kakde appearing for respondent no. 6 supports the claim of the petitioners. He adopts the submissions of the petitioners.

13. We have considered rival submissions of the parties. The short question that falls for consideration is as to the implementation of earlier directions issued by the co-ordinate

bench in Writ Petition No. 11124/2010 vide judgment and order dated 24.02.2011 followed by the instructions of respondent no. 3 / Regional Joint Director issued on 26.03.2021.

14. Petitioner no. 1 had filed Writ Petition No. 11124/2010 claiming arrears of salary for its members in pursuance of directions dated 06.12.2010 issued under Section 79 (1) of the Act. In that petition, reliance was placed on orders passed on 14.12.2010 in Writ Petition No. 9525/2010. Respondent no. 7/ Bank was held liable to comply with the directions dated 06.12.2010 and the petition was disposed of vide order dated 24.02.2011. Respondent no. 7/ Bank did not challenge the order passed by the Division Bench. It could have raised all grievances regarding the entitlement of members of petitioner no. 1. Thereafter, directions issued on 06.12.2010 and 26.03.2021 were challenged by respondent no. 7 by Writ Petition No. 3836/2022. By reasoned order, the said petition was dismissed. The order of dismissal has not been challenged further by respondent no. 7.

15. Having suffered adjudication in Writ Petition No. 11124/2010 and thereafter, in Writ Petition No. 3836/2022, it is not open for respondent no. 7 / Bank to challenge the entitlement of the members of petitioner no. 1 to receive arrears of salary.

16. The objection is raised pertaining to the maintainability of the Writ Petition against respondent no. 7 / Bank as it is not a State defined under Article 12 of the Constitution of India.

17. Learned counsel for respondent no. 7 referred to the judgment of the Supreme Court in the matter of *S.S. Rana* (supra), to buttress the submission that the Writ Petition is not maintainable. In that matter employee of the Co-operative Society had filed a petition before the High Court against the Co-operative Society seeking the quashment of termination order and consequential benefits. In that context, it was held that the Co-operative Society was not a State within the meaning of Article 12 of the Constitution of India.

18. The objections of the maintainability of Writ Petitions against respondent no.7/Bank could have been raised earlier in those Writ Petitions. However, it was never raised. As per the principles of constructive res judicata, it is not permissible now for respondent no. 7 / Bank to challenge the entitlement of the members of petitioner no. 1 on any count. Both the orders passed by the co-ordinate benches are final and bind respondent no. 7. We, therefore, do not approve the submissions of learned Advocate Mr. K.G. Suryawanshi made in this regard.

19. The co-ordinate bench passed the order dated 22.02.2024 in the present petition directing the parties to submit a chart along with affidavits giving the break-up of the amount claimed. In pursuance of that, the petitioner has filed an affidavit and claimed Rs. 14,83,82,586/- for the members who are in service and Rs. 3,25,99,518/- for the retired or dead members, totaling Rs. 18,09,82,104/-. Respondent no. 7 / Bank is bound to comply with the directions of the co-ordinate benches referred to above. No excuse can be entertained. It is not open for respondent

no. 7 to contend that respondent no. 6 engaged the services of the members as per their byelaws and it is liable to pay the arrears. Neither can a plea be entertained that the employer-employee relationship between parties does not exist.

20. Learned Advocate Mr Suryawanshi harped upon the modified directions dated 15.03.2022, deleting clause 4 of the earlier direction dated 06.12.2012. The directions issued on 15.03.2022 are under Section 79 (1) of the Act. We have gone through those directions. Those are prospective. The substantial claim of the petitioners was since before 15.03.2022. Respondent nos. 1 to 5 also pointed out the circumstances which led to issue the directions dated 15.03.2022 but that would not deprive the rights of the members of petitioner no. 1 which are crystallized by distinct orders passed by co-ordinate benches. The claims emerging after 15.03.2022 would be regulated by those directions.

21. It is pointed out by Mr Suryawanshi that Section 69 A was deleted with effect from 14.02.2013 and a new Section 69 B was introduced. The deletion of earlier 69 A or insertion of 69 B would not affect the entitlement of petitioners. It was open for respondent no. 7 / Bank to agitate this issue in Writ Petition No. 3836/2022. The counsel for respondent no. 7 is unable to point out from pleadings on the grounds of objections that it was raised before the division bench. Rather it is candidly admitted that those objections including the objection for the maintainability of the writ petition were not argued. Learned counsel referred to concluding paragraph no. 10 of the judgment dated 22.02.2024 to point out that the petition was dismissed on laches without going

into the merits of contentions. We are not convinced of the justification of learned counsel. Respondent no. 7 / Bank could have challenged the judgment dated 22.02.2024 passed in Writ Petition No. 3836/2022. Now there is no alternative for respondent no. 7 / Bank than to comply with the directions.

22 Our attention is invited to the order dated 17.10.2016 passed in Writ Petition No. 8049/2015 in the case of *Keshav Narayan Kshirsagar Versus State of Maharashtra*. It was a petition filed by an individual member claiming unpaid salary and the claim was opposed by the then respondents. It was contended that the petitioners had not worked since 19.11.2011 and failed to perform duties. Being a disputed question of facts, the petition was dismissed. We have already recorded that the entitlement of the members of petition no. 1 cannot be gone into the present proceedings. Therefore, considering the difference in the material particulars, the order of the earlier bench cannot be made applicable. This order would not be an impediment in granting relief to the present petitioners.

23. There are rival submissions made by the parties on the count that respondent no. 6 / Co-operative Society has a balance amount to satisfy the claims of its members. However, we did not come across any express material indicating that respondent no. 6 was given funds or grants to meet the requirement. The benefits of loan waived scheme may not be tangible.

24. In the present matter, respondent no. 7 is estopped from taking a plea that Writ Petition is not maintainable. Respondent no. 7 / Bank is bound by the directions issued under Section 79 (1) of the Act. Interestingly, the Bank had paid part of

the outstanding amount to the petitioners. The present case is under the provisions of the Maharashtra Co-operative Societies Act. Considering the difference in the facts the judgment is of no help to respondent no. 7.

25. Learned Advocate Mr Suryawanshi also relies on the judgment of *Solapur District Co-operative* (supra). Our attention is invited to paragraphs nos. 17, 21, 24, 25, 29 to 31. The petitioner in that matter was also claiming implementation of direction dated 06.12.2010. It was opposed on the ground that on 15.03.2022 the earlier clause 4 was deleted. By amending the petition, directions dated 15.02.2023 were also challenged. Before the co-ordinate bench predominant submissions were about the validity of the order dated 15.03.2022. Ultimately, it was held that it was permissible for the competent authorities to modify the earlier order dated 06.12.2010 and it was within their competence to issue order dated 15.02.2022. In conclusion, the following are the observations :

“31. Therefore, there is no merit in the main challenge that the order dtd. 15/3/2022 being corrigendum cannot modify or clarify the statutory order issued on 6/12/2010 and that it is contrary to the orders issued by this Court. There is no challenge on the merits of the order dtd. 15/3/2022 in the pleadings and the arguments made during oral arguments are countered by the Respondents to demonstrate that the order dtd. 15/3/2022 is a bona fide exercise of power.”

26. The facts before the co-ordinate bench are different than the facts in the matter at hand. We have already observed that the entitlement of the members of petitioner no. 1 cannot be gone into. The decision of the two co-ordinate benches passed in Writ Petition No. 11124/2010 and thereafter, Writ Petition No. 3836/2022 are in favour of the petitioners. They are final and binding. The petitioners are not disputing the validity of the order dated 15.03.2022 or the competency to pass the said direction. Considering the facts of the present petition and the observations recorded by us, the ratio laid down in *Solapur District Co-operative* (supra) is not applicable to the present case.

27. In view of our discussion, we find that the petition deserves to be allowed. Hence, we pass the following order :

ORDER

i. Respondent no. 7 / Bank is bound by the directions dated 26.03.2021 issued by respondent no. 3 / Regional Joint Registrar and it shall disburse the arrears of salary to the members of petitioner no. 1.

ii. Any disbursement already made by respondent no. 7 shall be adjusted and the balance amount be paid by crediting it to the account of respondent no. 6 within six weeks from today.

iii. In case of failure of a disbursement within the prescribed time, the office bearers of respondent no. 7 shall be liable to be proceeded

with under the provisions of Maharashtra Co-operative Societies Act.

iv. Rule is made absolute in the above terms.
There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

[S.G. MEHARE, J.]

LATER ON :

28. After pronouncement of the judgment, learned counsel for Respondent No.7 Mr. Suryawanshi K. J. prays for staying the operation of the judgment and order pronounced today. He prays time of six (6) weeks for approaching the higher forum.

29. Learned counsel for the petitioners opposes the request of respondent No. 7. It is submitted that the members of petitioner No.1 are waiting for the dues since long and few of them have retired and died also.

30. Though we have directed respondent No.7/Bank to disburse the balance amount of arrears of salary of the members of petitioner No.1, it is not for the first time this Court is directing the Bank to make the payment. On previous occasions also, such a type of directions were already issued. Therefore, we are not inclined to grant time as prayed for by learned counsel Mr. Suryawanshi K. J. However, to avail them to approach higher forum, we think it fit to grant time of three (3) weeks only. The operation of the judgment pronounced today shall stand stayed for

three (3) weeks and is come to an end automatically after three (3) weeks, without reference to the Court.

[SHAILESH P. BRAHME, J.]

[S.G. MEHARE, J.]

Thakur-Chauhan/-