IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.6015 of 2020
and
W.M.P.No.7061 of 2020

The Pondicherry Union Territory Cooperative
Bank Staff Association,
2014, East Coast Road (100 Feet Road),
Olandaikeerapalayam,
Mudaliarpet & Post,
Pondicherry – 605 004.
Rep. by its General Secretary,
V.Iyyanarappan,
S/o.Viswanathan ...Petitioner

-Vs-

1.The Chief Secretary (Co-operation),
Government of Puducherry,
Chief Secretariat,
Puducherry – 605 001.

2.The Registrar of Cooperative Societies,
Government of Puducherry,
Cooperative Department (Planning Section),
V.V.P.Nagar, Thattanchavadi Post,
Puducherry – 605 009.

3.The Administrator,
The Puducherry State Cooperative Bank Ltd.,

Puducherry.
4.The Managing Director,
The Puducherry State Cooperative Bank Ltd.,
Puducherry. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the second respondent in No.Nil dated 14.01.2020 and the consequential impugned circular issued by the fourth respondent in PSB/HO/172/2019-2020/B Circular No.02/2020 dated 27.01.2020 and to quash the same and consequently directing the respondents to continue to prove service benefits including employer's contribution towards Employment Provident Fund equal to the Employee's contribution, with all consequential and other attendant benefits and pass such further orders.

For Petitioner	:	Mr.S.Nedunchezhiyan
For R1 & R2	:	Mrs.G.Djearany Government Advocate (Pondy)
For R3 & R4	:	Mr.R.Sreedharan Additional Government Pleader (Pondy)

ORDER

This writ petition has been filed to quash the impugned proceedings issued by the second respondent in No.Nil dated 14.01.2020 and the consequential impugned circular issued by the fourth respondent in PSB/HO/172/2019-2020/B Circular No.02/2020 dated 27.01.2020 and consequently directing the respondents to continue to prove service benefits, including employer's contribution towards Employment Provident Fund equal to the Employee's contribution, with all consequential and other attendant benefits.

2. The case of the petitioner is as follows:

2.1 The Petitioner Association is a registered Association under the provisions of Societies Registration Act, 1860, formed with laudable object of protecting the interests of its members, who are all employees of Puducherry Union Territory Cooperative Bank Ltd., which remains the Apex Bank with 28 Branches. The Puducherry Union Territory Cooperative Bank is an Apex Bank having 28 Branches in which there are 205 employees are working.

2.2 As per the terms of Settlement under Section 18(1) of I.D. Act, the Scale of Pay, Dearness Allowance, Fitment, Increments, Encashment of Earned Leave, Surrender Leave, Medical Expenses etc., have been arrived based on which the Petitioner is provided with salary and other service benefits.

2.3 As per 9A of the I.D. Act, no employer, who proposes to effect any change in the conditions of service applicable to any workmen in respect of any matter specified in the Fourth Schedule, shall effect such change without giving to the workmen likely to be affected by such change, a notice in the prescribed manner of the nature of the change proposed to be effected.

2.4 As per the provisions of Employees Provident Fund Scheme, 1952, as amended, the contributions payable by the employer shall be at the rate of 12% of the basic wages, Dearness Allowance and Retaining Allowance (if any) payable to each employee to whom the scheme applies.

2.5 As per Regulation 29(2) of the Employees Provident Fund Scheme, 1952, it is the statutory requirement for the Apex Bank to pay contribution equal to the contribution payable by the employee towards EPF.

2.6 The 3rd Respondent Bank for which the EPF and MP Act, 1952 is applicable, proceeded to contribute to the EPF matching the contribution made by the employees in excess of the mandated 12%.

2.7 As per the Service Regulations, the Petitioners are entitled for Earned Leave, Medical Leave etc., as per the Leave Rules, apart from pay and allowance, scale of pay etc.

2.8 While so, the 2nd Respondent has passed the impugned order dated 14.01.2020 invoking powers under Section 81(1) of Puducherry

Cooperative Societies Act, 1972 by reducing the employer's contribution towards EPF limiting the same to 12% of employees salary ceiling of Rs.15,000/- without matching the contribution made by the employee and further disallowing the employees to surrender and encash their Earned Leave by stating that no employee of any Cooperative Bank shall henceforth claim for encashment of his/her earned leave as a matter of right at the time of quitting from the service of the society.

2.9 Consequently, the 4th Respondent Managing Director has issued the impugned order dated 27.01.2020 for limiting the employer's contribution by restricting the same to 12% of maximum salary ceiling of Rs.15,000/- or 12% of the employee's salary whichever is less, apart from disallowing encashment of earned leave.

3. Challenging by impugned proceedings passed by respondents 3 and 4, the petitioner has filed this present writ petition.

4. Learned counsel appearing for the petitioner submitted that at present the bank is financially sound and they are continuing to pay the services benefits.

5. Learned counsel further submitted that even though he has given a

representation dated 21.01.2020, he is ready and willing to give a fresh representation to the second respondent enclosing all the documents.

6. The counter affidavits were filed on behalf of the respondents.

7. Learned Additional Government Pleader appearing for respondents 3 and 4 submitted that already the circular issued was under challenge in another writ petition and this Court by order dated 22.08.2024 in W.P.Nos.1629 & 2453 of 2020 has upheld the circular dated 14.01.2020 and the relevant portion of the order is extracted hereunder:

> "**5.** Adverting to the counter affidavit, the learned Government Advocate submitted that when the respective employers of the petitioners did not raise any objection over the direction issued by the first respondent, the petitioners, being the employees, have no locus standi to challenge the directions issued by the first respondent and only on the objection raised by the first respondent, the petitioners have impleaded their respective Societies as Respondents 2 to 6. The first respondent issued directions only after considering the financial crisis of Societies. Excessive employment, increase in the recurring expenditure of employees' salary and decrease in the business turnover due to severe private sector competition are some of the reasons for financial crisis. Therefore, only for the survival of the societies, the Government of Puducherry had taken measures for recurring revenue expenditure. Insofar as the employer's contribution towards Provident

Fund is concerned, it is restricted to Rs.1,800/- i.e., 12% of the maximum salary ceiling limit of Rs.15,000/-. Therefore, the employer is liable to pay a maximum contribution of Rs.1800/- for an employee irrespective of their salary. However, both employer and employee without following the same, the Societies are contributing more than 12%. Attention was also drawn to the proviso to paragraph 26-A(2) of the EPF Scheme, which reads as follows:

> "Provided that, subject to the provisions contained in sub-paragraph (6) of paragraph 26 and in sub-paragraph (1) of paragraph 27A, where the monthly pay of such a member exceed fifteen thousand rupees, the contribution payable by him, and in respect of him the employer, shall be limited to the amounts payable on a monthly pay of fifteen thousand rupees, including dearness allowance, retaining allowance (if any) and cash value of food concession."

6. Accordingly, the employer was contributing at the rate of 12% of the employee's monthly salary where the term "Salary" includes Basic Salary, Dearness Allowance and retaining allowance drawn by the employees. Therefore, in order to comply with the provisions of the Act, the first respondent rightly issued directions with ultimate motive of reducing the recurring revenue expenditure for the survival of the Societies.

7. It could be seen from the submissions made before this Court that as the Societies are facing much financial difficulties even for its survival and it cannot pay even the monthly salary to its employees and in order to overcome such financial crisis, the Government has taken various measures and as part of such measure, the societies contribution to the employees' Provident Fund was restricted to Rs.1,800/- and the allowance for tea was stopped. Therefore, it cannot be said that it is contrary to regulations. Insofar as the earn leave surrender is concerned, due to encashment of the Earn Leave, the funds of Societies were drained to the lowest level due to which the Societies are unable to disburse the monthly salary on regular basis. Therefore, the encashment of earn leave has been rightly withheld during the employees service period and it could be considered only after their retirement.”

8. Learned Additional Government Pleader drew the attention of this Court to the order passed by this Court in a similar case in W.P.Nos.17181, 17191 & 17194 of 2023, which deals with the Cooperatvie Bank, wherein this Court held as follows:

“**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."

9. Learned Additional Government Pleader appearing for respondents 3 and 4 has produced a copy of the certificate issued by the Registrar of Co-operative Societies, Government of Puducherry, Co-operative Department, Puducherry dated 26.07.2021, in which it is clearly stated that the Pondicherry State Co-operative Bank was registered as a Co-operative Society with Registration No.P.78 on 10.10.1958. Hence, the order passed by this Court in W.P.Nos.1629 & 2453 of 2020 is squarely applicable to this case.

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

11. In view of the above factual matrix of the case and the ratios laid down by this Court in regard to Co-operatvie Society in W.P.Nos.1629 & 2453 of 2020 and in regard to Co-operative Bank in W.P.Nos.17181, 17191 & 17194 of 2023, this Court is inclined to pass the

following orders:

a) **The petitioner is directed to give a representation to the second respondent enclosing all the relevant documents within a period of two weeks from the date of receipt of a copy of this order.**

b) **On receipt of such representation, the second respondent shall consider the same on merits, in accordance with law and pass appropriate orders within a period of eight weeks thereof.**

In the result, **the writ petition stands disposed of with the above observations and directions**. No costs. Consequently, connected miscellaneous petition is closed.

06.12.2024

cda
Index : Yes / No
Speaking/Non Speaking order

J.SATHYA NARAYANA PRASAD, J.

cda

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