

**BEFORE THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
PUDUCHERRY.**

R.P. No.2/2013

Present : **Tmt. P. PRIYTARSHNY,**
Registrar of Co-operative Societies
Puducherry.

V. Rasu
No.52, Main Road
Kalmandapam
Nettapakkam Post
Puducherry.

Applicant

Vs.

The Administrator
Kalmandapam Co-operative Milk
Producers Society Ltd., No. P.301
Kalmandapam
Nettapakkam Post
Puducherry.

Respondent

ORDER

(Issued under Section 141 of the Puducherry Co-operative Societies Act)

This revision petition filed under Section 141 of the Puducherry Co-operative Societies Act, 1972 (for short the 'Act') is directed against the order dated 8th December 1997 passed by the President of the Kalmandapam Co-operative Milk Producers Society Ltd., No. P. 301 (for easy reference the 'society') terminating the applicant from the services of the society.

FACTS FIRST

2. I shall first narrate the sequence of facts, as stood exposit from the affidavit, out of which the present controversy has arisen:

2.1. The applicant joined as secretary of the society on 1st April 1984. His last drawn gross emoluments was Rs.2,100. He was discharging the day-to-day activities of the society, including keeping the accounts, maintaining cash and in general the overall maintenance of the society.



2.2. When he pointed out the irregularities committed by the President of the society she became hostile towards him and was waiting for an opportunity to victimize him. A show cause notice dated 6th November 1997 was issued against him. The charges mentioned therein were false. The President compelled him to give a letter admitting his guilt, failing which he would be terminated from service. She dictated a letter and got it signed by him. Another notice dated 4th December 1997 was issued and this time also she pressurized him to submit the explanation as dictated by her. He submitted a letter dated 6th December 1997 admitting his guilt. Though she promised that no disciplinary action would be taken against him, contrary to her assurance, she terminated him from service with effect from 8th December 1997.

2.3. According to the applicant the impugned order was tainted by coercion and undue influence. The very reading of the contents of the show cause notice would reveal that the whole exercise was an empty formality. The charges were motivated with an intention to victimize him. No opportunity was given to him to defend the charges and hence the punishment imposed was void, particularly contrary to bye-law No.20 of bye-laws of the society which empowers only a committee to take disciplinary action against an employee of the society.

2.4. He sent an advocate notice calling upon the management to set aside the termination order and reinstate him, but the respondent gave a reply notice with untenable allegations.

2.5. He raised an Industrial Dispute vide No.2/2000. The said claim was dismissed by the Labour Court by order dated 11th November 2002 on the ground that the industrial dispute was not maintainable. Challenging the said order of the Labour Court, the applicant preferred a writ petition in W.P. No. 16674/2003 in the Hon'ble High Court of Madras. By order dated 26th February 2013 the writ petition was dismissed giving liberty to the petitioner to file appropriate petition before the proper forum, if so advised.

2.6. This is how this revision petition came to be filed before me, seeking to set aside the impugned order and direct the respondent to reinstate him with consequential benefits, back-wages and damages for non-employment of a sum of Rs.10 lakhs.



NOTICE AND REJOINDER

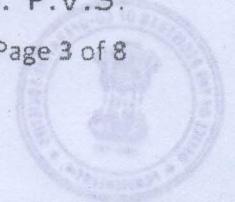
3. On perusal of the revision petition it was seen that the order impugned was not enclosed with the petition. Further from the order dated 26th February 2013 of the Hon'ble High Court it transpired that the Labour Court on examination of issues before it held that the I.D. was not maintainable, however dealt with other issues and held that the termination of the applicant cannot be termed as one passed by incompetent authority and dismissed the I.D. in toto.

4. A notice dated 3rd May 2013 was issued to the applicant directing him to show how the revision petition would be maintainable under Section 141 of the Act when there was a clear finding of the Labour Court that the impugned order was proper. Further Section 141 does not empower the Registrar to call for and examine the records of any officer of the society.

5. To the said notice the applicant filed a rejoinder. He forwarded the impugned order and the award passed by the Labour Court. It is the plea of the applicant that when the Labour Court held that the I.D. itself was not maintainable as his job was that of secretary of the society and he could not be termed as workman within the definition of the I.D. Act, the Labour Court without jurisdiction has erroneously decided on merits of the case holding that the impugned order was valid and cannot be termed as one passed by an incompetent authority. Reliance was placed on judgment of the Hon'ble Apex Court in *Sushikumar Mehta vs. Gobind Ram Bohra*, (1990) 1 SCC 193, wherein it was held that when a court lacked inherent jurisdiction to entertain the suit, the decree so passed was a nullity and would not operate as res judicata. On the strength of the judgment, the applicant submitted that the findings of the Labour Court was a nullity and shall not have any bearing on the review petition and the order of the Labour Court would not operate as res judicata.

6. On the maintainability of the revision petition against the order of the respondent, the applicant garnered support from a decision of the Division Bench of the Hon'ble High Court of Madras in *P. Eswaramoorthy and others vs. R.J.B. Leoraj and others*, (2008) 5 MLJ 238, a decision based on Section 153 of the Tamil Nadu Co-operative Societies Act, 1983. It is the contention of the applicant that Section 153 of the Tamil Nadu Act would be in pari materia to Section 141 of the Puducherry Act. The applicant prayed that he should be heard before an order is passed in this regard.

7. To decide the maintainability of the revision petition a personal hearing was conducted on 18th June 2013. Ms. S. Hariny, Advocate of M/s. P.V.S.



Girishar and Sai Associates Y. Kavitha and S. Hariny represented the applicant. Her arguments were, by and large, the averments made in the review petition. When a specific question was posed to the learned counsel representing the applicant as to why the writ petition was withdrawn without outcome, she submitted that as it was found that a review would be maintainable with the Registrar against the impugned order under Section 141 of the Act it was thought expedient not to pursue the remedy under Article 226 of the Constitution of India before the Hon'ble High Court. Reinforcing the arguments, the applicant submitted his written arguments as well. He has grounded his plea that the Labour Court has held that the applicant was not a workman it ought not to have gone into the merits of the claim and hence its findings are non-est.

THE SPINAL ISSUE

8. The spinal issue that has spiraled in this revision petition is when the award of the Labour Court has categorically held that the impugned order was passed by a competent authority and the applicant has no case at all, can the revision petition brush aside such a finding on the ground that such a ruling was without jurisdiction and perverse and entertain this revision petition.

RESOLVING THE ISSUE

9. I have heard the arguments of the learned counsel for the applicant and pored over the averments made in the affidavit and in the written arguments. It is the submission of the applicant that when the Labour Court has come to a conclusion that the applicant would not fall within the definition of 'workman' under the I.D. Act it ought to have returned the claim and should not have gone into the merits of the claim and dismissed the dispute. My attention was invited to paragraph 7 of the award dated 11th November 2002. I extract the said paragraph below:

"As such item No.11 empowers the secretary to take legal action for recovery of debts in consultation with Administrative Committee. By no stretch of imagination it could be termed as non-supervisory or clerical. As such the analysis of Bye-law 27(2) of the society leads no doubt of this mind in this court that the job of the Secretary of the Society is certainly supervisory in nature and the Secretary could not be termed as workman within the definition of I.D. Act. On this count itself this I.D. is not maintainable. However, for the purpose of comprehensively



deciding the matter, the other points are also dealt with as under". [Emphasis mine]

10. The Labour Court went on to deal with other issues of the claim on the merits and came to a conclusion that the termination order cannot be termed as one passed by any incompetent authority and decided the point against the petitioner and dismissed the I.D. as devoid of merit.

11. This finding of the Labour Court was challenged by the applicant before the Hon'ble High Court in W.P. No. 16674 of 2003. His prayer was to quash the Labour Court's award dated 11th November 2002. But the said writ petition was not pressed for and withdrawn with a liberty to file appropriate petition before the proper forum. I feel apposite and appropriate to quote the operative portion of the order dated 26th February 2013:

"2. At this stage of hearing of the writ petition, it is submitted by the learned counsel for the petitioner that the petitioner is not pressing for the prayer sought for in the writ petition, however, seeks liberty to file appropriate petition before the proper forum in the manner known to law, as the remedy lies elsewhere.

3. Recording the submission of the learned counsel for the petitioner, the writ petition stands dismissed with liberty to the petitioner to file appropriate petition before the proper forum within six weeks from the date of receipt of a copy of this order, if he is so advised. No costs."

13. The learned counsel to the applicant was not in a position to even plead much less to show a sufficient cause as to why the writ petition was withdrawn with a liberty to file a petition before the appropriate forum when the prayer in the writ petition was to quash the award of the Labor Court. In my considered opinion the applicant should have proceeded with the remedy and left it to the logical conclusion of the Court. I am unable to countenance the argument faintly pressed into on behalf the applicant that when the remedy was available with the Registrar he thought that he need not pursue the remedy before the Hon'ble High Court. When there was a clear and categorical finding by the Labour Court against his claim and when he was aggrieved over such a finding, proper recourse would only be before the Hon'ble High Court. It defies all logic to withdraw the writ petition in haste contending that a relief would be available by way revision petition under Section 141 of the Act. The learned counsel for the applicant submitted that by permitting to withdraw the writ petition with liberty to approach the



proper forum the Hon'ble High Court has impliedly held that the Labour Court was not the proper forum to the applicant. A perusal of the order of the Hon'ble Court (extracted supra) does not buttress the argument of the applicant. The Hon'ble High Court has not gone into the veracity of the award of the Labour Court at all. Her argument that the Hon'ble High Court has impliedly quashed the finding of the Labour Court is farfetched and does not stand to reason.

14. What is the remedy open to an aggrieved person? In *Mohd. Iqbal Khanday v. Abdul Majid Rather* (AIR 1994 SC 2252), it was held by the Hon'ble Apex Court that if a party is aggrieved by the order, he should take prompt steps to invoke appellate proceedings and cannot ignore the order and plead about the difficulties of implementation at the time contempt proceedings are initiated. [Underlined to add emphasis]

15. Following the aforesaid principle, the Hon'ble Supreme Court in *State of Bihar and others Vs. Rajendra Singh and another*, AIR 2004 SC 4719 : 2004 (3) Suppl. SCR 735 : 2004 (7) SCALE 114 : 2004 (8) JT 168, held that:

"If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach to the Court that passed the order or invoke jurisdiction of the Appellate Court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong the order has to be obeyed. Flouting an order of the Court would render the party liable for contempt. While dealing with an application for contempt the Court cannot traverse beyond the order, non-compliance of which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible."

[Emphasis added]

16. Though both the aforesaid judgments have been rendered while dealing in contempt proceedings, the dictum will apply, in my considered opinion, on the facts of the present case as well.

17. When a question was posed to the Full Bench of the Hon'ble Kerala High Court in *Pavithran vs. State of Kerala*, 2009 (4) KLT 20 on the impact of an adverse order left unchallenged in administrative law, the Court held in paragraph 8 thus:



"Whenever an adverse order is passed against a person, unless the same is challenged before the appropriate forum, within the prescribed time limit, the said order will become final and the person affected by it, will also be bound by it. It is a well settled principle in Administrative Law that, there are no void orders in absolute sense in administrative matters. There are only voidable orders. Unless a person aggrieved takes recourse to the appropriate remedy at the appropriate time, even an illegal order will be treated as valid and binding. See the observations in Wade in Administrative Law, 6th Edn.

The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and it, in reality, valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another. A common case where an order, however void, becomes valid is where a statutory time limit expires after which its validity cannot be questioned. The statute does not say that the void order shall be valid; but by cutting off legal remedies it produces that result." [Emphasis supplied]

The observations of the Full Bench, in my considered view, will have a definite implication and bearing on the facts of this case.

18. Strong reliance was placed by the counsel for the applicant on the judgment of the Hon'ble Apex Court in *Sushilkumar Mehta vs. Gobind Ram Bohra*, (1990) 1 SCC 193 [*supra*], wherein it was held that when a court lacked inherent jurisdiction to entertain the suit the decree so passed was a nullity and would not operate as res judicata. The said defect of jurisdiction cannot be cured by consent or waiver. I have absolutely no quarrel with the proposition. However in this case I am unable to subscribe to the argument that by applying the said principle, the findings of the Labour Court validating the termination order dated 8th December 1997 can be ignored as



patently erroneous and without jurisdiction by me and entertain this revision petition.

19. The counsel for the applicant sought to admit the revision petition treating the award of the Labour Court a nullity. I am afraid whether such a prayer could be entertained at all. Even at the cost of repetition I must say that if the applicant is aggrieved by the award of the Labour Court it is open to him to challenge the findings before the appellate forum. An order passed by a judicial forum cannot be set to naught by a quasi judicial authority. I cannot just brush aside the award of the Labour Court and entertain a revision petition under Section 141 of the Act. This will be in complete transgression of judicial discipline and an aberration of judicial process.

THE OUTCOME

20. In view of the aforesaid analysis, I repel the contention raised by the applicant and as a fall out of the same; the revision petition, being sans merit, stands dismissed as not maintainable. There is, however, no order as to costs.

Pronounced in open forum on the 17th day of July 2013.



P. Priytarshny

[P. PRIYTARSHNY]
REGISTRAR OF CO-OPERATIVE SOCIETIES

To

The parties