BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 20.12.2023

PRONOUNCED ON: 26.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.20744 of 2013
M.P.(MD)No.1 of 2013

The Management,
R.K.10, Virudhunagar District
Central Cooperative Bank Limited,
represented by its Managing Director/
Joint Registrar,
Madurai Road, Virudhunagar. ... Petitioner

vs.

1.The Deputy Commissioner of Labour,
Appellate Authority under Tamil Nadu
Shops and Establishment Act,
Madurai.

2.S.Xavier ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to impugned order passed by the first respondent in T.N.S.E.No.7/2012, dated 19.03.2013 and to quash the same.

For Petitioner	: Mr.D.Shanmugaraja Sethupathi
For R1	: Mr.R.Ragavendran Government Advocate
For R2	: No appearance

ORDER

The Writ Petition is filed for writ of Certiorari to quash the impugned order passed by the first respondent in T.N.S.E.No.7/2012, dated 19.03.2013.

2. The brief facts as stated in the affidavit are that the second respondent was working as Branch Manager and was duty bound to initiate legal proceedings for recovering various loans. The limitation prescribed to initiate legal proceedings is three years from the date of last payment was already expired. During the inspection, it was found that the second respondent has not taken any action for recovering 50 micro loans which were barred by limitation, thereby the second respondent was responsible for incurring loss to the tune of ?39 820/- to the bank. Further the second respondent had not taken any legal action in respect of 79 micro loans granted to women and caused loss to the tune of ?2,77,251/- to the bank. In respect of 16 loans granted to women, the second respondent failed to maintain their relevant records including the loan application and hence no further action could be taken in respect of 16 loans, thereby caused loss to the tune of ? 57,168/- to the bank. The second respondent has also committed various irregularities in granting salary loan (personal loan) for various persons. Hence, it was recommended to initiate surcharge proceedings for recovering the loss

sustained by the bank. Subsequently the second respondent was issued show cause notice dated 30.03.2 009 under section 87 of the Tamil Nadu Cooperative Societies Act and the same was challenged by the second respondent in W.P.No. 6428 / 2009 and the said petition was dismissed on 28.08.2009. Thereafter the above proceeding was continued and decreed vide order dated 29.10.2009 by Deputy Registrar, whereby the second respondent was liable to pay ?6,29,686/- to the bank. Besides the surcharge proceedings, on the basis of inspection report under section 82, charge memo dated 25.07.2008 was issued for the charges of failure to take legal action against those loans. In the meanwhile, the second respondent was suspended from service pending disciplinary proceedings. The second respondent submitted explanation on 11.11.2008 and then domestic enquiry was conducted and the second respondent had fully participated in the domestic enquiry. The second respondent submitted proof affidavit dated 13.04.2009 but no document was marked on the side of the second respondent. However, the management marked documents in Ex.A1 to A6. The enquiry officer submitted his report dated 7.10.2009 and held the charges are proved. Then second show cause notice was issued along with the enquiry report for imposing major penalty. The second respondent submitted explanation on 28.09.2010. Thereafter the second respondent was dismissed from service vide order dated

26.03.2001. Against the said order of dismissal the second respondent preferred an appeal under section 41(2) of Tamil Nadu Shops and Establishment Act along with internal interlocutory application to condone the delay of 205 days in filing appeal in I.A.No.13/2011. But the said condone delay was dismissed for default on 03.04.2012. Subsequently the second respondent had filed another application in I.A.No.10/2012, seeking to set aside the order of dismissal on 17.05.2012, the above application was allowed without issuing notice to the bank and without even hearing the bank. Subsequently the first respondent even without taking the application made in I.A.No.13/2011, which was filed for condoning the delay in filing the main appeal had numbered the main appeal itself in T.N.S.C.No.7/2012. The management filed counter in the main appeal as well as interlocutory application for containing the delay on 09.10.2012. The second respondent was dragging on the proceeding on some pretext. Subsequently without issuing any notice to the petitioner bank, the first respondent had suddenly passed orders on 19.03.2013. Hence the order was passed without giving proper opportunity to the petitioner bank, thereby violative of principles of natural justice. Challenging the said impugned order the present writ petition is filed.

3. The petitioner management submitted that Virudhunagar District Central Cooperative Bank Limited is registered under provisions of Tamil Nadu Cooperative Societies Act and Rules made there under. It is having Registered By-laws, which is in accordance with the provisions of Tamil Nadu Cooperative Societies Act and Rules pertaining to the constitution, object and other affairs of the Bank. The service condition of the employees shall be in accordance with the Special By-laws and other relevant provisions of the Act and Rules and also in accordance with periodical circular issued by the Registrar of Cooperative Societies under section 181 of the Tamil Nadu Cooperative Societies Act. The first respondent is not having any jurisdiction since Section 4(f) of the Tamil Nadu Shops and Establishment Act specifically exclude its application, if the Establishment is governed by a separate law for the time being in force in the State, in respect of the same subject matter. Section 153 of Tamil Nadu Co-operative Societies Act makes it clear that the Registrar, on application from any aggrieved person, shall call for and examine the record of any subordinate officer and officer of the registered society and examine in respect of any proceedings under the Act or the Rules or By-laws as to the regularity of such proceedings, legality or propriety of any decision passed therein. The Tamil Nadu Cooperative Societies Act being a self-contained code has been provided with the mechanism

such as Appeal and Revision to deal with any order passed, relating to or touching upon the service condition, under the Act, Rules and By-laws. Therefore, when the respondent management is governed by Tamil Nadu Co-operative Societies Act, the application of Tamil Nadu Shops and Establishment Act stands excluded. In such circumstances, the first respondent has no jurisdiction and the impugned order is without jurisdiction and relied on the judgment reported in ***2000 (11) CTC page 147*** and ***2004(1) CTC page 505.*** And also relied on ***2008(5) MLJ page 238*** wherein it has been held that any dispute with regard to service condition has to be redressed by filing Revision under section 153 of the Tamil Nadu Cooperative Societies Act. Further the employee is having remedy to file petition before the Labour Court under Section 2(k) and 2A of Industrial Disputes Act.

4. On merits the petitioner management submitted that the punishment of dismissal from service was imposed in pursuance of the disciplinary proceedings and the 2nd respondent has participated in the domestic enquiry and he had not expressed any grievance during the domestic enquiry. After completing the enquiry, the 2nd respondent was issued show cause notice along with enquiry report. The 2nd respondent had also submitted an explanation. After giving opportunity, the Enquiry Officer has submitted the enquiry report holding that the

charges against the 2nd respondent are proved. Therefore, the disciplinary proceeding was conducted in a fair and proper manner after giving opportunity to the 2nd respondent. The management passed the order of punishment after following the principle of natural justice. Therefore, the 1st respondent ought not to have set aside the order of punishment, especially when the charges have been proved during the domestic enquiry. The first respondent has never raised any question that the enquiry report is perverse or without following the due process of law. The 1st respondent has not gone into the veracity of the domestic enquiry. On the other hand, the 1st respondent has accepted the enquiry report that the charges have been proved against the 2nd respondent. Hence, the 1st respondent, ought not to have interfered in the punishment imposed by the disciplinary authority. The disciplinary authority is empowered to impose any punishment according to the nature of the charge and the appellate authority or the revisional authority, is not empowered to interfere with the punishment. In this case, the disciplinary authority, considering the nature of the charge and gravity of the allegation, has imposed the punishment of dismissal from service. Hence, the first respondent has no jurisdiction to interfere with the nature of punishment by holding that the punishment is disproportionate. Therefore, the petitioner management submitted both on jurisdiction as well as on merits the impugned order is liable to be set aside and hence, prayed to allow the writ petition.

5. Heard Mr.D.Shanmugaraja Sethupathi, learned Counsel appearing for petitioner, Mr.R.Ragavendran, learned Government Advocate appearing for first respondent and Mr.G.Murugan, learned Counsel appearing for 2nd respondent and perused the materials placed on record.

6. In the present case the issue for consideration is whether the Tamil Nadu Cooperative Societies Act, 1983 has dealt with matters which are governed by the Shops and Establishment Act, 1947. In other words, whether the matters dealt with in the Shops and Establishment Act, 1947 is dealt with in the Tamil Nadu Cooperative Societies Act. And whether the Tamil Nadu Cooperative Societies Act be considered as "governed by a separate law" as stated in section 4(1)(f) of the Shops and Establishment Act, 1947.

7. The Learned Counsel appearing for the respondents submitted that before considering the present issue raised by the writ petitioner, it is pertinent to refer to the Gazette Notification issued by the Government wherein it is stated that the

Shops and Establishment Act is not applicable to the Cooperative Societies, but sections 31, 41, 43, 50 and 51 are exempted in the said Notification. In such circumstances, the employee working in Cooperative Societies can maintain an appeal under Shops and Establishment Act before the authority. Hence it is unnecessary to go into the question of section 4(1)(f) of the Shops and Establishments Act. However, the said contention was refuted by the petitioner/management and submitted that the said Gazette Notification was issued under Cooperative Societies Act, **1961**, but after repealing the said Act of 1961, the subsequent Cooperative Societies Act, 1983 was enacted. After repealing of 1961 Act, the said notification cannot have any validity and cannot be applicable to the present Act enacted in the year 1983. Further the government had not issued any such notification under 1983 Act. The relevant Gazette Notification is extracted here under:

> *"In exercise of the powers conferred by section 6 of the Tamil Nadu Shops and Establishment Act 1947, (Tamil Nadu XXXVI of 1947), and in supersession of the erstwhile Industries, Labour and Corporation Department Notification No.II-1 No. 6779/1963 dated 11.12.1963, published at pages 2999–3000 of Part II Section 1 of the Fort St. George Gazette dated 25.12.1963, the Governor of Tamil Nadu hereby exempts permanently all Societies register or deemed to be registered under the Tamil Nadu Cooperative Societies Act, 1961 (Tamil Nadu Act 53 of 1961) from the provisions*

of the Tamil Nadu Shops and Establishment Act, 1947, (Tamil Nadu XXXVI of 1947) except sections 31,41, 43,50 and 51 of the said Act subject to the condition that the said Societies shall exhibit their name boards in Tamil and wherever other languages are used versions in those language languages shall be below the Tamil version"

After perusing the said Gazette Notification, it is seen that the said notification is issued under Act 1961. And the government had not issued any notification under Act, 1983. Therefore, this Court is of the considered opinion that when the said Gazette Notification was issued under Act 1961, after repealing the said Act 1961, then the validity of the said Notification has lapsed. Therefore, the said notification cannot be made applicable for subsequently enacted Act 1983. Therefore, this Court proceeds with the issue raised by the writ petitioner.

8. The Learned Counsel appearing for the writ petitioner and the Learned Counsel appearing for respondents in order to canvas their points had relied on several judgments, but those judgments were rendered under sections 4(1)(a) or 4(1)(c) of Shops and Establishment Act. In the present case the relevant section is under section 4(1)(f) and hence the said judgments are not relevant to the issue raised in the present writ petition except one judgment. In W.A.No.138 of 1960 ***Madras State Electricity Board Vs. Commissioner of Labour and others*** reported in CDJ 1960 MHC 086, the scope of section 4(1)(f) was discussed. In the

said case the Electricity Board had claimed that the Section 79C of Electricity Act ought to be considered as "governed by a separate law". After considering the issue the Hon'ble Court has held as under:

> *"Section 4(1) (f) of the Act can apply only where there is a separate law providing for matters dealt with under the Madras Shops and Establishments Act. The object of this provision is only to avoid conflict of jurisdiction which may result by applying two parallel sets of law to the same establishment. It is not necessary that the separate law, the existence of which would exclude the applicability of Madras Shops an Establishments Act under S. 4(1)(f), should be a law comprising within its scope all the details of the Madras Shops and Establishments Act with precision and minuteness. Nor and it be said that separate law in relation to one or a few of the matters governed by the Madras Shops and Establishments Act will to that extent exclude the operation of the Act. A separate law, which can exclude the operation of the Act in accordance with the provisions of S. 4(1)(f) of the Act, is one which in substance and in effect must cover the same field as that covered by the Act. We are of opinion that the regulations framed under S.79C of the Act, even if it can be called a separate law, upon which however we express no opinion, are not such as to bring about the exclusion of the applicability of the Madras Shops and Establishments Act. We agree with Rajagopalan, J., that there are no grounds for the issue of a writ of certiorari as prayed for by the appellant. The appeal fails and is dismissed with costs. Counsel's fee Rs. 150/-."*

The judgment states that a separate law, which can exclude the operation of the Act under S.4(1)(f) of the Act ought to be one which in substance and in effect must cover the same field as that covered by the Act. And held that the Section 79C of Electricity Act had not covered the same field. Relying on the said judgment the contention of the respondents is that Section 153 of the Tamil Nadu Cooperative Societies Act is not covering the field that is covered under the Shops and Establishments Act. But the contention of the petitioner management is that the section 153 is covering the field.

9. The respondents further submitted that the Tamil Nadu Shops and Establishments Act, 1947 provides remedy on all aspects for an employee including holidays, hours of work, payment of wages, health and safety. Also provides protection from dismissal without notice under section 41 and provides interim relief under section 41A pending appeal before High Court, but the Tamil Nadu Cooperative Societies Act does not provide such remedy and hence not covering the same field. This contention was refuted by the writ petitioner / management and submitted that the present Tamil Nadu Cooperative Societies Act, 1983 especially section 153 and the Rules, 1988 made thereunder along with Special Bylaw, which is formulated for all the Cooperative Societies and the same

is approved by the Government, is a comprehensive self-contained Act provides remedy in all aspects to the employees. Hence, the contention of the writ petitioner is that the Cooperative Societies Act 1983 is covering the same field. Therefore, the applicability of Shops and Establishment Act is excluded under section 4(1)(f) of the Tamil Nadu Shops and Establishment Act. The relevant provision of section 4(1)(f) is extracted hereunder:

> *"4. Exemption: (1) Nothing contained in this Act shall apply to—*
> *(a) persons employed in any establishment in a position of management;*
> *(b) persons whose work involves travelling: and persons employed as canvassers and caretakers;*
>
> *(c) establishments under the Central and 1[State] Governments, local authorities, the Reserve Bank of India, 2[a railway administration operating any railway as defined in clause (20) of article 366 of the Constitution] and*
> *cantonment authorities;*
> *(d) establishments in mines and oil fields;*
> *(e) establishments in bazaars in places where fairs or festivals are held temporarily for a period not exceeding fifteen days at a time;*
>
> ***(f) establishments which, not being factories within the meaning of the Factories Act, 1948, are in respect of matters dealt with in this Act, governed by a separate law for the time being in force in the 1[State]**.*

(2) Nothing contained in section 7 or section 13, as the case may be, shall apply to—

1(a) hospitals and other institutions for the treatment or care of the sick, the infirm, the destitute or the mentally unfit;

(b) such chemists' or druggists' shops as the 1[State] Government may, by general or special order, specify;

(c) clubs and residential hotels, hostels attached to schools or colleges, and establishments maintained in boarding schools in connection with the boarding and lodging of pupils and resident masters;

(d) stalls and refreshment rooms at railway stations, docks, wharves or ports."

Hence in order to consider the issue based on the rival submissions both the Acts ought to be analyzed.

10. Originally the Weekly Holidays Act, 1942 (Central Act XVIII of 1942) was brought into the Madras Province from 01.01.1947 and it is limited in its scope for holidays alone. Since there was no enactment touching the other issues affecting the employees such as hours of work, payment of wages, health and safety, it was considered to bring in comprehensive measure in Madras Province to regulate these matters on the line of similar enactments in force in other

Provinces. Hence the Act was enacted, however initially it was applicable for the City of Madras and in all municipalities, subsequently to other places. The Tamil Nadu Shops and Establishments Act, 1947 received Governor General assent on 02.02.1948, published in Gazette on 10.02.1948 but deemed to have come into force on 01.04.1951. Hence the said Act is one of the earliest legislations after independence. As per the "Statement of Objects and Reasons" the enactment is provide regulations for the payment of wages, terms of services, work hours, overtime work, rest intervals, opening and closing hours, holidays, closed days, work conditions, leaves, maternity leaves, and benefits; rules for employment of children and records maintenance. The main object is "to provide for the regulation of conditions of work in shops, commercial establishments, restaurants, theatres and other establishments, and for certain other purposes". Chapter I deals with definitions, Chapter II deals with working hours in shops, Chapter III deals with working hours other than shops, Chapter IV deals with employment of children and young persons, Chapter V deals with Health and Safety, Chapter VI deals with holidays with wages, Chapter VII deals with wages, Chapter VIII deals with appointment, power and duties of Inspectors, Chapter IX deals with penalties for offences, Chapter X deals with Miscellaneous. In the present case the appeal is preferred against the order dismissal from service under Section 41 which falls under Chapter VII under the heading “Wages”.

11. The brief history of Tamil Nadu Cooperative Societies Act is that the first ever Cooperative Act had its genesis in the year 1904 to support the agriculturists and artisans. In Act 1912 with a larger scope of bringing in its fold the non-credit societies were included. Thereafter the states governments enacted its own laws. The first Tamil Nadu Cooperative Act came in 1932 (Madras Act VI of 1932), which underwent changes. This Act was repealed by 1961 Act (Tamil Nadu Act 53 of 1961). Subsequently the present Act “the Tamil Nadu Cooperative Societies Act, 1983 (Tamil Nadu Act 30 of 1983) was enacted, but it came into force in 1988 after framing of Rules in the year 1988. The present Act 1983 some of the sections were amended in the year 1989, 1990, 1992, 1999, 2004, 2006, 2008, 2011, 2012, 2013. Further the 97th constitutional amendment further granted autonomous but the same was struck down as far as societies coming under the purview of state governments. Under the Tamil Nadu Cooperative Societies Act, 1983 and the Tamil Nadu Cooperative Societies Rules, 1988 there are various provisions dealing with the constitution of Recruitment Bureaus, method of recruitments, appointments, constitution of common cadre services, their salary,

appeal, reversion, review etc. Apart from this there is Special Bylaws for the Society wherein it deals with service of the employees of the societies, which includes Pay and allowances, probation, resignation, safety, cleanliness, Leave and sanction of Leave, Holidays and Sundays, suspension, disciplinary proceedings, punishment, appeal, subsistence allowance etc. Further the Government would issue Government Orders, Notification and Circulars covering the issues raised then and there.

12. In short, the Tamil Nadu Shops and Establishments Act, 1947 covers the issues of employees regarding working hours in shops and other than shops, employment of children and young persons, Health and Safety, holidays and wages. The Special Bylaw of Cooperative Societies covers the working hours, health, cleanliness, holidays, salaries. **Hence, the Special Bylaw covers the areas which the Shops and Establishment Act covers**.

13. The contention of the respondents herein is that the Shops and Establishment Act provides for appellate remedy but the Cooperative Societies Act is not providing any such remedy. Especially the appeal could be preferred against the order of dismissal from service or other major punishments under

Section 41 of the Shops and Establishment Act. Further the Learned Counsels appearing for the respondents also submitted that if there is any specific exemption either in the Standing Order or in the Bylaw, then only the provisions of Shops and Establishment Act may be exempted. Neither the provisions of the Co-operative Societies Act nor Bylaw has exempted the jurisdiction of Tamil Nadu Shops and Establishment Act and also not barred to seek remedy under Section 41. It is seen that the section 41 falls under Chapter VII under the heading "Wages". The said provision is extracted hereunder:

> *"41. Notice of dismissal—(1) No employer shall dispense with the services of a person employed continuously for a period of not less than six months, except for a reasonable cause and without giving such person at least one months notice or wages in lieu of such notice, provided however, that such notice shall not be necessary where the services of such person are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose.*
> *(2) The person employed shall have a right to appeal to such authority and within such time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer.*
> *2[(2-A) The appellate authority may, if it considers that any document or the testimony of any person is relevant or necessary for the discharge of its duties under this Act as appellate authority, call for and inspect such document or summon and examine such person. For the aforesaid*

purposes, it shall have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908), in respect of the following matters, namely:-

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) compelling the production of documents;

(iii) issuing commissions for the examination of witnesses

(2-B) The appellate authority, may, after giving notice in the prescribed manner to the employer and the person employed, dismiss the appeal or direct the reinstatement of the person employed, with or without wages for the period he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case.]

3) The decision of the appellate authority shall be final and binding on both the employer and the person employed."

14. The said contention of the respondents is refuted by the writ petitioner / management and submitted that the Special Bylaw has provided original remedy and appellate remedy. The Special Bylaw had prescribed the original authorities and appellate authorities. Further revision under section 153 and review under section 154 is available in the Cooperative Societies Act itself. The specific contention of the management is that when the remedy is available under the Special Bye-Law and the Cooperative Societies Act, then as per section 4(f) the

Shops and Establishment Act cannot be invoked. In order to consider the plea of the management the Special Bylaw ought to be perused.

15. It is seen the "Disciplinary Matters" are dealt with under Chapter IV in the Special Bylaw, consisting of Rules 19 to 23. Under Rule 19 various kinds of penalties are prescribed and under Rule 19(4)(j) for issuing notice the authority ought to follow the procedure laid down under section 112 of the Cooperative Societies Act. Under Rule 20 competent authority to impose penalties are stated and the same is extracted hereunder:

Category of employee	Award of Censure or Fine	Withholding of increment or promotion or recovery from pay	Suspension or reduction to a lower rank or lower post or lower stage in the time scale of pay	Compulsory retirement or removal or dismissal
1	2	3	4	5
General Manager	As per common cadre regulations approved by the government			
Asst. General Manager	Managing Director	Managing Director	Managing Director	President
Manager	Managing Director	Managing Director	Managing Director	President
Assistant Manager	Managing Director	Managing Director	Managing Director	President
Other Employees	General Manager	Managing Director	Managing Director	Managing Director

Under Rule 21 elaborate procedures for “imposition of penalties” are stated and Rule 22 provides for suspension of the employee. Under Rule 23 Appellate remedy is provided wherein the relevant appellate authority is stated and the said is extracted hereunder:

Category of employee	Award of Censure or Fine	Withholding of increment or promotion or recovery from pay	Suspension or reduction to a lower rank or lower post or lower stage in the time scale of pay	Compulsory retirement or removal or dismissal
1	2	3	4	5
General Manager	As per common cadre regulations approved by the government			
Asst. General Manager	President	President	President	Board
Manager	President	President	President	Board
Assistant Manager	President	President	President	Board
Other Employees	Managing Director	President	President	Board

Further the limitation of two months is provided for preferring appeal and no appeal would be entertained if the appeal is filed beyond the period of two months. Further under section 153 of the Cooperative Societies Act provides for revision jurisdiction. Further under Rule 169 of the Cooperative Societies Rules, 1988 procedure is prescribed regarding filing of revision application. Under Rule 170 for filing application for review. Under Rule 171 fees chargeable for the processes of appeal, revision and review is dealt with. Under Rule 172 Authority to execute orders passed in appeal, revision or review is prescribed. Hence from the above discussion of provisions it is evident that the Special Bylaw provides appellate remedy, then Cooperative Societies Act provides for revisional remedy. Then the employees can seek remedy under 2(k) and 2A of the Industrial Disputes Act and for interim relief section 17B can be invoked. On comparing the section 41 of the Shops and Establishment Act and the Rules 19 to 23 of Special Bylaw, this Court is of the considered opinion that the Special Bylaw contains elaborate procedures for conducting the disciplinary proceeding, for imposing punishments, for ordering suspension and for appellate remedy.

16. Further the section 41 of Shops and Establishments states that the employer cannot dispense with the services of any employee if the employee had continuously served for six months. In the Special Bylaw on recruitment, the employee would be under probation and hence the principles of probation would follow. Hence the employee rights are protected under principles of probation.

The next part of section 41 states the employer can dispense the service without notice, if it is proved based on the enquiry that the employee has committed any misconduct. In the Special Bylaw the employee would be suspended, then enquiry would be conducted and based on the enquiry report the employee may be imposed with punishment. Therefore, on comparison the Special Bylaw is protecting the employees as the Shops and Establishments Act would protect. It is pertinent to mention herein that the Special Bylaw is formulated and approved by the State Government and the same is adopted by all Cooperative Societies. Hence, the appeal remedy is provided under the Special Bylaws and under Cooperative Societies Act for revision remedy.

17. Interestingly in the Special Bylaw in Rule 21(3) speaks about the Tamil Nadu Shops and Establishment Act and which states as under,

> *"Every penalty of fine imposed under this special bylaw shall be in accordance with the provisions of section 35 of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947) and the rules relating thereto, and for the said purpose the reference to the "prescribed authority" occurring in the said Section 35 shall be construed as a reference to the Registrar. However, no penalty by way of fine shall be imposed on any employee above the clerical or equivalent cadre of staff."*

Only for the purpose of imposing fine the Shops and Establishment Act can be invoked as per Rule 21(3) of Special Bylaw. Except for this purpose, for the other purposes the Special Bylaw ought to be invoked. It is also to be noted that except for this, the Special Bylaw has not referred the Shops and Establishment Act. Further it is also to be seen that there is no express bar in the Special Bylaw for invoking the Shops and Establishment Act.

18. Further it is to be noted that though the Bylaws are passed under Chapter II which deals with “Registration of Cooperative Societies and their Bylaws”, the Special Bylaw has no statutory value as held by Full Bench of Hon’ble Supreme Court in Cooperative Central Bank Ltd. and others Vs Additional Industrial Tribunal and others reported in (1969) 2 SCC 43, and the relevant portion is extracted hereunder:

> *“We are unable to accept the submission that the bye-laws of a co-operative society framed in pursuance of the provisions of the Act can be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to bye-laws of the nature that a co- operative society is empowered by the Act to make. The bye- laws that are contemplated by the Act can be merely those which govern the internal management, business or*

administration of a society. They may be binding between the persons affected by them, but they do not have the force of a statute. In respect of bye-laws laying down conditions of service of the employees of a society, the bye-laws would be binding between the society and the employees just in, the same manner as conditions of service laid down by contract between the parties. In fact, after such bye-laws laying down the conditions of service are made and any person enters the employment of a society, those conditions of service will have to be treated as conditions accepted by the employee when entering the service and will thus bind him like conditions of service specifically forming part of the contract of service. The bye-laws that can be framed by a society under the Act are similar in nature to the Articles of Association of a Company incorporated under the Companies Act and such Articles of Association have never been held to have the force of law. In a number of cases, conditions of service for industries are laid down by Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946, and it has been held that, though such Standing Orders are binding between the employers and the employees of the industry governed by those Standing Orders, they do not have such force of law as to be binding on industrial Tribunals adjudicating an industrial dispute. The jurisdiction which is granted to Industrial Tribunals by the Industrial Disputes Act is not the jurisdiction of merely administering the existing laws and enforcing existing contracts. Industrial Tribunals have the right even to vary contracts of service between the employer and the employees which jurisdiction can never be exercised by a civil court or a Registrar acting under the Cooperative Societies Act so that the circumstance that, in granting relief on issue No. 1, the Tribunal will have to vary the special bye-laws framed by the Cooperative Bank does not lead to the inference that the Tribunal would be incompetent to grant the *reliefs sought in this reference. In fact, the reliefs could only be granted by the Industrial Tribunal and could not fall within the scope of the powers of the Registrar dealing with a dispute under section 61 of the Act."*

On perusal of the aforesaid judgment, it is seen that the Hon'ble Supreme Court has held that Bylaw has no statutory force. Further it is settled law that any order passed under section 90 of Cooperative Societies Act alone is appealable. It is also settled that the disputes between the employer and employee are not covered under section 90. Then the Special Bylaw alone deals with the issue between the employer and employee. But Special Bylaws are not having any statutory force.

19. In such circumstances, the remedy available to the employee is to raise Industrial Dispute and the Industrial Tribunal has jurisdiction to deal with the subject. In the present case, it is not the case of the writ petitioner / management that Industrial Disputes Act and Labour Court is not having jurisdiction but it is the contention of the petitioner / management that the Shops and Establishment Act is not having jurisdiction. Therefore, any order passed under the Special Bylaw may be challenged under section 2(k) and 2A of the Industrial Dispute Act before the Labour Court. It is pertinent to note herein that the Cooperative Societies are not Government under Article 12 of the Constitution and Special

Bylaw has no statutory force and hence any order passed under Special Bylaw cannot be challenged by invoking writ jurisdiction under Article 226.

20. The applicability of Industrial Disputes Act and Cooperative Societies Act was considered by the Hon’ble Division Bench in P.Eswaramoorthy and others Vs. R.J.B. Leoraj and others reported in (2008) 5 MLJ 238 wherein the Hon’ble Court had considered and compared the issue of applicability of section 153 of Cooperative Societies Act and Industrial Disputes Act and has come to the conclusion that both is granting same relief and the employee is at liberty to invoke any one of the Act. The relevant portion of the judgement rendered is extracted here under:

“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 Vs. 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 Vs. 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 Vs. The Deputy Commissioner of Labour (Appeal) Madras and 2 others [2000 (III) CTC 738 = 2000 (2) LLJ 1451] holding that Section 90 of the 1983 Act is not available for employees of Co-operative Societies against the orders of termination has been correctly decided."

Therefore, it is settled that the employee is is at liberty to invoke any one of the Act based on the principles of "doctrine of election" to seek any one of the remedies.

21. But if the employee wants to invoke 2(k) of the Industrial Disputes Act then the said petition can be filed through Employees Union. The petition would be considered for conciliation, then the government ought to refer the petition for adjudication, which is time consuming. Further if the Employees Union is not interested in contesting the case, then the employee cannot proceed with the same. Under Section 2A of the Industrial Disputes Act, the challenge can be only for the disputes like discharges, dismisses, retrenches, or otherwise termination of

services, since the section 2A states the employee can challenge "any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination". However, there is such restriction in the Shops and Establishment Act.

22. From the above discussion it is evident that section 153 of Cooperative Societies Act can be equated to section 41 of Shops and Establishment Act. Admittedly the remedy under section 153 is only revisional remedy and the remedy under section 41 is appellate remedy. And both cannot be stated as same. The remedy under 2(k) and 2(A) has its own limitations, but such restrictions are not there under section 41 of the Shops Act. When the employee / worker is entitled to challenge without any restrictions under section 41 of Shops and Establishment Act then the same cannot be curtailed.

23. Based on the above discussion the following proposition emerges:

> *i)The section 153 revision power under Cooperative Societies Act cannot be stated as "governed by separate law" in order to come within the exemption under section 4(1)(f) of the Shops and Establishment Act.*

ii) The Special Bylaws of Cooperative Societies have no statutory value and hence the appellate remedy granted under the Special Bylaws under Rules 19 to 23 cannot be equated to remedy under section 41 of Shops and Establishment Act.

iii) The employee is having liberty to invoke revision remedy under Section 153 of Cooperative Societies Act, appellate remedy under section 41 along with interim relief under section 41-A of Shops and Establishment Act, appellate remedy under section 2(k) and 2A along with interim relief under section 17-B of Industrial Disputes Act. The employee is having choice of election to seek remedy.

iv) The Gazette Notification issued under Cooperative Societies Act 1961 is not applicable Cooperative Societies Act, 1983.

24. As far as the merits is concerned, it is seen that the allegation against the second respondent is that the second respondent had not steps to initiate legal proceeding to recover the loan within the period of limitation of three years. Even though the charges are series in nature, taking the second respondent's long period of service, this court is inclined to modify the punishment as compulsory retirement. Further, when the second respondent preferred appeal in T.N.S.C.No. 7/2012, it is stated the second respondent was 61 years at the time of filing the

appeal, which means the second respondent had attained superannuation. Therefore, the second respondent is entitled to the terminal benefits by taking the period of service from the date of appointment till the date of superannuation and the same shall be paid within a period of eight weeks from the date of receipt of the copy of this order.

25. Therefore, the writ petition filed by the Society is disposed of as stated supra. Consequently, connected miscellaneous petitions are closed. No costs.

Index : Yes / No **26.03.2024**
Internet : Yes

Tmg

To

The Deputy Commissioner of Labour,
Appellate Authority under Tamil Nadu
Shops and Establishment Act,
Madurai.

S.SRIMATHY, J

Tmg

W.P.(MD)No.20744 of 2013

26.03.2024