COMPILATION OF JUDGMENTS OF HON'BLE HIGH COURT OF MADRAS

ON CASES INVOLVING PUDUCHERRY CO-OPERATIVES

UP TO 31.12.2014

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FOREWORD

The initiative taken by the Department of Cooperation for bringing out the book titled "Compilation of Judgements of Hon'ble High Court of Madras on cases involving Puducherry Co-operatives" deserves commendation. Cooperative institutions, while expanding their sphere of activities in public interest, have to be more cautious in preventing possible litigations that may arise at a later stage. Hence, this compilation of various judgements of the Hon'ble High Court would meet the emerging demands of the Department. I am sure that that this book will act as a ready reckoner not only to the Cooperative Department, but also to those who desire to seek remedies through various legal forums.

2. I appreciate the Registrar of Cooperative Societies and his team of officers, particularly Thiru R. Muralidharan, Deputy Registrar of Cooperative Societies, for their commendable efforts in bringing out this Compilation.

(JOKEY ANGU)
Secretary (Cooperative)

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PREFACE

Co-operative societies have assumed importance in this Union territory as an instrumental of social change. Large funds, mainly provided by the Government and its agencies, are handled by the societies. Their proper administration is therefore an imperative for the healthy development of the co-operative societies in the Union territory, I should say, of the co-operative movement itself. An intimate knowledge of the law relating to the entire law on the subject, the Act, Rules, judgments of the Court will therefore be immense help to all concerned.

The Puducherry Co-operative Societies Act and the Rules framed thereunder do cover various facets relating to co-operative societies of different hues and dimensions right from their registration to the winding up. Despite the all pervasive nature of the legislation, difficulties still arise in their implementation and actual working, leading at times to protracted and recriminatory litigation.

The Compilation of Judgments of the Hon'ble High Court of Madras Involving Puducherry Co-operatives is the second volume and the first volume was compiled and released during 2006. Thereafter much water has flown under the bridge.

Like the earlier volume, this compilation of second volume is the brain child of Thiru R. Muralidharan, Deputy Registrar (Planning & Legal) of the Department. Some of the judgments missed out in the first volume are included here and there are 58 cases of Hon'ble High Court of Madras and one of the Hon'ble Apex Court. The crisp subject index and cerebral head note to each case make interesting reading of the judgments. An insight to these judgments will certainly enhance the reader's knowledge on various facts of the working of the co-operatives. I place on record the dedicated and tireless efforts of the editor Thiru R. Muralidharan who has one more feather in his cap through this publication. He has brought out quite a good number of publications for the Department. The compilation is a welcome addition to the literature on the subject.

..2..

I thank Thiru Jokey Angu, I.A.S., Secretary to Government (Co-operation) for the thoughtful foreword and his keen interest in the activities of the Department.

Tmt. V. Sathya, Senior Inspector and Tmt. N. Srilatha, Stenographer of the Department have ably supported the editor in bringing out this publication and I convey my deep appreciation to them.

Such publications should be a regular feature of the Department and I look forward more manuals on various subjects which will be a source of knowledge to all the stakeholders especially who will be taking the reins of the Department.

With co-operative greetings,

20/5/15

[**Dr. A.S. SIVAKUMAR**]

BETWEEN YOU AND ME

After compiling the first volume of 'Compilation of Judgments of the Hon'ble High Court of Madras involving Puducherry Co-operatives', I found that quite a good number of judgments were rendered by the Hon'ble High Court on co-operatives and there is enough material for the second volume. In the meantime, some of the judgments which should have been included in the first volume came to my access and I incorporated them in this volume. These judgments are very rich in their content and on the question of law involved in them.

The law develops when it is interpreted by the Courts. Intense knowledge is sine qua non to study the growth of law and this is possible only through case laws on the subject. Fifty eight cases are documented in this publication by giving the head note on the main principle laid down in the relevant case, the sections of the Act involved in the interpretation. This exercise will fulfill a strong need to document the judgments involving Puducherry co-operatives. Even if some judgments are left out, I shall be thankful if they are brought to my notice so that they can be included in the next volume, if God willing.

In fact I should have brought out this volume much earlier and quite a few judgments were keyed in long ago. The collection of judgments from various sources is really a challenging task and many of my colleagues helped me on this. So many people have contributed to and influenced my thinking on this publication that I cannot list all and must ask the forgiveness of those I omit.

I feel honoured to have a foreword from the **Secretary (Co-operation)** and for the nice words. This work would not have been possible without the dynamic inspiration of my **Registrar Dr. A.S. Sivakumar**. I thank him much.

All along I was finding it tough when it comes to proof reading, because this task is really perilous. The proof reader eye is really a blessing and I am fortunate to find this in **Ms. V. Sathya**, my worthy colleague. She richly deserves my sincere appreciation for editorial suggestion and production help. She has infectious enthusiasm which is truly uncommon.

For invaluable editing and production assistance, for her inner commitment, skill and sensitivity my abundance appreciation is due to **Ms. N. Srilatha**. She has contributed her best to this arduous task in large measure by devoting endless hours and long days.

For the excellent creativity to the cover page **Mr. G. Madhurai**, Deputy Registrar deserves earnest appreciation. He stands by my side in all my constructive endeavours. I will forever treasure our blossoming friendship.

Mr. K. Srinivasan, is my 'can do' associate. For the logistical support I thank him warmly. His assistance is invaluable to me. My appreciation is due to **Ms. J. Jayabharathi**, a former employee of the Pondicherry State Co-operative Union for keying in the judgments.

Behind the success of every man is not a woman, but a 'family' who is the source of encouragement and emotional support. All the time spent in for the publication originally belonged to them which they surrendered without a murmur. I just do not thank my mother, wife and daughter but I convey my love and gratefulness to them for their support in thick and thin.

For errors and defects which notwithstanding every anxiety to prevent them, may inadvertently occur, I crave indulgence of the readers.

This publication is my humble dedication to two legendry advocates, who always live in my memory, **Mr. R. Vaidyanathan**, former Government Pleader and **Mr. P. Krishnamoorthy**, former Government Pleader for Pondicherry at High Court. I owe them much for what I am today.

For the next generation ladies and gentlemen of the department, I wish only the best to you.

May God bless you and me!

R. MURALIDHARAN

Disclaimer

Although due care and caution have been taken to avoid any mistakes or omissions while editing, printing and publishing judgments with head notes, readers should verify the correctness from the full text as in the certified copy of judgment. The Department shall not be held responsible or liable in any manner for any loss or damage caused to anyone in any way due to mistakes / omissions committed despite care and caution.

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SUBJECT INDEX

Bye-laws

The main object of the Pondicherry Co-operative Wholesale Stores is to carry on the business in wholesale. There is no bye-law or rule of the stores which would enlarge the scope of that object, so as to comprehend within it any dispute that may arise between the stores on the one hand and the employees on the other with regard to the conditions of service of the employees. It cannot, therefore, be said that the dispute in these cases satisfies the requirement that the dispute being one touching the business of the petitioner-stores. It was held that the applications made by the ex-employees in these cases under S. 33 C(2) of the Industrial Disputes Act were competent. *[The Pondicherry Co-operative Wholesale Stores Ltd. vs. The Presiding Officer, Labour Court, Pondicherry and others]* ***1***

There was no scope for ordering an amendment to the bye-laws of the Pondicherry Co-operative Urban Bank in a writ petition in as much as in the event of the appellant seeking for such an amendment in the proper manner that would involve a detailed procedure to be followed by the competent authorities and then only it would be possible to find out as to whether such an amendment is really called for and or whether the provision is in consonance with the provisions of the main Act. *[V. Selvaraj vs. Union of India, rep. by Secretary (Co-operation), Pondicherry and others]* ***114***

Management

Pondicherry Co-operative Societies Act, 1972 – S. 33 – Appointment of administrator - Under S. 33(2) of the Act, the administrator subject to the control of the Registrar has power to exercise all or any of the functions of the committee. Therefore, it cannot be said that administrator does not have the power or authority to pass the resolution. A conjoint reading of S.33(1) read with the definition of 'board' under the regulation and regulation 46 which speaks about the power to amend as well as the bye-law No. 47 would clearly establish the fact that the second respondent being the Administrator is having absolute competency to pass a resolution by way of amending the regulation. There is no rule or regulation, which prescribes that before passing a resolution the approval of the general body will have to be obtained. There is no necessity in law that the members of the petitioner Union will have to be heard before

enhancing the age. As the respondents have the power and authority in enhancing the age, the petitioner cannot question the same. *[Pondicherry Co-operative Urban Bank Employees Welfare Union vs. The Registrar, Co-operative Department, Pondicherry and another]* **254**

Election

Pondicherry Co-operative Societies Rules, 1973 – R. 32 - The question that came up for decision is whether the committee is empowered to adjourn the filing of nominations after the election schedule has been announced and issue a notification to start the proceedings from the date of filing of nomination. On perusal of Rule 32 (19) of the Rules it could be seen that there is no provision to continue from the stage at which the election was stopped. The Court is aware that once election proceeding has started the interference of the Court is not appropriate. However for the reasons mentioned and also in the larger interest of the members of the society this Court feels the interference under Article 226 is warranted. *[S. Thirumalai and another vs. The Registrar of Co-operative Societies, Pondicherry and another]* **66**

Pondicherry Co-operative Societies Act, 1972 – S. 84 and Rule 64 of the Rules - Rule 64 of the Pondicherry Co-operative Societies Rules 1973 provides for reference of disputes under S. 84 of the Act and it is stipulated therein that a dispute relating to or in connection with, any election of officer shall be referred to the Registrar within two months from the date of declaration of the result of such election and hence the writ petition in not maintainable. However, it is open to the petitioner to pursue other legal remedy. *[R. Parasuraman vs. The Registrar of Co-operative Societies, Pondicherry and others]* **86**

Surcharge

The Pondicherry Co-operative Societies Act, 1972 – S. 82 - The order of the surcharge inquiry officer directing the petitioners to make good of the loss at Rs. 88,200 each to the society was confirmed by the Co-operative Tribunal. The findings recorded by the Tribunal are based on the materials on record and the reasons for arriving at such findings are unassailable. Factual findings unless perverse or legally untenable, cannot be interfered within the exercise of the extraordinary jurisdiction of the Court. *[A. Periathamby and another vs. The Pondicherry Public Works Department Staff Co-operative Society Ltd., and others]* **72**

Supersession of committee

Pondicherry Co-operative Societies Act, 1972 – S. 83 – Supersession of the committee of management - It is not an isolated act which has led to the issue of the impugned order, but a chain of events, starting from the no confidence motion, led to the impugned order. Therefore the opinion formed by the Registrar that the society was not functioning properly, as required under S. 83 (1) (a), cannot be found fault with. The first respondent was prepared to hold elections, within any time frame fixed by the Court and that there was no intention at all to have a Special Officer for a period exceeding two years. Under such circumstances, the contention that the failure to specify the period vitiated the impugned order cannot be countenanced. The Managing Directors of the Pondicherry State Co-operative Bank and Pondicherry State Co-operative Housing Federation recorded in the note file their views and it is only thereafter the first respondent passed the impugned order. Therefore as a matter of fact, there was no post facto consultation but a pre-consultation. There has been a consultation with the necessary party, before the impugned order was passed and hence the consultation with the Bank cannot vitiate the order. *[S. Baskar @ Kumaravelu vs. The Registrar of Co-operative Societies, Pondicherry and another]* **89**

Pondicherry Co-operative Societies Act, 1972 – S. 83 – Supersession of the committee of management - The Tribunal, in the impugned order, has categorically stated that the irregularities had been listed in the explanation of the petitioner and that the Registrar of Co-operative Societies has taken a decision to dissolve the elected board of directors after consulting the financing bank, and that the Registrar, before dissolving the elected board of directors, considered the explanation submitted by the petitioner and later passed final order. At this stage, the adequacy of reasons for the supersession cannot be gone into by this Court and it can be decided only by the Tribunal, before which the appeal is pending. The reasons assigned by the Tribunal in the impugned order for dismissing the stay application are perfectly valid. *[N. Gunasekaran vs. The Registrar of Co-operative Societies, Pondicherry and others]* **111**

Disputes

Pondicherry Co-operative Societies Act, 1965 – S. 73 - The ex-employees of the Pondicherry Co-operative Wholesale Stores claimed computation of

dearness allowance on the basis of a resolution passed by the stores resolving to pay dearness allowance to its employees according to Government scale. The contention of the stores is that under S. 73 of the Pondicherry Co-operative Societies Act, 1965, it is the Registrar of Co-operative Societies who is the competent authority to decide the point raised by the ex-employees and that, therefore, the applications under S. 33 C(2) of the Industrial Disputes Act were themselves not maintainable. The main object of the Pondicherry Co-operative Wholesale Stores is to carry on the business in wholesale. There is no bye-law or rule of the stores which would enlarge the scope of that object, so as to comprehend within it any dispute that may arise between the stores on the one hand and the employees on the other with regard to the conditions of service of the employees. It cannot, therefore, be said that the dispute in these cases satisfies the requirement that the dispute being one touching the business of the petitioner-stores. *[The Pondicherry Co-operative Wholesale Stores Ltd. vs. The Presiding Officer, Labour Court, Pondicherry and others]* ***1***

Pondicherry Co-operative Societies Act, 1972 – S. 84- Disputes - If any member of the society including the petitioner feels aggrieved since the board of directors have got away after committing financial irregularities and no steps have been taken by the Registrar or his subordinate to recover the amounts swindled from society, it is open to file a dispute under S. 84 of the Act. Unless a member raises a specific dispute with reference to the irregularities or misappropriation committed by its erstwhile directors, no directions can be given by the Court. It is open to the petitioner to raise appropriate dispute under S. 84 against the erstwhile board of directors and certainly the authorities concerned shall go into the matter and pass appropriate award in terms of S. 84. *[B. Sathiyaseelan vs. The Registrar of Co-operative Societies, Pondicherry and others]* ***121***

Once the right of the petitioner stood rejected by the statutory authority under the said Act in exercise of quasi judicial powers, it is not open to the petitioner to seek enforcement of the observations made in the order without challenging the order passed by the statutory authority. *[M. Nirmal vs. The Managing Director, Pondicherry Co-operative Consumers Federation Ltd., Pondicherry and others]* ***220***

Execution of decree

Pondicherry Co-operative Societies Act, 1972 – S. 133 – Execution of decree - The petitioner has committed default in the matter of repayment of loan taken from the Pondicherry State Co-operative Housing Federation. He did not comply with the conditions imposed in the interim orders. He was evicted from the house and he alleged that proper procedure was not followed before eviction. The petitioner admitted that he is not in a position to pay the dues and a huge amount was due from him. The petitioner has also suggested that the property in question could be brought on auction sale to recover the amount. The Court was not inclined to restore possession of the property in question in favour of the petitioner even though it was alleged that he was evicted without following the procedure. So far as the belongings of the petitioner are concerned, if they are lying inside the premises, the petitioner is given liberty to approach the respondents, who shall hand over the same to the petitioner immediately. *[Vikraman vs. Union of India, rep. by Chief Secretary, Pondicherry and others]* **97**

Revision

S. 141 - The revision petitioner has not produced any document before the appellate authority to show that apart from the payments disclosed by the records he has also made some more payments. Under such circumstance, it is not open to the revision petitioner to contend that the payments made by him were not given credit to. The agreed rate of interest is 16% per annum and under Order 34, Rule 11 of C. P. C. the respondent is entitled to claim the agreed rate of interest because it is a mortgage suit. The future rate of interest was fixed at 6% per annum by the appellant authority. So under such circumstances, there is no reason to interfere with the award passed by the Tribunal. *[Hariputhran vs. The Pondicherry Co-operative Urban Bank and another]* **78**

The petitioner claimed that the attachment of property was not effected by proper officer and the mortgaged property cannot be attached as it belonged to joint family. Rejecting the averments, the Court held that since the property was mortgaged by the revision petitioner himself, the question of attachment was valid and need not be gone into. Further since the petitioner himself had mortgaged the property as it belonged to him, the question of going into allegation that the property belonged to joint family does not arise. *[A.L. Pargunapandi vs. The Manager, Mannadipet Commune Co-operative Housing Society Ltd., Pondicherry]* **84**

Puducherry Co-operative Societies Act, 1972 – S. 141 – Revision powers of the Registrar - The petitioner contended that under S. 84 of the Act, power has been conferred on the Registrar for hearing disputes touching the business of the society. Therefore, when that power is delegated to a subordinate, he also exercised the same power as that of the Registrar. Therefore, the revisional remedy under S. 141 of the Puducherry Co-operative Societies Act is either illusory or it was not practicable to file such revision. Held, by virtue of the power of delegation under S. 161 read with S. 171 (3) of the Act, the power has been delegated to a subordinate to the Registrar. When there is a valid delegation of power to a subordinate of the Registrar, the power of the revision can thus be exercised by the Registrar, as he does exercise any authority under S. 84. The statutory revisional remedy or the appellate remedy provided under the Act must be exercised before approaching this Court under Article 226 of the Constitution of India. The writ petition was dismissed and the petitioner was directed to work out his remedies before the revisional authority. *[V.Venkatesan vs. The Registrar of Co-operative Societies, Puducherry and others]* ***179***

The appeal/revision was filed by the petitioner against the order passed reducing the petitioner from his rank. Since a revision is maintainable under Section 141 of the Pondicherry Co-operative Societies Act, 1972 and a limited prayer is made to consider the same on merits within a time frame, learned counsel for the respondents was directed to take notice, who in turn submits that three months' time may be granted to the first respondent to consider and pass necessary orders on the appeal/revision of the petitioner. *[P. Kannan vs. The Registrar of Co-operative Societies, Puducherry and another]* ***223***

The learned counsel appearing for the appellant, who is the first respondent in the writ petition, agreed for the disposal of the appeal/revision petition filed by the writ petitioner. This writ appeal is dismissed. However, liberty is given to the appellant to raise all the points including the maintainability of the revision petition before the authority concerned. *[The Registrar of Co-operative Societies, Puducherry vs. P. Kannan and another]* ***263***

Section 141 – Revision - The impugned order does not dispute the fact that the person who passed the same was a subordinate to the Registrar of Co-operative Societies. Section 141 of the Act is in pari materia with

Section 153 of the Tamil Nadu Act. It empowers the Registrar to call for and examine the record of any officer subordinate to him. Therefore, the power to entertain the revision cannot be said to be excluded in such cases. As an employee of the co-operative society, the petitioner has very limited options. If revision is also shut out, the petitioner will be left with no remedy. *[J. Radhakrishnan vs. Union of India, Rep. by Secretary to Government, Pondicherry and others]* **301**

Section 141 – Revision - The Revisional Authority can revise any action of the second respondent invoking Section 141 of the Puducherry Co-operative Societies Act, 1972. The revisional jurisdiction of the first respondent is not merely confined only to any order passed by a subordinate. The revisional jurisdiction is for correcting all errors of jurisdiction and for setting right any illegality, infirmity or irregularity. Such illegalities may arise either out of acts of commission or acts of omission. In respect of the acts of omission, there could be no orders. Therefore, the first respondent is obliged to entertain a revision petition, even if it does not arise out of any particular order of the subordinate officer. *[R. Tamizhkumaran vs. The Registrar of Co-operative Societies, Puducherry and another]* **304**

Labour Law

Industrial Disputes Act, 1947 – S. 33 C(2) – The ex-employees of the Pondicherry Co-operative Wholesale Stores claimed computation of dearness allowance on the basis of a resolution passed by the stores resolving to pay dearness allowance to its employees according to Government scale. The contention of the stores is that under S. 73 of the Pondicherry Co-operative Societies Act, 1965 it is the Registrar of Co-operative Societies who is the competent authority to decide the point raised by the ex-employees and that, therefore, the applications under S. 33 C(2) of the Industrial Disputes Act were themselves not maintainable. Rejecting the contention of the stores it was held that it cannot be said that the dispute in these cases satisfies the requirement that the dispute being one touching the business of the petitioner-stores. Hence the applications made by the ex-employees in these cases fall under S. 33 C(2) of the Industrial Disputes Act and maintainable. *[The Pondicherry Co-operative Wholesale Stores Ltd. vs. The Presiding Officer, Labour Court, Pondicherry and others]* **1**

It is also well settled in law that the Court should refrain itself from interfering with orders of interim suspension pending disciplinary proceedings, unless the same suffers from want of jurisdiction, as interim suspension pending enquiry is not a punishment by itself, but it is only intended to facilitate smooth and speedy enquiry. *[B. Gayathri vs. Pondicherry State Co-operative Consumers Federation Ltd.]* **46**

The suspension pending enquiry is not a punishment but is only a step to facilitate smooth and speedy enquiry. It has been held by the Courts time and again that disciplinary proceedings should not be kept pending indefinitely. *[B. Gayathri vs. Pondicherry State Co-operative Consumers Federation Ltd.]* **49**

It is expressly clear that the charges are not so serious or grave warranting inflicting of any major penalty and stoppage of one increment without cumulative effect will meet the ends of justice. *[Pondicherry State Co-operative Consumers' Federation Ltd. vs. B. Gayathri]* **51**

A mere perusal of the sequences of events clearly shows that the petitioner, just because the writ petition was admitted and pending before this Court and thinking that he is the authority of the respondent-society, is not appearing for enquiry for the reasons best known to him. If this sort of attitude of the petitioner is allowed by this Court, no enquiry would be properly conducted *[B. Navaneetha Kannan vs. The Administrator / Managing Director, the Pondicherry Co-operative Milk Producers' Union Ltd., Pondicherry and others]* **54**

The impugned proceedings has been issued by the second respondent in and by which the petitioner has been retired from service with effect from 30.6.2004. Admittedly, the second respondent has no so far amended its regulations or bye-laws enhancing the age of superannuation from 58 to 60 years. Unless such an enhancement is made, it is highly doubtful as to whether the petitioner's prayer can be countenanced. *[G.R. Veerapathiran vs. The Registrar of Co-operative Societies, Pondicherry and another]* **61**

The Presenting Officer himself has to be cross examined as a witness with reference to certain documents, instead of changing the said Presenting Officer by substituting with some other Presenting Officer the Disciplinary Authority has allowed the entire proceedings to be completed with the help of the very same Presenting Officer. The writ petitioner has been denied the reasonable opportunity to defend the proceedings. This definitely vitiates

the dismissal order. Quashing the order impugned, the Court directed the first respondent to appoint a new Presenting Officer and recommence the proceedings. *[G. Vasantha vs. The Disciplinary Authority, Health Staff Co-operative Credit Society Ltd., Karaikal and another]* **63**

The relevant bye-laws applicable to the second respondent society deal with the age of superannuation and retirement. In bye-law No. 35, it is clearly stated that every employee shall retire from service on attaining the age of 58 and in the case of special staff like peon and other last grade employees, it is 60. This bye-law has not been amended. *[P. Sambandam vs. The Registrar, Co-operative Department, Pondicherry and another]* **103**

In the present case, the officer has played dual role not only as the presenting officer, but also as a witness. The writ appeal is liable to be dismissed on the ground of non-compliance of the order passed by the learned single Judge of this Court and also for not carrying out the instructions given by the Deputy Registrar (Planning) to change the presenting officer as he was a witness. *[The Disciplinary Authority/The President, Health Staff Co-operative Credit Society, Karaikal vs. G. Vasantha and another]* **117**

In the relevant rules except stating that the selection committee should consist of the Managing Director, Chief Cane Officer, Controller of Finance, Administrative Officer and two non-official directors, there is no other stipulations in the rules to the effect that in order to make the selection valid, there should be any quorum from amongst the committee members. If that be so, the mere non-attendance of the Administrator in the place of two non-official directors by itself would not invalidate the selection proceedings, and consequently the promotion orders issued to the petitioners based on the selection process held by the committee could not have been rescinded. *[R. Thambusamy and others vs. The Union Territory of Pondicherry, rep. by its Registrar of Co-operative Societies, Pondicherry and others]* **124**

The petitioner submitted that he was made to give the consent letter due to the threat of the first respondent that he would be retrenched from service. Held, the petitioner after having given the consent letter cannot turn around and challenge the proceedings by which he is appointed as a salesman. It is not disputed by the petitioner that he has been appointed with all his seniority. Therefore, the petitioner cannot challenge the said order at a belated stage. *[K. Ramadoss vs. The President, Thirunallar Village Co-operative Agricultural Credit Society and others]* **151**

According to the petitioner, he was fully eligible for the post of Office Manager/Administrative Officer, since he satisfies the qualifications stipulated in the recruitment rules. The petitioner submitted a representation staking his claim. The respondent does not dispute that the petitioner's suitability for the post and there is no dispute regarding the petitioner's qualifications, for being considered for promotion to the post of Administrative Officer. The writ petition is allowed as prayed for and the respondents are directed to consider the claim of the petitioner for promotion to the post of Administrative Officer. *[V. Balakrishnan vs. The Registrar of Co-operative Societies and another]* **168**

The Registrar of Co-operative Societies held that since the termination of service is a consequence of the disciplinary proceedings, he cannot adjudicate the matter in view of the bar under S. 84 of the Pondicherry Co-operative Societies Act, 1972. The petitioner was advised to seek remedy under the Industrial Disputes Act, 1947. It was submitted by the petitioner that a right of appeal is provided under the subsidiary regulations governing the service conditions of the employees. The petitioner has to therefore, seek remedy in accordance with the rules. *[J. Anthonisamy vs. The Registrar of Co-operative Societies, Pondicherry and another]* **172**

The prayer of the petitioners is to implement the principle of equal pay for equal work and to fix their scale of pay on par with the respondents 4 to 6. The official respondents stated that at the time of appointing the respondents 4, 5 and 6 as fresh recruits after their service in Pondicherry Co-operative Textile Processing Society (TEXPRO) an inadvertent order was given fixing their salary at higher level. This was rectified and an order was passed on 10.1.2007 fixing their salary at Rs.3,600 – 8,200. The excess payment made to them was recovered in 24 monthly installments. The entire excess salary was recovered from them. In view of the above, the prayer of writ petitioners that equal pay should be given for equal work is met and there is no anomaly of pay between the petitioners and the respondents 3, 4 and 5. Further, no writ will lie against a co-operative society. On these premises, the writ petitions were dismissed. *[R. Ramamurthy and others vs. Union of India, rep. by Secretary to Government, Pondicherry and others]* **184**

The Labour Union has filed the writ petition seeking for a direction to the respondents to constitute an Industrial Tribunal, as per the provisions of

the Industrial Disputes Act and to refer the issue of revision of wages. The Commission headed by Justice Dr. David Annousamy has already submitted a report and a copy of the report was also given to the petitioner-union. If the petitioner-union is not satisfied, then the only course open to them is to raise an appropriate dispute, specifying their stand regarding the Commission's recommendation and ultimately, before the Labour Department. The appropriate Government will consider the same by referring for adjudication. The present attempt to forestall the Commission's report or prevent the respondents from taking decision on the basis of the Commission's report is not clearly maintainable. *[SPINCO Labour Union vs. The Registrar of Co-operative Societies, Pondicherry and others]* **191**

The Registrar of Co-operative Societies has no power to transfer any employee of a society to another society, since each co-operative society is an independent unit and an employee cannot be transferred from one society to another. Hence the request of the petitioner to transfer him to another society, as the society in which he was working was liquidated cannot be granted. *[P. Panjamoorthy vs. The Registrar of Co-operative Societies, Pondicherry and another]* **206**

The question whether the second respondent is a workman or not is purely a question of fact and cannot be decided purely on the nomenclature of the post held by the second respondent. The Labour Court disbelieved the reason given in the resolution passed by the petitioner for retrenching the service of the second respondent more particularly when immediately after the second respondent was retrenched, they have employed several persons in various positions. Thus, the Labour Court came to a conclusion that the second respondent has to be reinstated in service. The Labour Court after properly appreciating the evidence available on record came to a conclusion that the order of retrenchment was without any basis and that there has been violation of S. 25(f) of the Industrial Disputes Act and therefore passed the award of reinstatement with backwages, however, denied backwages for the period during which the second respondent was employed. There is no valid reason to re-appreciate the findings arrived at by the Labour Court to come to a different conclusion. *[Arignar Anna Primary Agricultural Co-operative Bank vs. The Presiding Officer, Labour Court, Karaikal and another]* **209**

Once the right of the petitioner stood rejected by the statutory authority under the Act in exercise of quasi judicial powers, it is not open to the petitioner to seek enforcement of the observations made in the order without challenging the order passed by the statutory authority. *[M. Nirmal vs. The Managing Director, Pondicherry State Co-operative Consumer Federation Ltd. and others]* **220**

When the enquiry officer has finally found the petitioner was not guilty in respect of charges, the de-novo enquiry proceedings asking the petitioner to appear for enquiry again has to be looked into with all seriousness. The disciplinary authority is entitled to differ from the findings of the enquiry officer, if the disciplinary authority is not satisfied with the findings of the enquiry officer. But the law imposes an obligation upon the disciplinary authority to follow certain mandatory procedures. Even though the findings of the enquiry officer also explicitly established the innocence of the petitioner, the disciplinary authority, despite the submission of the report by the enquiry officer holding the petitioner not guilty, chose to issue the order to conduct de novo enquiry which is clearly proved to be a motivated one. The Court is of the considered view that the principles laid down by the Apex Court in Punjab National Bank case that on submission of the favourable report by the enquiry officer, the disciplinary authority, before even going for a de-novo enquiry disagreeing with the finding of the enquiry officer should issue with a show cause notice to the petitioner and call him to explain as to why the findings of the Enquiry Officer should not be deviated, have been flagrantly violated. *[B. Navaneetha Kannan vs. The Administrator/ Managing Director, Pondicherry Co-operative Milk Producers Union Ltd. and another]* **225**

The case of petitioner herein could not be considered as his age was 36 years, whereas for direct recruitment, the age limit was 35 as per the recruitment rules. Further, it was found by the Labour Court on evidence that he was only a NMR at that time and could not be promoted. Therefore, the Labour Court found that there was no irregularity or favoritism shown to anyone in the above appointment of Cane Assistant. *[D. Balasundaram vs. The Union Territory of Pondicherry, rep. by its Registrar of Co-operative Societies, Pondicherry and others]* **249**

Under S. 33(2) of the Pondicherry Co-operative Societies Act, the administrator subject to the control of the Registrar has power to exercise all or any of the functions of the committee. Therefore, it cannot be said

that administrator does not have the power or authority to pass the resolution. A conjoint reading of S. 33(1) read with the definition of 'board' under the regulation and regulation 46 which speaks about the power to amend as well as the bye-law No. 47 would clearly establish the fact that the second respondent being the Administrator is having absolute competency to pass a resolution by way of amending the regulation. There is no rule of regulation, which prescribes that before passing a resolution the approval of the general body will have to be obtained. There is no necessity in law that the members of the petitioner Union will have to be heard before enhancing the age. As the respondents have the power and authority in enhancing the age, the petitioner cannot question the same. *[Pondicherry Co-operative Urban Bank Employees Welfare Union vs. The Registrar, Co-operative Department, Pondicherry and another]* **254**

Whether the official deputed to a post in the society is entitled to draw the scale of pay attached to the post or the scale of pay mentioned in the order of deputation? The second respondent, having accepted the terms and conditions of deputation with pay scale mentioned in the order of deputation, cannot now turn around and say that he is entitled to the scale of pay attached to the post of Managing Director. Therefore, one cannot find fault with the authorities for not granting the scale of pay attached to the post of Managing Director as he had accepted the terms and conditions. *[Union of India, rep. by Secretary to Government (Co-operation), Puducherry and others vs. The Registrar, Central Administrative Tribunal, Chennai and another]* **265**

The petitioner seeks a positive direction to the first respondent to appoint him as Junior Assistant. The question of issuing any such positive direction does not arise. The first respondent is a co-operative bank. In case there are vacancies, necessarily the first respondent should advertise in newspapers. In case such notification is issued, it is open to the petitioner to submit an application and necessarily such application should also be considered along with others in accordance with the relevant recruitment rules. *[Christopher Amal vs. The Managing Director, Co-operative Urban Bank Ltd., and another]* **271**

It was observed that appellant bank has in crystal clear terms pleaded that the second respondent was working as Manager in the bank. Therefore, the contrary view taken by the learned single Judge that 'the question as to whether the second respondent or a person employed in managerial

capacity is raised for the first time before this Court' is not a correct one. Both the Labour Court, while passing the Award as well as the learned single Judge, while dismissing the writ petition have not gone into the aspect viz., whether the second respondent was a workman as per Section 2(s) of the Industrial Disputes Act and have not decided this point/issue at the first instance. If really, the appellant/bank has offered one month salary in lieu of notice at the time of second respondent/employee's retrenchment as compensation, then, in law, it may not be open to the 2nd respondent/ employee to take a plea that there has been a violation of Section 25(f) of the Industrial Disputes Act. *[Arignar Anna Primary Agricultural Co-operative Bank, Karaikal vs. The Presiding Officer, Labour Tribunal, Karaikal and another]* **276**

The impugned order does not dispute the fact that the person who passed the same was a subordinate to the Registrar of Co-operative Societies. Section 141 of the Act is in pari materia with Section 153 of the Tamil Nadu Act. It empowers the Registrar to call for and examine the record of any officer subordinate to him. Therefore, the power to entertain the revision cannot be said to be excluded in such cases. As an employee of the co-operative society, the petitioner has very limited options. If revision is also shut out, the petitioner will be left with no remedy. [*J. Radhakrishnan vs. Union of India, Rep. by Secretary to Government, Pondicherry and others]* **301**

There are no lapses on the part of the society in conducting the enquiry in a fair manner and after following the principles of natural justice. After considering the length of service as well as family circumstances of the respondent, punishment was awarded and hence the punishment shall not be construed as shockingly proportionate and hence the modification of punishment awarded by the Civil Court with back wages in not in accordance with law. *[Pondicherry Co-operative Wholesale Stores Ltd., Pondicherry and another vs. A. Subramanian]* **308**

The tenure of the appellant as President of the second respondent society has come to an end and an Administrator has been appointed. Therefore, the appellant has got no locus standi to seek a direction to take action against the third respondent. The appellant is neither a person interested nor he could maintain a public interest litigation in the service matters pertaining to the third respondent. *[P. Purushothaman vs. The Registrar of Co-operative Societies, Puducherry and others]* **320**

Section 72 of the Act makes it clear that the provident fund shall not be liable to attachment or be subject to any other process of any court or other authority. That protection is given for payment of provident fund, after the person leaves the service of the employer. The pendency of the surcharge proceeding cannot be a reason to withhold the provident fund. Even if surcharge proceedings is issued and it reaches finality, the provident fund cannot be withheld against surcharge proceeding. *[K. Ramamurthy vs. The Registrar of Co-operative Societies, Puducherry and another]* ***322***

Maintainability of writ against co-operative society

So far as the question about the maintainability of the writ petition is concerned, the only exception carved out by the Larger Bench is a public or a statutory duty discharged by a co-operative society. Therefore, the writ petition will not lie on the grounds raised by the petitioner. *[P. Sambandam vs. The Registrar, Co-operative Department, Pondicherry and another]* ***103***

On behalf of the society, it was contended that the petitioner has instituted the writ petition against a co-operative society and no writ will lie against a co-operative society. Held, if the financial assistance of the State is so much as to meet almost the entire expenditure of the society, it would afford some indication of the society being impregnated with Governmental character. Further, now the committee has been dissolved and an Administrator has been appointed for the society. In view of those facts, the Court was of the considered opinion that the first respondent society could be called as a 'State' within the meaning of Article 12 of the Constitution of India and the writ would lie against the first respondent. *[IMCOLA (Exports) Limited vs. The Pondicherry Co-operative Sugar Mills, Pondicherry and others]* ***134***

Jurisdiction of Civil Court

In this writ petition, the cancellation of sale order by the Pondicherry Co-operative Sugar Mills was challenged. A plea was taken by the society that the remedy to the petitioner is only by filing a civil suit. Rejecting the argument, the Court held that the petitioner is engaged in the business of exporting molasses to various countries and if the petitioner is driven to the Civil Court for release of the balance quantity of molasses, then the petitioner could get the remedy in the Civil Court only after a couple of years. In the meantime, as contended by the petitioner, the customers in various countries would squeeze the petitioner for fulfillment of the commitments made by the petitioner. Further, the petitioner, at best,

would be entitled for damages and not the specific relief of enforcement of the sale order. Hence, considering the above factors, that the remedy of the petitioner under the given circumstance would be only to avail the writ jurisdiction and not by way of filing the suit before the Civil Court *[IMCOLA (Exports) Limited vs. The Pondicherry Co-operative Sugar Mills, Pondicherry and others]* **134**

Pondicherry Co-operative Societies Act, 1972 – Section 144 – Jurisdiction of Civil Court – The appellant society has passed an order of reversion and demoted the respondent. Order of punishment was challenged before the Civil Court. By impugned order, the First Appellate Court interfered with the order of punishment and ordered reinstatement. The questions that came up for consideration before the High Court are whether the Civil Court has jurisdiction to try a matter exclusively which comes under the jurisdiction of the Registrar of Co-operative Societies, whether Civil Court can interfere with respect of proportionality when the same is within discretion of appointing authority and whether the Lower Appellate Court was correct in granting back wages. There are no lapses on the part of the society in conducting the enquiry in a fair manner and after following the principles of natural justice. After considering the length of service as well as family circumstances of the respondent, punishment was awarded and hence the punishment shall not be construed as shockingly proportionate and hence the modification of punishment awarded by the Civil Court with back wages in not in accordance with law. *[Pondicherry Co-operative Wholesale Stores Ltd., Pondicherry and another vs. A. Subramanian]* **308**

Income Tax Act

S. 80 P(2)(a)(i) of the Income Tax Act, 1961 refers to a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members. But, it cannot be said that a co-operative society which is engaged in selling or distribution of consumer goods or other goods to its members for deferred consideration can be said to be extending credit facilities merely because it does not insist on cash payment but prefers to collect the consideration after a time. Therefore, the Rodier Mill Employees Co-operative Sotres is not entitled to the exemption under S. 80 P(2)(a)(i) of the Income Tax Act, 1961, as a co-operative society engaged in providing credit facilities to its members *[Rodier Mill Employees Co-operative Stores Ltd. vs. Commissioner of Income Tax, Tamil Nadu-V]* **11**

Whether the interest earned by the Pondicherry Co-operative Housing Society on the advances made by it to its members for construction of houses would be exempted under S. 80-P of the Income Tax Act; and whether the housing co-operative society could be held as carrying on business of providing credit facilities to its members. Clause 2(j) of the bye-laws of the society says that one of the objects of the society is lending moneys to its members. The carrying on of the activity of lending moneys to its members by the assessee-society has to be regarded as an activity relating to the provisions of credit facilities by the society to its members, as one of those objects. Under S. 80P(2) (a) (i) of the Act, in order to claim the benefit of deduction under S. 80P(1) of the Act, the co-operative society should be engaged in carrying on the business of banking or providing credit facilities to its members. The nature of the credit facilities provided by the assessee-society to its members in furtherance of its object clause 2(j) is a distinct and separate activity of the assessee-society and that activity carried on by the assessee-society would make it a society engaged, among others, in carrying on the business of providing credit facilities to its members, attracting S. 80P(2) (a) (i) of the Act. *[Commissioner of Income Tax vs. Pondicherry Co-operative Housing Society]* ***15***

Sales Tax

The Pondicherry State Co-operative Consumers Federation claimed tax exemption on purchasing the oil in bulk and selling the same in retail in small packets in terms of the G.O. issued under the Pondicherry General Sales Tax Act. In this case the assessee did not manufacture the oil which it sold in packets. The oil was purchased in bulk and was packaged for the purpose of convenient retail sale. Mere packaging of oil did not bring about any change in the commodity. The packaged oil remains oil in packages and nothing more. The exemption was disallowed. *[Union Territory of Pondicherry, rep. by the Deputy Commissioner (Commercial Tax), Pondicherry vs. Pondicherry State Co-operative Consumer Federation Ltd.]* ***22***

Tamil Nadu General Sales Tax Act, 1959, S. 30(1) – Appeal – Power of appellate authority to condone delay – Appellate authority has no power to condone delay beyond 30 days as prescribed in clause 2 of proviso to S. 30 of Tamil Nadu General Sales Tax Act. *[Indian Coffee Workers Co-operative Society Ltd. vs. Commissioner of Commercial Taxes, Chennai and others]* ***25***

Penalty was imposed on the petitioner society to the extent of Rs. 3,58,537 under S. 12(5)(iii) of the TNGST Act for belated payment of tax. The petitioner thereafter filed an application under S. 16B of the TNGST Act for waiver of penalty imposed to the Commissioner to whom the power was vested. The request was rejected on the ground that the assessee has not fulfilled the condition prescribed under S. 16B of the Act. On perusal of the impugned order it is observed that the order has not stated that in what way the condition has not been complied with. The discretion conferred on the Commissioner has to be exercised in a judicial manner on satisfying the conditions contemplated therein. The provision is incorporated in the statute only to exercise the same and not to put the same just ornamental to the statute. As a result, the impugned order was set aside, the writ petition was allowed and the matter is remitted to the respondent to consider the application afresh. *[Indian Coffee Workers Co-operative Society Ltd. vs. Deputy Commercial Tax Officer and others]* **57**

Contempt of Court

The respondents themselves have understood the legal position and realized that their plea is fallacious and have set aside the earlier selection and also ordered that there will be a de novo selection in terms of the earlier directions issued by this Court in the writ petition. While taking note of the said order and the unconditional apology expressed by the respondents, the contempt proceedings are dropped and the contemnors are discharged. *[D. Soundararajan and others vs. The Union Territory of Pondicherry, rep. by its Registrar of Co-operative Societies, Pondicherry and others]* **43**

When the directions of the Court are not adhered, it is open to the petitioner to file a contempt petition for non-compliance of the order. A writ petition cannot be maintained to carry out the direction of the Court. *[G. Vasantha vs. The Disciplinary Authority/The President, Health Staff Co-operative Credit Society, Karaikal and another]* **148**

Miscellaneous

The petitioner is a co-operative housing society and is the absolute owner of the schedule land and they made an application to the second respondent for granting approval for conversion of the agricultural land into residential land and to permit them to construct houses thereon. The same was rejected by the first respondent on the ground that the issue involved proximity of site to the airport and the request of the petitioner cannot be considered. The objection is absurd, more so, when residential

and multistoried buildings and other activities are being permitted in and around the said area, the request of the petitioner alone was taken into consideration and rejected. The second respondent is directed to consider the request of the petitioner forthwith and grant approval. *[Sri Jay Maruthi Co-operative Housing Society vs. Union of India, rep. by Member Secretary, Town & Country Planning Department, Pondicherry & another]* **81**

As a right the petitioners cannot seek any cutting order from the Pondicherry Co-operative Sugar Mills when the Government has allotted the cane area based on number of factors to a particular mill. Only based on the price given to the sugarcane alone the allotment cannot be stated as unreasonable and arbitrary. That apart, except the petitioners all the other farmers who have cultivated the sugarcane at the relevant time have supplied the sugarcane to the E.I.D. Parry (India) Limited. *[K. Ramakrishnan and another vs. The Chief Secretary to Government, Pondicherry and others]* **106**

If it is the case of the petitioner that the eighth respondent is running the retail out-let without following the statutory provisions and without required permission from the first respondent, if he is interested in the public, he can always workout his remedies by initiating proceedings by way of public interest litigation. The petitioner has not stated anywhere in the affidavit as to what is his right which is affected which he seeks to protect. Writ petition cannot be entertained. *[B. Sujatha vs. The Regional Officer, Department of Shipping, Road Transport & Highways, Chennai and others]* **155**

A decision made by the respondent which is a policy one cannot be interfered unless the same is tainted with malafides and based upon irrelevant considerations. When the respondent has taken a conscious policy decision and come to the conclusion, the petitioner cannot challenge the same since he is not the person aggrieved. The petitioner cannot insist that a particular condition should be included in the notification as a tender condition. The petitioner has no legal right to insist that a particular condition should be incorporated and the petitioner is also not able to establish any arbitrariness, irregularity or malafide in a policy decision made by the respondent. *[E. Gunasekaran vs. The Managing Director, Pondicherry Co-operative Co-operative Milk Producers' Union Ltd., Pondicherry]* **159**

The petitioner challenged the order of the first respondent housing society cancelling the plot allotted to him. The said order was confirmed by the second respondent and further confirmed by the Co-operative Tribunal, the third respondent herein. Against the order of the Tribunal, writ petition was filed. The Court directed the parties to sort out the difference and arrive at a settlement. The society was prepared to allot a plot. Considering the reasonableness of the offer made by the respondents and also taking into consideration of the fact that the petitioner paid the entire sale consideration in 1976, the petitioner is directed to pay the money within a period of three months and on receipt of the said amount the first respondent is directed to execute the sale deed within one week thereafter without making any amount as further demand. *[M. Rajavelu vs. The Pondicherry Co-operative Housing Society Ltd., Pondicherry and others]* ***175***

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 – Ss. 2(6), 2(6-A)&10(3)(iii)–Definition of 'family'–The claim of the respondent / landlady is that she requires the premises to set up a jewellery shop for her 'foster son'. It is well settled that a 'foster son' also can be treated as a member of the family under S. 2(6-A) of the Act and therefore, it can be held that the landlady has proved her bona fide requirement of the premises for her foster son. Therefore, with this bona fide intention, the landlady has rightly requested the tenant for handing over the vacant possession of the premises and when the tenant failed to do so, she made a petition before the Rent Controller under Ss. 10(2)(i) and 10(3)(iii) of the Act on the grounds of willful default and owner's occupation. The landlady has established her case on both these grounds for eviction of the tenant and both the Courts below have rightly ordered the eviction of the tenant. *[Pondicherry State Weavers Co-operative Society Ltd. vs. S. Ramamirtham]* ***194***

According to the petitioner, the observation with regard to the publication of vacancies in newspaper was taken as a directive to all the co-operative societies and banks by the Registrar of Co-operative Societies resulting in the issuance of a circular, which is in the nature of a directive. The Court can decide only the case before it. While deciding a particular matter, the Court was not expected to comment about other matters not before it. The co-operative societies are functioning on the basis of respective bye-laws. The bye-laws of other societies need not be in tune with the bye-laws of Puducherry Co-operative Urban Bank. The observation made in relation to Urban Bank would not be applicable to

other societies and banks covered by different set of bye-laws. *[The Government of Puducherry, rep. by its Secretary vs. The Managing Director, Co-operative Urban Bank Ltd., and another]* **273**

The petitioner instituted the writ petition seeking a direction to the Administrator of the society to initiate disciplinary proceedings against the third respondent employee, as per the order passed by the Registrar in the revision petition. As on date, the petitioner is not the President of the second respondent society and he has no locus standi to file the petition seeking a direction to the second respondent to initiate disciplinary proceedings against the third respondent. He is not personally affected by the order of the first respondent in setting aside the order of dismissal passed against the third respondent. *[P. Purushothaman vs. The Registrar of Co-operative Societies and others]* **317**

The tenure of the appellant as President of the second respondent society has come to an end and an Administrator has been appointed. Therefore, the appellant has got no locus standi to seek a direction to take action against the third respondent. The appellant is neither a person interested nor he could maintain a public interest litigation in the service matters pertaining to the third respondent. *[P. Purushothaman vs. The Registrar of Co-operative Societies and others]* **320**

SUPREME COURT

Sales Tax

The authorities had firstly certified the assessee's industry to be small scale industry and had then proceeded to grant exemption to it from payment of sales tax on the goods manufactured. The G.O. providing exemption clearly suggested that such exemption was given in the public interest. Since in the present case the exemption was granted to all small scale industrial units registered with the Director of Industries and since the assessee was recognized and certified as a small industrial unit, engaged in the activity of re-packing of edible oil and further since the exemption was granted with the open eyes to this particular industry, the State cannot be allowed to run around and take a stance that the appellant- assessee was not entitled to the exemption on the ground that it did not manufacture any goods. *[Pondicherry State Co-operative Consumer Federation Ltd. vs. Union Territory of Pondicherry]* **328**

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 1.9.1972

CORAM

THE HON'BLE Mr. JUSTICE PALANISWAMY

WRIT PETITION Nos. 2859 AND 2860 of 1971 (P)

The Pondicherry Co-operative Wholesale Stores Ltd., Pondicherry, rep. by its Secretary	...	Petitioner in both the petitions.

Vs.

The Presiding Officer, Labour Court, Pondicherry.	...	First respondent in both the petitions.
T. R. Jambunathan	...	Second respondent W. P. No. 2859/1971
R. Thandabani Udayar	...	Second respondent In W. P. No. 2860 of 1971.

Pondicherry Co-operative Societies Act, 1965 – Section 73 – Industrial Disputes Act, 1947 – Section 33 C(2) - What survives for consideration in these writ petitions is the claim for computation of dearness allowance which the ex-employees claimed on the basis of a resolution passed by the Pondicherry Co-operative Wholesale Stores resolving to pay dearness allowance to its employees according to Government scale. The Labour Court rejected the contention of the petitioner-stores and accepting the claim of the ex-employees computed the claim for dearness allowance at different rates as were applicable to Government servants. These petitions are filed for quashing these orders.

The contention of the stores is that under Section 73 of the Pondicherry Co-operative Societies Act, 1965 it is the Registrar of Co-operative Societies who is the competent authority to decide the point raised by the ex-employees and that, therefore, the applications under Section 33 C(2) of the Industrial Disputes Act were themselves not maintainable.

Applying the tests laid down by the Supreme Court, it needs to be examined whether the dispute raised by the ex-employees in these cases is a dispute touching the business of the petitioner stores. The main object of the petitioner stores is to carry on the business in wholesale. There is no bye-law or rule of the stores which would enlarge the scope of that object, so as to comprehend within it any dispute that may arise between the stores on the one hand and the employees on the other with regard to the conditions of service of the employees. It cannot, therefore, be said that the dispute in these cases satisfies the first requirement laid down by the Supreme Court, namely, that the dispute being one touching the business of the petitioner-stores, though it may be that the Registrar can compute the benefits claimed by the ex-employees. The Court held that the applications made by the ex-employees in these cases under Section 33 C(2) of the Industrial Disputes Act were competent.

The Labour Court, Pondicherry was called upon to compute the money value for the dearness allowance based upon the vague resolution of the petitioner-stores. The resolution did not state whether it was applicable only to that particular year or whether it was to be applied for all time to come. There are no words limiting its application to any particular year. Therefore, the Labour Court rightly held that the resolution was applicable to all years depending upon the rate of dearness allowance paid to Government servants.

Both the contentions raised by the petitioner failed and the writ petitions were dismissed with cost.

Case laws referred :

(i) *M.S. Madhava Rao vs. D.V.K. Surya Rao, AIR 1954 Mad. 103, (1953) 2 MLJ 340 : ILR [1953] Mad 1047 : [1953] MWN 515 : 66 MLW 821;*

(ii) *Deccan Merchants Co-operative Bank Ltd. vs. Dalichand, AIR 1969 SC 1320 : 1969 (1) SCR 887 : 1969 CLJ 135;*

(iii) *Krishan Ayyar vs. Secretary, Urban Bank Ltd., ILR 56 Mad. 970;*

(iv) *Co-operative Central Bank and others vs. Industrial Tribunal, Hyderabad and others, AIR 1970 SC 245 : (1970) 1 SCR 205 : [1969] 2 LLJ 698;*

(v) *South Arcot Co-operative Motor Transport Society vs. Syed Batcha, AIR 1964 Mad 103 : 1964-I-LLJ 280 : (Coop. Cases) Vol. I 437;*

(vi) K. C. H. C. Society vs. Soundarajan, AIR 1968 Mad 67;
(vii) Voltas Ltd. vs. J. N. Demelle, AIR 1971 SC 1902.

***Advocates appeared*:**

For Petitioner	...	Mr. S. M. Ali Mohammed
For Respondent	...	Mr. J. Stanislas, for R-2.

JUDGMENT

Petitions under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the affidavit filed therewith the High Court will be pleased to issue writs of certiorari calling for the records connected with C. P. Nos. 29 and 30 of 1971 from the Presiding Officer, Labour Court, Pondicherry and quash the order in C. P. No. 29/71 7.7.1971 in so far as it relates to item No. 4 regarding dearness allowance in W. P. No 2859 of 1971 and quash the order, dated 7.7.1971 in C. P. No. 30 of 1971in W. P. No. 2850 of 1971.

These writ petitions coming on for hearing on Tuesday, the 8th Friday the 18th and Friday the 25th day of August 1972, and this day upon perusing the petitions and the affidavits filed in support thereof the Order of the High Court, dated 15.9.1971 and made herein, and the counter and reply affidavits filed herein and the records relating to the order in C. P. Nos. 29 and 30 of 1971, dated 7.7.1971 on the file of the Presiding Officer, Labour Court, Pondicherry and comprised in the return of the first respondent in both the petitions to the writ made by the High Court, and upon hearing the arguments of Mr. S. M. Ali Mohammed, Advocate for the petitioner in both the petitions and of Mr.J.Stanislas, Advocate for the second respondent, in each of the petitions the Court made the following

ORDER

These two petitions can be disposed of by a common order as the point that arises for consideration in each of them is the same. The petitioner in both the cases is the Pondicherry Co-operative Wholesale Stores Ltd., represented by its Secretary. Two of its ex-employees, who are ranked as the second respondent in the petitions, applied before the Labour Court, Pondicherry, the first respondent, under Section 33C(2) of the Industrial Disputes Act, 1947, praying for computation of certain benefits. What survives for consideration in these two petitions is the claim for

computation of dearness allowance which the ex-employees claimed on the basis of a resolution passed by the petitioner-stores on 7.7.1967 resolving to pay dearness allowance to its employees according to Government scale. The ex-employees claimed computation of dearness allowance at the rate applicable to Government servants which was different from year to year. The contention of the petitioner-stores was that dearness allowance applicable to Government servants in the year 1967 was alone payable, that it was not the intention of the board of directors that dearness allowance might be revised by the Government from time to time and that the said revised scale should be applicable to the employees of the petitioner-stores also. The Labour Court rejected the contention of the petitioner-stores and accepting the claim of the ex-employees computed the claim for dearness allowance at different rates as were applicable to Government servants. These petitions are filed for quashing these orders.

2. In the original affidavits filed in support of these petitions, the only ground taken was that the Labour Court erred in interpreting the resolution as if the stores had undertaken to pay dearness allowance at the rate that may be applicable to Government servants from time to time and that the Labour Court exceeded its jurisdiction in passing the orders in question. But liberty was given to the petitioner-stores to raise additional ground, namely, that the claims themselves preferred by the ex-employees were barred under Section 73 of the Pondicherry Co-operative Societies Act, 1965. The contention of the stores is that under the said section it is the Registrar of Co-operative Societies who is the competent authority to decide the point raised by the ex-employees and that, therefore, the applications under Section 33 C(2) of the Industrial Disputes Act were themselves not maintainable.

3. The Pondicherry Co-operative Societies Act 1965 is a mere reproduction of the Madras Co-operative Societies Act, 1961. Section 73 of the Pondicherry Act, which corresponds to Section 73 of the Madras Act, inter alia says that if any dispute touching the constitution of the committee or the management or the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society) arises between the society or its committee and any past or present servant, such a dispute shall be referred to the Registrar for decision. It is contended on behalf of the petitioner stores that by reason of this provision, the jurisdiction of the

Labour Court is impliedly excluded and that, therefore, the applications made by the ex-employees are incompetent. The argument is that the claim made by the ex-employees for computation of dearness allowance is a claim that could be disposed of by the Registrar and that in as much as the ex-employees' right to the same was disputed by the petitioner-society this is a dispute which is competent to be decided only by the Registrar. The learned counsel for the petitioner relies on the words 'touching the business of the registered society' occurring in Section 73 which also find a place in Section 73 of the Madras Co-operative Societies Act (Madras Act VI of 1932). That expression was the subject of consideration by a Full Bench on this Court in *M.S. Madhava Rao vs. D.V.K. Surya Rao, AIR 1954 Mad. 103, (1953) 2 MLJ 340 : ILR [1953] Mad 1047 : [1953] MWN 515 : 66 MLW 821*. The Full Bench held that those words must be given their full import bearing in mind the object of the legislation that the word 'touching' indicate that the dispute need not directly arise out of the business of the society but that it is enough that it should have reference or relation to or concern the business of the society. It was further held that the word 'touching' was clearly not intended to restrict the meaning of the word 'business' and that on the other hand it was designed to enlarge its scope. The Full Bench further took the view that word 'business' was not used in narrow sense. In that case, the dispute related to the election of the directors of a particular co-operative bank. The dispute was enquired into by the Deputy Registrar, who set aside the elections. Writ petitions were filed challenging the order of the Deputy Registrar had no jurisdiction to go into the dispute. The Full Bench held that the adjudication of the Deputy Registrar setting aside the elections was within his jurisdiction and was not liable to be quashed. Mr. Ali Mohamed, counsel appearing for the petitioner-stores, in these cases, placed strong reliance on the said decision of the Full Bench in support of his argument that the claim made by the ex-employees in these cases is a claim which the Registrar is competent to decide and that as the dispute was raised with regard to this claim, the Labour Court had no jurisdiction to entertain the same.

4. The Supreme Court had occasion to consider a similar expression in the Maharashtra Co-operative Societies Act, 1961, in *Deccan Merchants Co-operative Bank Ltd. vs. Dalichand, AIR 1969 SC 1320 : 1969 (1) SCR 887 : 1969 CLJ 135*. In that Act, Section 91 provides for settlement of the dispute referred to therein. There also, the expression found is 'any dispute touching the constitution.....business of a society'. The controversy in

that case was between a bank on the one hand and some persons who were in possession of a premises which the bank claimed as its own on the other, the contention of the bank being that the persons in possession were successors in interest of the previous owner, who was a member of the bank. The bank wanted the matter to be referred for arbitration, and the matter was accordingly referred for arbitration. To quash that reference, the aggrieved persons moved the High Court of Bombay contending inter alia that the dispute did not touch the business of the society. This contention was upheld and the reference was quashed. It is again that order that the bank went up in appeal to the Supreme Court. The contention was urged on behalf of the petitioner bank before the Supreme Court that the dispute in that case was a dispute that related to the building that belonged to the bank and that the controversy related to the business of the bank and that, therefore, the reference was competent. In dealing with this contention, the Supreme Court referred to the several disputes enumerated in Section 91 of the Maharashtra Act and observed at page 1325 [AIR].

> *"It is clear that the word 'business' in this context does not mean affairs of a society because election of office bearers, conduct of general meetings and management of a society would be treated as affairs of a society.....In this sub-section the word 'business' has been used in a narrower sense and it means the actual trading or commercial or other similar business activity of the society is authorized to enter into under the Act and the Rules and its bye-laws".*

After having thus observed, the Supreme Court proceeded to examine the several decisions of the High Courts cited before them. One of the cases cited was one decided by this Court in *Krishan Ayyar vs. Secretary, Urban Bank Ltd., ILR 56 Mad. 970*. In that case, the dispute was a legal petitioner who was a member, a director and the legal advisor of a Co-operative Bank arising out of matters relating to the legal petitioner's acts as the Bank's vakil was not a dispute within the Co-operative Societies Act (II of 1912) or the Madras Co-operative Societies Act (VI of 1932). Their Lordships of the Supreme Court has referred to the following observation of the Chief Justice of this Court who decided that cases:

> "I think it is clear that both under the Building Societies Act and the Friendly Societies Act, in England which contain

somewhat similar provisions as regard as settlement of disputes within the Society by the Registrar that in order that such a dispute can be dealt with by the Registrar it must be a dispute between the society and a member in his capacity as member".

The Madhya Pradesh and Nagpur High Courts have taken a liberal view of the word 'business', After referring to the decisions of those Courts, the Supreme Court held that the view expressed by this Court is preferable. It does not appear that before the Supreme Court the Full Bench decision of this Court in *Madhava Rao vs. Surya Rao* [cited above] was cited.

5. A similar expression occurring in the Andhra Pradesh Co-operative Societies Act, 1964 arose for consideration before the Supreme Court in *Co-operative Central Bank and others vs. Industrial Tribunal, Hyderabad and others, AIR 1970 SC 245 : (1970) 1 SCR 205 : [1969] 2 LLJ 698* . In that case, the dispute was between a co-operative bank and their workmen represented by the Andhra Pradesh Bank Employees' Federation. The subject of the dispute related to three matters, one of which was about service conditions. The question was whether the dispute was a dispute touching the business of the bank. In that case also, decisions of several High Courts including that of this Court *Madhava Rao vs. Surya Rao* [supra] were cited. After referring to those decisions, the Supreme Court observed that it was not necessary to examine in detail the reasons given by the several High Courts in view of the decision of the Supreme Court in *Deccan Merchants Co-operative Bank Ltd. vs. Dalichand* [cited above]. Their Lordships affirmed the view expressed in that decision and observed: That the dispute should be one between the co-operative society and its employees capable of being resolved by the Registrar or his nominee. Thus regarding these two decisions of the Supreme Court, the principles deducible are:

(i) The word 'business' is used in a narrow sense and it means the actual trading or commercial or other similar business activity of the society which the society is authorized to enter under the Act and the Rules and its bye-laws, and

(ii) Though the word 'touching' is very wide and would include any matter, it must be a dispute which is capable of being resolved by the Registrar.

Having regard to the foregoing observations of the Supreme Court it is doubtful whether the interpretation given by the Full Bench of this Court that the word 'business' was not used in a narrow sense is still good law.

6. Applying the tests laid down by the Supreme Court, we have to examine whether the dispute raised by the ex-employees in these cases is a dispute touching the business of the petitioner stores. The main object of the petitioner stores is to carry on the business in wholesale. My attention has not been drawn to any bye-law or rule of the stores which would enlarge the scope of that object, so as to comprehend within it any dispute that may arise between the stores on the one hand and the employees on the other with regard to the conditions of service of the employees. It cannot, therefore, be said that the dispute in these cases satisfies the first requirement laid down by the Supreme Court, namely, that the dispute being one touching the business of the petitioner-stores, though it may be that the Registrar can compute the benefits claimed by the ex-employees.

7. Mr. Ali Mohamed appearing for the petitioner store placed strong reliance upon the decision of the Bench of this Court in *South Arcot Co-operative Motor Transport Society vs. Syed Batcha, AIR 1964 Mad 103 : 1964-I-LLJ 280 : (Coop. Cases) Vol. I 437* in which it was held that an application by an employee under Section 2 of the Industrial disputes Act before the Labour Court for computation of certain benefits was barred by Section 51 of the Madras Co-operative Societies Act, 1932. In that case, the co-operative society carried on motor transport business employing its own members as its employees. The dispute related to service conditions. Venkatadri, J, speaking for the Court, held that the dispute was one that touched the business of the society. The obvious reason was that the dispute was raised by the employees who were also members of the society. It was for that reason the learned Judge held that the dispute could be resolved only by the Registrar and would not come within the jurisdiction of the Labour Court. On facts, that decision is, therefore, not applicable to the facts of the instant cases. Kailasam, J, in *K. C. H. C. Society vs. Soundarajan, AIR 1968 Mad 67*, distinguished the aforesaid Bench decision on that ground and held that a claim for retrenchment compensation by a servant of a co-operative society is entertainable by the Labour Court under the Industrial Disputes Act and that Section 51 of the Co-operative Societies Act, 1932, was not a bar. I am in respectful agreement with that view. For the foregoing reasons I find that the applications made by the ex-employees in these cases under Section 33 C(2) of the Industrial Disputes Act were competent.

8. The next contention urged by Mr. Ali Mohamed for the petitioner-stores is that the Labour Court exceeded its jurisdiction in interpreting the resolution of the board of directors as if the employees were entitled to dearness allowance at Government rates which may be prescribed from time to time. The contention was that though the resolution merely stated that the employees would be entitled to dearness allowance at Government rate, what was intended was that the employees were entitled to Government rate as was prevailing only in the year 1967 and that the resolution could not be interpreted to mean as if the petitioner-stores undertook to pay dearness allowance at the rate that may be fixed by the Government from time to time. The contention was that the Labour Court, as an executing Court, was not entitled to interpret the resolution in such wide terms and that by so interpreting the Labour Court exceeded its jurisdiction. I am unable to accept this argument. The question as to the scope of the jurisdiction of the Labour Court Section 33 C(2) has been the subject of several decisions of the Supreme Court in *Voltas Ltd. vs. J. N. Demelle, AIR 1971 SC 1902* deals with this question and it is pointed out therein that the proceedings under Section 33 C(2) are analogous to execution proceedings and that a Labour Court called upon to compute benefits claimed by a workmen is in the position of an executing Court and as such competent to interpret an award whether there is a dispute as to the rights thereunder or as to its correct interpretation. If the award is un-ambiguous, the Labour Court is bound to enforce it, and under the guise of interpreting it, it cannot make a new award by adding to or subtracting anything therefrom. Although it cannot go behind the award, it is nevertheless competent to construct the award where it is ambiguous and to ascertain its precise meaning, for, unless that is done, it cannot enforce the award when it is called upon to do by an application under Section 33 C(2). The claim postulates that the determination of the question about computing in terms of money may in some cases have to be proceeded by an inquiry in incidental to the main determination assigned to the Labour Court by that sub-section. Applying these tests, it would follow that in the instant cases the Labour Court, Pondicherry was called upon to compute the money value for the dearness allowance based upon the vague resolution of the petitioner-stores. The resolution did not state whether it was applicable only to that particular year or whether it was to be applied for all time to come. There are no words limiting its application to any particular year. Therefore, the Labour Court rightly held that the resolution was applicable to all years depending upon the rate of dearness allowance paid to Government servants. Mr. Ali Mohamed contended that

subsequent to the resolution in question, the board of directors had passed different resolutions with reference to dearness allowance. But this fact was not brought to the notice of the Labour Court, and such a new point cannot be permitted to be raised for the first time in the writ petitions. As the Labour Court was only called upon to compute the benefits in terms of the resolution of the year 1967 which alone was placed before it, the Labour Court rightly held that though the resolution did not make any specific reference to any particular year the resolution should be implemented with regard to each year in the matter of computation of dearness allowance according to Government scale. In the result, both the writ petitions fail and are dismissed with costs of second respondent in each case. Counsel fee Rs. 100 one set.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 4.1.1982

CORAM

THE HONOURABLE Mr. JUSTICE N.V. BALASUBRAMANIAN

AND

THE HONOURABLE Mr. JUSTICE S. PADMANABHAN

TAX CASE No. 677 of 1978

Rodier Mill Employees' Co-operative Stores Ltd. ... Appellant

Vs.

Commissioner of Income-tax, Tamil Nadu-V. ... Respondent

Section 80 P(2)(a)(i) of the Income Tax Act, 1961 refers to a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members. But, it cannot be said that a co-operative society which is engaged in selling or distribution of consumer goods or other goods to its members for deferred consideration can be said to be extending credit facilities merely because it does not insist on cash payment but prefers to collect the consideration after a time.

When the section refers to a co-operative society engaged in providing credit facilities to its members it really refers to a credit society, whose primary object is the provision of loans or other credit facilities to its members. It does not include any society whose primary object is something other than the provision of loans or other credit facilities, such as a consumer co-operative society.

The assessee is not entitled to the exemption under Section 80 P(2)(a)(i) of the Income Tax Act, 1961, as a co-operative society engaged in providing credit facilities to its members.

Case laws referred:

(i) *CIT vs. Coral Mills Workers Co-operative Stores Ltd., [1977]106 ITR 868(Mad);*

(ii) *CIT vs. U. P. Co-operative Cane Union Federation Ltd. [1980] 122 ITR 913 (All);*

(iii) *Additional CIT vs. U. P. Co-operative Cane Union [1978] 114 ITR 70 (All).*

Advocates appeared :

For Appellant	:	Mr. S.V. Subramaniam, Advocate
For Respondent	:	Mr. J. Jayaraman, Advovate.

JUDGMENT

Balasubrahmanian, J.

The question of law which the Income Tax Appellate Tribunal referred to us in this case is as follows :

'Whether, on the facts and in the circumstances of the case, the income of the assessee-co-operative society was not exempt under Section 80 P(2)(a)(i) of the Income-tax Act, 1961?'

2. The assessee, Rodier Mill Employees' Co-operative Stores Ltd., Pondicherry, provides for its members consumption goods such as textiles, toilet articles and the like, on credit. The assessee claimed that the entire profits made in the co-operative stores were exempt under Section 80 P(2)(a)(i) of the Income Tax Act, 1961, on the ground that it was a society which provided credit facilities to its members. The ITO disallowed the claim on the ground that merely selling goods on credit to its members will not render the society as one carrying on a business which provided 'credit facilities' to its members. This decision of the ITO was taken in appeal before the AAC. He differed from the ITO, and held that the assessee was entitled to the exemption under Section 80 P(2)(a)(i) of the Income Tax Act, 1961. The department appealed against this decision to the Income-tax Appellate Tribunal. The Tribunal reversed the decision of the AAC restoring the disallowance of the claim made by the ITO. In this reference, the assessee contends that the Tribunal went wrong in holding that Section 80 P(2)(a)(i) of the Act does not apply to the profits from the society.

3. Mr. S. V. Subramaniam, learned counsel for the assessee, submitted that when the assessee sold goods such as textiles, toilet articles and other provisions to its members on credit, it must be held that the society was extending credit facilities to its members. Since sales on credit must be

regarded as providing credit facilities, the learned counsel submitted that the society itself must be regarded as one which has provided credit facilities to its members.

4. We do not accept this contention as well founded. Section 80 P(2)(a)(i) of the Act refers to a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members. It is not suggested in this case that the assessee carries on the business of banking. All that is urged is that it provides credit facilities to its members. It may be that in a broad sense there is a provision of credit in every transaction of sale on credit. But, it cannot be said that a co-operative society which is engaged in selling or distribution of consumer goods or other goods to its members for deferred consideration can be said to be extending credit facilities merely because it does not insist on cash payment but prefers to collect the consideration after a time. In the literature of law relating to co-operative societies there is a well-merited distinction between credit societies, on the one hand, and consumer societies, on the other, not to speak of societies engaged in various productive activities. When the section refers to a co-operative society engaged in providing credit facilities to its members it really refers to a credit society, whose primary object is the provision of loans or other credit facilities to its members. It does not include any society whose primary object is something other than the provision of loans or other credit facilities, such as a consumer co-operative society.

5. This construction of the section is not without authority. An earlier Bench decision of this court reported in *CIT vs. Coral Mills Workers Co-operative Stores Ltd., [1977]106 ITR 868(Mad)*, had occasion to construe the section incidentally, although the main point which arose before them was the validity of certain reassessment proceedings under the Income Tax Act, 1961. In that case a co-operative society registered under the State Co-operative Societies Act was dealing in grocery articles and piece-goods, selling those goods on credit to its members. A contention similar to the addressed by the assessee's learned counsel before us was urged before the Bench in that case too. It was contended that since goods were sold by the society on credit to its members it must be regarded as a society providing credit facilities. The following passage from that judgment discloses the ground on which this contention was rejected (page 871) :

"It is seen from the evidence now available that the society is dealing in grocery articles and piece-goods and that it is neither carrying on the business nor providing credit facilities to its members. The contention of the assessee that it sells goods on credit to its members and should, therefore, be taken as providing credit facilities to its members is merely to be stated for rejection. A 'credit society' within the meaning of Section 14(3)(i) of the old Act and Section 81(i) of the new Act could only mean a society which provides credit by way of loans of money to its members and not a society which sells goods on credit."

6. To a certain extent we agree with the contention of the learned counsel for the assessee that providing credit facilities is a larger conception than a mere provision of loans. Indeed, the Allahabad High Court in *CIT vs. U. P. Co-operative Cane Union Federation Ltd., [1980] 122 ITR 913 (All)*, held that a co-operative society which stood guarantee for the loans borrowed by its members for pumping sets must be regarded as a co-operative society providing credit facilities within the meaning of Section 80 P(2)(a)(i) of the Income Tax Act. But, however liberal the construction of the expression 'providing credit facilities' may be, it cannot, in our opinion, include the mere sale of goods on credit by an out and out consumer co-operative society as the assessee in the present case is. The Allahabad High Court itself had earlier considered a similar question in the case of *Additional CIT vs. U. P. Co-operative Cane Union, [1978] 114 ITR 70 (All)* . In that case, a co-operative society, which ran a printing press, supplied printed stationery, on credit, to its members. The Appellate Tribunal took the view that this society must be regarded as one which provided credit facilities to its members. Disagreeing with that view, the Allahabad High Court held that selling goods on credit is only a mode of carrying on the business. It does not thereby become a business of providing credit facilities.

7. In view of this clear position under the law both as a matter of construction and on the authorities our answer to the question of law is that the assessee is not entitled to the exemption under Section 80P(2)(a)(i) of the Income Tax Act, 1961, as a co-operative society engaged in providing credit facilities to its members. Thus our answer is against the assessee. The assessee will pay the costs of the department. Counsel fee Rs. 500 (Rupees five hundred only).

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.11.1990

CORAM

THE HONOURABLE Mr. JUSTICE T SOMASUNDARAM

AND

THE HONOURABLE Mr. JUSTICE V. RATNAM

Commissioner of Income Tax ... Petitioner

Vs.

Pondicherry Co-operative Housing Society Ltd., ... Respondent

Two questions came up for consideration in this appeal, viz., (i) whether the interest earned by the housing society on the advances made by it to its members for construction of houses would be exempted under Section 80-P of the Income Tax Act; and (ii) whether the housing co-operative society could be held as carrying on business of providing credit facilities to its members.

Taking the second question first, the Court held that there is no dispute that the assessee-society is a co-operative housing society and it had been providing credit facilities to its members. Clause 2(j) of the bye-laws says that one of the objects of the society is lending moneys to its members. The carrying on of the activity of lending moneys to its members by the assessee-society has to be regarded as an activity relating to the provisions of credit facilities by the society to its members, as one of those objects. The availability of credit facilities provided by the assessee-society is not restricted only to such members as have secured a site from the assessee-society. Even other members, who had their own sites, had been given the benefit of credit facilities by the assessee-society and that activity had been carried on by the assessee-society purely as a business activity pursuant to the object set out in clause 2(j) of the bye-laws of the society. The Court has no hesitation in answering the second question referred to it in the affirmative and against the Revenue.

While answering the first question the Court observed that under Section 80P(2) (a) (i) of the Act, in order to claim the benefit of deduction under Section 80P(1) of the Act, the co-operative society should be engaged in carrying on the business of banking or providing credit facilities to its members. The nature of the credit facilities provided by the assessee-society to its

members in furtherance of its object clause 2(j) is a distinct and separate activity of the assessee-society and that activity carried on by the assessee-society would make it a society engaged, among others, in carrying on the business of providing credit facilities to its members, attracting Section 80P(2) (a) (i) of the Act.

Both the points were answered in favour of the society and the appeal stood dismissed.

Case laws referred :

(I) Rodier Mill Employees Co-operative Stores Ltd. vs. CIT, [1982]135 ITR 355(Mad), page 11 ibid ;

(ii) CIT vs. Madras Auto Rickshaw Drivers Co-operative Society Ltd., [1983]143 ITR 981(Mad);

(iii) Kerala Co-operative Consumers Federation Ltd. vs. CIT [1988] 170 ITR 455(Ker);

(iv) CIT vs. South Arcot District Co-operative Marketing Society Ltd., [1989]176 ITR 117(SC);

(v) Broach District Co-operative Cotton Sales, Ginning and Pressing Society Ltd. vs. CIT, [1989]177 ITR 418(SC).

JUDGMENT

At the instance of the Revenue, under Section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') the following common questions of law have been referred to this court for its opinion in respect of the assessment years 1964-65 and 1972-73 to 1974-75.

"(1) Whether, on the facts and in the circumstances of the case, the interest income earned by the assessee on advances made by it to its members for constructing houses would be exempted under Section 80-P of the Income-tax Act?

(2) Whether, on the facts and in the circumstances of the case, it could be held that the assessee co-operative society was carrying on the business of providing credit facilities to its members, although it was functioning as a co-operative housing society?"

2. The assessee is a co-operative housing society, having been registered some time in 1957 under the Tamil Nadu Co-operative Societies Act and later under the provisions of the Pondicherry Co-operative Societies Act, 1965. The objects of the assessee-society, as could be gathered from the bye-laws in annexure-D to the stated case are eleven, out of which, what is to the effect that the object of the society shall be to lend money to members of the society for the purposes of building houses. The other objects deal with acquisition of land, laying-out the land as house-sites to suit the requirements of the society in the shape of roads, parks, playgrounds, schools, hospitals, water works, etc., to construct or cause to be constructed building or other works of common utility, to build or cause to be built residential houses or other buildings for the members, to dispose of land, houses, etc., to establish and maintain social, recreative, educational, public health or medical institutions for the benefit of the members, to raise funds required for the business of the society, to repair, alter or otherwise deal with the buildings of the society and to do all things necessary and expedient for the accomplishment of the aforesaid objects.

3. Consistent with one of its objects, viz., to raise funds required for the business of the society, the assessee borrowed money from the Government and paid interest on the amounts so borrowed. Likewise, with reference to the moneys lent by the society to its members for purposes of building houses, the society had released interest from the members. In the assessment years in question, there was an excess of receipt of interest by the society from its members over the payment of interest by the assessee-society to the government and that represented the income from interest on the loans advanced by the society to its members. With reference to these amounts of Rs. 21,443, Rs. 25,566, Rs. 1,29,862 and Rs. 1,35,985 for the assessment years 1964-65 and 1972-73 to 1974-75, the assessee-society claimed in the course of the assessment proceedings that as it is a co-operative society engaged in providing credit facilities to its members, the interest income as aforesaid attributable to its activity of providing credit facilities should be deducted under Section 80P(1) and (2) (a) (i) of the Act.

4. The Income-tax Officer took the view that the advances made by the assessee society to its members for purposes of construction of houses cannot be regarded as provision of credit facilities to its members in its business and, therefore, the claim for deduction under Section 80P(1) and

(2) (a) (i) of the Act was not in order and subjected those amounts also to tax treatment.

5. Aggrieved by that, the assessee preferred appeals before the Appellate Assistant Commissioner. He took the view that Section 10(20A) of the Act would be applicable and held the assessee-society was the four assessments years in question. On further appeals by the Revenue before the Tribunal, it held that the Appellate Assistant Commissioner wrongly applied Section 10(20A) of the Act, but that one of the principal objects of the assessee-society was lending of moneys to its members for purposes of building houses and the assessee-society was carrying on the business of providing credit facilities to its members and was engaged in that activity during the relevant assessment years. Ultimately, the Tribunal concluded that the assessee-society was entitled to the benefit of deduction under Section 80P(1) and (2) (a) (i) of the Act for all the assessment years in question. That is how the two common questions of law set out earlier have been referred to this Court for its opinion.

6. We may take up for consideration the second question first. There is no dispute that the assessee-society is a co-operative housing society and it had been providing credit facilities to its members. Learned counsel for the Revenue, however, contended that the predominant object of the society was house building and the extension of credit facilities to its members for that purpose was only in the nature of a means to achieve that end. On the other hand, learned counsel for the assessee submitted that even if the society is registered for purposes of house building, it need not necessarily be engaged in an activity of providing credit facilities to its members and in this case one of the objects of the society itself, besides house building, is to lend money to the members of the society, though for purposes of house building, and that would be sufficient to make it an independent and organized business activity of the assessee-society carried on systematically.

7. We find on a perusal of the objects of the society in annexure-D that the objects set out are independent and distinct objects of the society. Clause 2(j) of the bye-laws says that one of the objects of the society is lending moneys to its members. The carrying on of the activity of lending moneys to its members by the assessee-society has to be regarded as an activity relating to the provisions of credit facilities by the society to its members, as one of those objects. The availability of credit facilities provided by the assessee-society is not restricted only to such members as

have secured a site from the assessee-society. Even other members, who had their own sites, had been given the benefit of credit facilities by the assessee-society and that activity had been carried on by the assessee-society purely as a business activity pursuant to the object set out in clause 2(j) of the bye-laws of the society. Further, it is seen that to secure a loan from the assessee-society, it is not necessary that the member should either have the house constructed through the efforts of the society or under its supervision.

8. Our attention has also not been drawn to any bye-laws to this effect. The restriction imposed on the user of the credit facilities extended by the assessee-society for house building cannot be construed as a means intended to secure the object of the society, viz., house building. at best, it can be regarded only as the imposition of a condition for obtaining credit facilities and would not in any manner affect the character of the activity or detract from the activity being one of providing credit facilities. The need for taking a security over the house property in the form of a mortgage from the member to whom credit facilities had been extended establishes that it is only for the purpose of ensuring prompt repayment of the loan advanced and this does not also in any manner alter the character of the assessee-society as an institution giving financial aid or providing credit facilities. The activity of the assessee-society in making available funds to credit facilities to its members. We have carefully considered the entire bye-laws of the society and we are of the view that the object of the assessee-society as set out in clause 2(j) of the bye-laws in annexure-D is not the one intended to serve as a means to secure a principal object, viz., house building. We hold that the object set out in clause 2(j) of the bye-laws of the society is a separate, distinct and independent activity of the assessee-society.

9. We may now make a brief reference to two decisions strongly relied on by learned counsel for the Revenue in *Rodier Mill Employees Co-operative Stores Ltd. vs. CIT, [1982]135 ITR 355(Mad)* : *page 11 ibid* and *CIT vs. Madras Auto Rickshaw Drivers Co-operative Society Ltd. : [1983]143 ITR 981(Mad)*. In the first case, a co-operative society sold consumer goods on credit to its members and claimed that its entire profits were exempt under Section 80P(2) (a) (i) of the Act. That claim was negatived by the Income-tax Officer, but accepted on appeal by the Appellate Assistant Commissioner, whose conclusion was reversed by the Tribunal. On further reference to this Court, it was pointed out that there is a well-merited distinction between credited societies and consumer societies and the reference Section 80P(2)

(a) (i) of the Act is to a co-operative society whose primary object is the provision of loans or other credit facilities to its members and not to a society whose primary object is something other than the provision of loans and that the provision of credit facilities would not includes sale of goods on credit by an out and out consumer co-operative society, as the assessee was in that case.

10. We have earlier referred to the objects of the assessee-society and its objects are not confined to the activity of house building only, but extends to other spheres of activity as well, like maintenance of social, recreative, educational, public health or medical institutions, etc., and other activities as well. Under those circumstances, the decision in *Rodier Mill Employees Co-operative Stores Ltd. vs. CIT (supra)*, which related to a co-operative society dealing in consumer goods only, cannot have any application here. Similarly, the reliance placed upon *CIT vs. Madras Auto Rickshaw Drivers Co-operative Society Ltd. (cited above)* is of no avail to the Revenue. The object of the assessee-society in that case was purchase and sale of auto rickshaw and the society had come into being only for that purpose. It was under those circumstances, it was held that the entering into of a hire-purchase agreement for the purpose of the sale of auto rickshaw cannot be regarded as providing credit facilities, but only to further the sole object of the society, viz., purchase of auto rickshaw by the society initially in its own name and re-selling them to its members on hire purchase terms and that would not enable the society to claim the benefit of exemption under Section 80P(2) (a) (i) of the Act.

11. We are of the view that that decision also does not assist to Revenue on the state of the object clause of the assessee-society in this case relating to different and distinct objects of the society. We may observe in passing that, in *Kerala Co-operative Consumers Federation Ltd. vs. CIT, [1988] 170 ITR 455(Ker)*, also credit sales by a consumer co-operative society whose business was purchase and sale of consumer goods were held not to fall within the meaning of the expression 'providing credit facility by way of loans', but only sale of goods on credit. In arriving at this conclusion, the decision in *Rodier Mill Employees Co-operative Stores Ltd. vs. CIT,* referred to earlier, was relied upon and we have already held that that decision has no application to this case and, therefore, the decision in *Kerala Co-operative Consumers Federation Ltd. vs. CIT (cited above)*, also does not help the Revenue in any manner.

12. We have, therefore, no hesitation in answering the second question referred to us in the affirmative and against the Revenue.

13. We now proceed to a consideration of the first question. Under Section 80P(2) (a) (i) of the Act, in order to claim the benefit of deduction under Section 80P(1) of the Act, the co-operative society should be engaged in carrying on the business of banking or providing credit facilities to its members. The nature of the credit facilities provided by the assessee-society to its members in furtherance of its object clause 2(j) has already been referred to. We have earlier pointed out that that activity is a distinct and separate activity of the assessee-society and that activity carried on by the assessee-society would make it a society engaged, among others, in carrying on the business of providing credit facilities to its members, attracting Section 80P(2) (a) (i) of the Act. We may, in this connection, refer to the nature of construction to be put upon Section 80P(2) (a) (i) of the Act. The corresponding provision in the Indian Income-tax Act, the Supreme Court, in *CIT vs. South Arcot District Co-operative Marketing Society Ltd., [1989]176 ITR 117(SC)*, laid down that, as the provision for exemption was intended to encourage co-operative societies, a liberal construction should be given to the language employed in the provision. To similar effect is another decision of the Supreme Court reported in *Broach District Co-operative Cotton Sales, Ginning and Pressing Society Ltd. vs. CIT, [1989]177 ITR 418(SC)*, though the reference was to Section 81(i) (c) of the Act. It was reiterated that Section 81(i) of the Act was intended to encourage and promote the growth of co-operative societies and, consequently, a liberal construction must be given to the operation of that provision. Construing Section 80P of the Act in the manner indicated by the decision of the Supreme Court referred to above, we are of the view that if the co-operative society is engaged in carrying on the business of providing credit facilities to its members as we have found in this case, that would suffice to attract the benefit of deduction under section 80P(1) and (2) (a) (i) of the Act.

14. We have earlier found the assessee-society in this case had been engaged in carrying on the business of providing credit facilities to its members, amongst its other activities. In the case of a co-operative society has several objects, as the assessee-society in this case, if it is established that the co-operative society is engaged in any one of the activities falling under Section 80P(1) and (2) (a) of the Act, that would suffice to enable the society to claim the benefit of deduction, subject, of course, to such other provisions as may be applicable as enumerated in the other parts of Section 80P(2) of the Act. We, therefore, answer the first question referred to us in the affirmative and against the Revenue. The assessee will be entitled to the costs of these references. Counsels fee Rs. 500. One set.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE : 3.1.2001
CORAM
THE HONOURABLE Mr. JUSTICE R. JAYASIMHA BABU
AND
THE HONOURABLE Mr. JUSTICE K. GNANAPRAKASAM
T.C. No. 236 of 1994
(Revision No. 90/1994)

Union Territory of Pondicherry
rep. by the Deputy Commissioner,
(Commercial Taxes), Pondicherry ... Petitioner

Vs.

The Pondicherry State Co-operative
Consumers Federation Limited,
Pondicherry, rep. by its Managing Director ... Respondent

The Pondicherry State Co-operative Consumers Federation claimed tax exemption on purchasing the oil in bulk and selling the same in retail in small packets in terms of the G.O. issued under the Pondicherry General Sales Tax Act.

Disallowing the exemption and reversing the order of the Tribunal, the Court held that the exemption can be availed only in respect of the goods manufactured by small scale industries. It is not a blanket exemption enabling all small scale industries to avoid the payment of sales tax in respect of anything sold by them. In this case the assessee did not manufacture the oil which it sold in packets. The oil was purchased in bulk and was packaged for the purpose of convenient retail sale. Mere packaging of oil did not bring about any change in the commodity. The packaged oil remains oil in packages and nothing more.

Advocate appeared :

For Petitioner : Mr. R. Natarajan,
Additional Government Pleader,
Pondicherry.

For Respondent : No appearance.

Petition under Section 42 of the Pondicherry General Sales Tax Act praying the High Court to revise the order of the Court of the Sales Tax Appellate Tribunal, Pondicherry dated 19.3.1993 and made in T.A. No.6/91 (Appellate Assistant Commissioner (CT), Pondicherry, and made in Appeal No.2/89/PGST dated 14.6.1990 and Joint Commercial Tax Officer-I, Commercial Taxes Department, Pondicherry and made in PGST/No.23628/86-87 dated 9.5.1988.

ORDER : This petition coming on for hearing on this day upon perusing the petition, the proceedings of the lower authority and the record in the case, and upon hearing the arguments of Mr. R. Natarajan, Additional Government Pleader (T), Pondicherry on behalf of the petitioner and the respondents not appearing in person or by Advocate, the Court made the following order.

JUDGMENT

R. Jayasimha Babu, J.

Admittedly, the assessee purchases oil in bulk, packs them in small packets for the purpose of selling that oil in retail in such packing. Assessee's claim that this process will amount to manufacture was rightly rejected by the Tribunal.

2. The Tribunal, however, has proceeded to hold that the assessee is nevertheless not liable for payment of sales tax as in the Registration Certificate dated 9.5.1989 it had been stated that the assessee is exempt from sales tax for a period of five years. Counsel for the petitioner rightly points out that the Registration Certificate itself specifically sets out that the exemption granted is in terms of a G.O. dated 25.6.1974 and that G.O. is one issued under sub-section (3) of Section 19 of the Pondicherry General Sales Tax Act, 1967. It is provided therein that in the public interest exemption is granted "on the turnover from the sale of goods manufactured....." by among others "small scale industries which went into production on or after 6th November 1969".

3. The exemption therefore can be availed only in respect of the goods manufactured by the small scale industries. It is not a blanket exemption enabling all small scale industries to avoid the payment of sales tax in respect of anything sold by them. In this case admittedly the assessee did

not manufacture the oil which it sold in packets. The oil was purchased in bulk and was packaged for the purpose of convenient retail sale. Mere packaging of oil did not bring about any change in the commodity. The packaged oil remains oil in packages and nothing more.

4. The assessee was not entitled to claim the benefit of the exemption. The impugned order of the Tribunal is unsustainable and is set aside. The revision petition is allowed.

Note: This judgment was set aside by the Supreme Court in C.A. No. 8315 of 2001 dated 13.11.2007, vide Page No. 328.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.1.2002

CORAM

THE HONOURABLE Mr. JUSTICE A.S. VENKATACHALAMOORTHY

AND

THE HONOURABLE Mr. JUSTICE A. PACKIARAJ

W.P.No.7025 of 1999 & W.M.P. No.10143 of 1999

Indian Coffee Worker's Co-operative Society
Ltd., No.67, rep. by its President,
Jawaharlal Nehru Street, Pondicherry ..... Petitioner

Vs.

1. Commissioner of Commercial Taxes,
   Chepauk, Chennai-600 005.

2. Tamil Nadu Sales Tax Appellate
   Tribunal, Chennai-104.

3. Appellate Assistant Commissioner (CT),
   Cuddalore-1.

4. The Deputy Commercial Tax Officer,
   Cuddalore-1.

5. The Tamil Nadu Taxation Special Tribunal,
   rep. by its Registrar,
   Rajaji Salai, Chennai-600 001. ..... Respondents

Constitution of India, Article 226 – Powers of High Court – Held, High Court while exercising jurisdiction under Article 226 cannot re-write provisions of Act – High Court has no power to direct appellate authority to consider appeal on merits when such appeal was filed after expiry of 30 days from last date on which appeal should have been filed when no power is vested in appellate authority to condone delay more than 30 days in not preferring appeal within prescribed period of 30 days.

Tamil Nadu General Sales Tax Act, 1959, Section 30(1) – Limitation Act, 1963, Sections 5 & 29(2) – Inapplicability of Section 5 – Exclusion of extension of time limit – Tamil Nadu General Sales Tax Act empowers Appellate Assistant Commissioner to condone delay of 30 days if appeal was not filed within prescribed period of 30 days – Appeal filed beyond such period is not maintainable – Appellate authority has no power to condone delay beyond 30 days.

Tamil Nadu General Sales Tax Act, 1959, Section 30(1) – Appeal – Power of appellate authority to condone delay – Appellate authority has no power to condone delay beyond 30 days as prescribed in clause 2 of proviso to Section 30 of Tamil Nadu General Sales Tax Act.

Writ petition was dismissed.

Case laws referred:

(i) *Mohd. Ashfaq vs. State Transport Appellate Tribunal, U.P., AIR 1976 SC 2161;*

(ii) K. Ganesh vs. State of Tamil Nadu, 1988 STC (68) 84;

(iii) Kanaka Durga Agro Oil Products Ltd. vs. Commercial Tax Officer. Benz Circle. Vijayawada and another, 2000 STC (119) 387;

(iv) Rajashree Oils & Extractions' Case, 1998 (111) STC 668 (AP) [FB];

(v) Union of India vs. M/s. Popular Construction Co., 2001 (4) CTC 213;

(vi) Coimbatore Murugan Mills Limited vs. The Board of Revenue (Commercial Taxes) Chepauk, Madras and another, 1970 STC (25) 469;

(vii) Collector Land Acquisition Anantnag and another vs. Mst. Katiji and others, 1987 STC (66) 228;

(viii) State of Tamil Nadu vs. Saganlai, 1993 STC (88) 17;

(ix) N. Balakrishnan vs. M. Krishnamurthy, AIR 1998 SC 3222;

(x) Sarathy vs. State Bank of India , 2000 (3) CTC 552 [SC];

(xi) *Subramaniam. C. vs. Tamil Nadu Housing Board, 2000 (3) CTC 727;*

(xii) *A.V. Venkateswaran, Collector of Customs vs. Ramchand Sobhraj Wadhwani and another, AIR 1961 SC 1506;*

(xiii) *Sales Tax Commissioner vs. Modi Sugar Mills, AIR 1961 SC 1047.*

(xiv) *Maheswari Fireworks Industries vs. Commercial Tax Officer and others, 2001 STC (12) 272,*

Advocates appeared :

For Petitioner : Mr. C.K. Chandrasekaran

For Respondents : Mr. B. Parthasarathy, Government Advocate

JUDGMENT

A.S. Venkatachalamoorthy. J.

The prayer that is sought for in this writ petition is to call for the records relating to the order dated 25.3.1999 passed by the 5th respondent/Tribunal in T.P. No.3091 of 1997 read with the order dated 27.9.1990 in TNGST No.584757 of 1989-90 issued by the 3rd respondent and quash the same and consequently direct the respondent to pass orders on merits after giving an opportunity of hearing to the petitioner in accordance with law.

2. The brief facts are as follows:-

The petitioner/society is registered under the Pondicherry Co-operative Societies Act with its registered office at Pondicherry. The society serves food and drinks to its customers. During 1989-90 the annual turnover was roughly about Rs.98 lakhs. The 4th respondent herein passed the assessment order dated 27.9.1990 in form No.19 for the assessment year 1989-90. A penalty under Section 12(5) (iii) to the extent of Rs.3,58,537 was also levied. On 5.11.1990, the petitioner addressed the Appellate Assistant Commissioner, Commercial Taxes, Cuddalore, requesting him

to instruct the Deputy Commercial Tax Officer to withhold the assessment orders and further action to recover the arrears, as the final exemption orders are awaited from the Government of Tamil Nadu. Another communication dated 8.11.1990 was sent to the Assistant Commissioner, Commercial Taxes, Cuddalore with a similar request. The Assistant Commissioner, Commercial Taxes by a communication dated 5.2.1991 informed the petitioner that the Assistant Commissioner, Commercial Taxes, Cuddalore is not the appellate authority and that the petitioner could seek legal remedies as per law. Thereafter, the petitioner filed an appeal under Section-31 in Form No.3 on 1.2.1991. The appellate authority on 8.2.1991 passed an order, dismissing the appeal on the ground that the same was filed with a delay of 93 days from the date of actual due. Aggrieved by the said Order, the petitioner filed an appeal before the Sales Tax Appellate Tribunal, i.e., the 2nd respondent herein. By an order dated 19.9.1991, the 2nd respondent dismissed the said appeal viz., Tribunal Appeal No. 271 of 1991 holding that the Appellate Assistant Commissioner, Commercial Taxes, Cuddalore is perfectly justified in rejecting the said petition. Being aggrieved by the said order, the petitioner filed W.P. No.14886 of 1991 before the High Court, Madras. Subsequently, the appeal was transferred to the Tamil Nadu Taxation Special Tribunal and renumbered as T.P.No.3091 of 1997. By an order dated 25.3.1999, the Special Tribunal also dismissed the petition, holding that the appeal filed by the petitioner before the Appellate Assistant Commissioner was barred by limitation since according to the provisions of the Act any delay beyond 30 days could be excused only for a further period of 30 days, whereas the petitioner had filed the appeal with a delay of 93 days. The present writ petition has been filed against the said order of the 5th respondent viz., the Taxation Special Tribunal.

3. A counter affidavit has been filed on behalf of the respondents to the effect that the Appellate Assistant Commissioner as well as the Tribunal rightly declined to condone the delay in filing the appeal as otherwise it will be clearly violative of the provisions of the Act. According to the respondent, the penalty under Section 12 (5) (iii) of the TNGST Act was levied on the ground that the petitioner had failed to disclose the turnover relating to the sales of food and drinks in their hotel in the return submitted before the authority though the figures were available in their accounts. Further, it is contended that the appellate authority levied only the minimum penalty of 50% of the difference in tax payable on the

turnover disclosed in the return and that was determined by the assessing authority. The order levying penalty cannot be said to be illegal.

4. Learned counsel appearing for the petitioner contended that the assessment order was received by the petitioner on 6.10.1990 and the petitioner filed the appeal before the Appellate Assistant Commissioner on 5.11.1990, however as the same was not in form, the appeal in the prescribed form complying with all the requirements was filed on 1.2.1991. Hence, in those circumstances, it cannot be said that there was delay in filing the appeal particularly when, for the communication of the petitioner to the Appellate Assistant Commissioner dated 5.11.1990, no reply was received. Alternatively, it is contended that even assuming the appeal was filed only on 1.2.1991, considering the fact that the State Government granted exemption from payment of sales tax with effect from 1.4.1990 and also in view of the fact that petitioner is a co-operative society, this Court in the interests of justice can in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India direct the appellate authority to take the case on file and dispose it of on merits.

5. Learned counsel appearing for the Department contended that on 5.11.1990, the petitioner only sent a communication to the Appellate Assistant commissioner, Commercial Taxes, Cuddalore, to withhold the assessment orders and further action to recover the arrears as final exemption orders are awaited from the Government and that the communication cannot be, by any stretch of imagination, termed or called as an appeal. Learned counsel further contended that Section 31 of the TNGST Act makes it very clear that the appeal has to be filed within thirty days and a delay of 30 days alone can be condoned. This Court may not in exercising its discretionary powers under Article 226 of the Constitution of India pass orders as prayed for by the petitioner as otherwise the same would be violative of the principles of the Act.

6. First, let us proceed to consider the various basic facts before venturing to examine the legal position and whether the prayer of the petitioner can be granted.

7. The Deputy Commercial Tax Officer passed the assessment order in Form No. 19 and the same bears the date 6.10.1990. In the very first page, before the commencement of the order as such, under the heading NOTE, the following is mentioned.

"An appeal against this order lies before the Appellate Assistant Commissioner of Commercial Taxes, Cuddalore within 30 days of receipt of this order".

Section-31 of the Tamil Nadu General Sales Tax Act reads thus:-

"Appeals to the Appellate Assistant Commissioner:-

> *[1] Any person objecting to an order passed by the appropriate authority under Section 4-A, Section 12, Section 14, Section 15, sub-sections (1) and (2) of Section 16, Section 18, sub-section (2) of Section 22, Section 23 or Section 27 other than an order passed by an Assistant Commissioner may, within a period of thirty days from the date on which the order was served on him in the manner prescribed, appeal against such order to the Appellate Assistant Commissioner (having jurisdiction):*
>
> *Provided that the Appellate Assistant Commissioner may admit an appeal presented after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the said period:*
>
> *Provided further that in the case of an order under Section 12, Section 14, section 15 or subsections (1) and (2) of Section 16 no appeal shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of tax admitted by the appellant to be due or of such installment thereof as might have become payable as the case may be.*
>
> *[2] The appeal shall be in the prescribed form and shall be verified in the prescribed manner."*

From the above provision, it is clear that the appeal must be filed in a prescribed format within thirty days from the date of receipt of the assessment order. The Appellate Authority is vested with powers only to condone the delay of 30 days in proper cases where the appellant shows sufficient cause. If one looks at the Communication dated 5.11.1990 sent by the petitioner to the Appellate Assistant Commissioner, it could be noticed that certainly it is not an appeal against the assessment order. If one carefully goes through the said communication, it could be seen that nowhere it is stated that it is an appeal and that the order of the

assessment officer has to be set aside. Added to this, the same was not in the prescribed format. The provision under Section 31 (2) of the TNGST Act as could be seen, clearly lays down that the appeal shall be in the prescribed form and shall be verified in the prescribed manner. At the risk of repetition, it may be stated that the communication dated 5.11.1990 is not an appeal for the reason that the same has not been filed in a prescribed form with proper verification and there is no prayer to set aside the order of the Assessing authority. In fact, there is not even an allegation in the body of the communication that the assessment order is erroneous for some reason or other and the same is liable to be set aside. Once this Court comes to this conclusion, then, the submission of the petitioner that the appeal was filed even on 5.11.1990 and as it was not in the prescribed form, another appeal was sent on 1.2.1991 has to fail.

8. Then comes the question as to whether the delay in filing the appeal can be condoned. Admittedly, the assessment order was received on 6.10.1990 and the last date for filing the appeal was 5.11.1990, whereas, the appeal was filed only on 1.2.1991 and thereby there is a delay of 93 days in filing the appeal. While it is the contention of the petitioner that this Court has ample powers under Article 226 of the Constitution of India to condone the delay and direct the appellate authority to dispose of the matter on merits, the Department would contend that once the statute prescribes outer limit for condoning the delay, any delay beyond that period cannot be condoned.

9. We have already extracted Section 31 of the Tamil Nadu General Sales Tax Act, 1959. The said Act clearly lays down that an appeal has to be filed within thirty days from the date or receipt of the order and that an appeal may be admitted beyond that period if the appellate authority is satisfied that the appellant had sufficient cause for not presenting the appeal within the said period.

10. Reference to a few decisions and provisions of the Act would clarify the effect and consequence of the Statute positively laying down the time limit during when the delay can be condoned.

> In *Mohd. Ashfaq vs. State Transport Appellate Tribunal, U.P., AIR 1976 SC 2161,* the Supreme Court was considering Section 58 of the Motor Vehicles Act. The Supreme Court has ruled as under:-

"Section 58 of the said Act provided that a permit may be renewed on an application made for such purposes, provided that the application for renewal of a permit shall be made (a) in the case of stage carriage permit or public carrier's permit, not less than 120 days before the date of expiry and (b) in any other case not less than 60 days before the date of its expiry. Sub-section (3) of that Section further provided that:

"Notwithstanding anything contained in the first proviso to sub-section(2), the Regional Transport Authority may entertain an application for the renewal of a permit after the last date specified in the said proviso for the making of such an application, if the application is made not more than 15 days after the said last date and is accompanied by the prescribed fee."

Thus, sub-section(3) vested in the Regional Transport Authority a power to entertain an application for renewal of a permit even if it is beyond time, but in that case the time should not be more than fifteen days. The question for consideration was, whether sub-section (3) could be said to expressly exclude the provisions of Section 5 of the Limitation Act which gives unlimited power to the Court or a Tribunal to excuse the delay irrespective of the number of days of delay? Considering this question, the Supreme Court held:

"It is therefore, clear that sub-section (3) of Section 58 confers a discretion on the Regional Transport Authority to entertain an application for renewal when it is made beyond the time limit specified in the proviso to sub-section (2), but not more than 15 days late and the discretion is to be exercised in favour of entertaining the application for renewal when it is shown that there was sufficient cause for not making it in time. Now, the question which arises is does Section 5 of the Limitation Act, 1963 apply so as to empower the Regional Transport Authority, for sufficient cause to entertain an application for renewal even where it is delayed by more than 15 days? Section 29, sub-section (2) of the Limitation Act, 1963 makes Section 5 applicable

> in the case of an application for renewal unless its applicability can be said to be expressly excluded by any provision of the Act. The only provision of the Act sought to be pressed into service for this purpose was sub-section (3). Does sub-section (3) expressly exclude further extension of time under Section 5? If it does, then Section 5 cannot be availed of by the appellant for condonation of the delay. Sub-section (3) in so many terms says that the Regional transport Authority may condone the delay in making of an application for renewal and entertain it on merits provided the delay is of not more than 15 days. This clearly means that if the application for renewal is beyond time by more than 15 days, the Regional Transport Authority shall not be entitled to entertain it, or in other words, it shall have no power to condone the delay. *There is thus an express provision in sub-section (5) that delay in making an application for renewal shall be condonable only if it is of not more than 15 days and that expressly excludes the applicability of Section 5 in cases where an application for renewal is delayed by more than 15 days*."

11. It has to be noted that even though in the provisions of the Act (Section 58 of the Motor Vehicles Act of Uttar Pradesh), the wordings "condonable only if it is of not more than 15 days" are not there, the Supreme Court so held on the basis of the wordings employed in the provisions of the Act, which read thus:-

> "may entertain an application for the renewal of a permit after the last date specified in the said proviso for the making of such an application, if the application is made not more than 15 days after the said last date."

12. The next decision is the one reported in *K. Ganesh vs. State of Tamil Nadu, 1988 STC (68) 84*. That was a case where a petition was filed to condone the delay of 211 days in filing the Tax Case Revisions against the order of the Sales Tax Appellate Tribunal, Coimbatore. The Revisions were filed under Section 38 of the Tamil Nadu General Sales Tax Act. According to Sub-section (1) of Section 38, a petition can be preferred to the High Court within 90 days from the date of which copy of the order is served. By virtue of the 8th Amendment Act, 1986 which came into effect on 15.12.1986, the High Court may within a further period of forty-five days,

admit a petition preferred after the expiration of the said period of ninety days, if it is satisfied that the petitioner had sufficient cause for not preferring the petition within the said period. In the said Ruling, a Division Bench of this Court held that the period prescribed in the statue (local law) is clear and that further Section 29 of the Limitation Act specifically provided that Sections 4 to 24 would apply only insofar as and to the extent to which they are not expressly excluded by such special or local law. The Court, in that case, ruled that there is an express exclusion of Section 5 of the Limitation Act.

13. The next ruling that can be usefully referred to is the one reported in *Kanaka Durga Agro Oil Products Ltd. vs. Commercial Tax Officer, Benz Circle. Vijayawada and another, 2000 STC (119) 387*. That was a case arising under Andhra Pradesh General Sales Tax Act. In that case, the petitioner agreed for the proposed assessment and gave a letter of consent to that effect. However, long thereafter, the petitioner filed an appeal against the said assessment order with a delay of 533 days. The assesses in that case raised a contention that a turnover of Rs.76,72,260 representing the sale of oil extracted from oil cakes was subjected to a higher rate of tax unlike oil extracted from oil seeds, on the basis of the decision in *Rajashree Oils & Extractions' Case, 1998 (111) STC 668 (AP) [FB]* in which entry 24 [a] of the First schedule to the Andhra Pradesh General Sales Tax Act, 1957 was declared unconstitutional. The appellate authority dismissed the appeal on the ground of delay. The Court ruled as under:-

> "If the special statute prescribed a particular period of limitation for preferring the appeal, the appeal has to be necessarily filed within that date. If there is a provision for condonation of delay and sufficient cause is shown, the appellate authority can condone the delay if it is satisfied with the reasons for the delay. The proviso to Section 19 [1] as it originally stood empowered the appellate authority to admit an appeal after a period of 30 days, if it is satisfied that the dealer had sufficient cause for not preferring the appeal within the prescribed period of 30 days subject to the payment of the admitted tax due. Under the amended provision, the delay can only be condoned up to a further period of 30 days."

14. In a recent judgment, the Supreme Court of India in *Union of India vs. M/s. Popular Construction Co., 2001 (4) CTC 213* considered Section 34 of Arbitration and Conciliation Act, 1996 and ruled that when the statute positively prescribes 90 days as time limit for the purpose of filing an application under Arbitration Act, that provision is to condone the delay for a further period of 30 days only and Section 5 of the Limitation Act does not apply in view of express exclusion and scheme of the Act and delay beyond a period of 30 days after expiry of the original period of limitation cannot be condoned. It will be useful to quote in verbatim, the exact wordings employed by the Supreme Court, which reads thus:-

> "As for the language of Section 34 of 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29 (2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase 'but not thereafter' wholly otiose. No principle of interpretation would justify such a result."

15. Before we deduce the legal position, it is necessary to refer to the relevant provisions of the Act. Section-31 (1) of the Tamil Nadu General Sales Tax Act as it stood prior to the amendment reads as under:-

"31(1) Any person objecting to an order passed by the appropriate authority under (Section 4-A), Section 12, Section 14, Section 15, sub-section (1) and (2) of Section 16, Section 18, (sub-section (2) of Section 22, Section 23 (or Section 27) other than an order passed by an Assistant Commissioner) may, within a period of thirty days from the date of which the order was served on him in the manner prescribed, appeal against such order to the Appellate Assistant Commissioner (having jurisdiction)"

Subsequently, the first proviso clause came to be amended by way of Amendment Act and now the said proviso clause reads thus:

> "Provided that the Appellate Assistant Commissioner may, within a further period of thirty days, admit an appeal presented after the expiration of the first mentioned period of thirty days if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the first mentioned period."

So, while before the amendment, the provision was to the effect that the Appellate Assistant Commissioner was empowered to condone the delay for any number of days, provided he is satisfied that the appellant had sufficient cause for not presenting the appeal, by way of amendment the Legislature has now fixed time limit of 30 days and only for that period, the Appellate Assistant Commissioner has power to condone the delay. To contend that even after 30 days, the delay could be condoned would be only misreading the provision.

In the ruling reported in *Mohd. Ashfaq v. State Transport Appellate Tribunal, U.P,* which we have already referred, the wordings employed are:

> *"……if the application is made not more than 15 days after said last date."*

In *Union of India v. M/s. Popular Construction Co, (supra)*, the Law Makers have employed the following wordings:-

> *…….it may entertain the application within further period of 30 days but not thereafter.*

A question may arise whether the wordings employed in the first proviso to Section 31 viz., "within further period of 30 days" would have the same meaning. The answer can be only in the positive. Those words necessarily and only imply that the delay cannot be condoned thereafter. Or in other words, in our considered view, the wordings in the first proviso clause should be understood to mean that the Appellate Assistant Commissioner will have the power to condone the delay only up to 30 days from the last date and not beyond that.

16. At this juncture, we deem it necessary to refer to a recent Division Bench Judgment of this Court in *W.P.No.19488 of 2001* while considering an identical issue, ruled as under:-

> *"*The discretion of the Court under Article 226 of the Constitution is to be exercised with caution, especially, in cases where the limitation provided in the statute is sought to be overridden even without examining the merits of the matter. The reason given by the assesses here for justifying the non filing of the appeal in time is that the person in charge of the Company was ill. That by itself cannot be reason to hold that the law of limitation prescribed in the statute should not apply in the case of the assesses. A running business has many persons employed in it and those who are required to conform to the requirements of the Act as dealers must take necessary precaution to conform to its requirements. The fact that the extent of the delay is short is also by itself not a good reason, as once the period of limitation prescribed by law is over, the bar which the statute itself imposes on the authority to entertain the appeal is not to be lifted merely because the period of delay is a short one. Any such approach would result in practically rewriting the statutory provision and adding a proviso providing for a further grace period beyond what the statute has prescribed……."

Article 226 of the Constitution cannot be used as a magic wand to get over the bar of limitation.

As far as the present case is concerned, the explanation that since the Government was considering the request for exemption the appeal was not filed in time, cannot be said to be an acceptable one.

17. Learned counsel for the petitioner in his endeavour to persuade this Court to accept his submission, relied on certain rulings which we presently refer to. Learned counsel first placed reliance on the ruling reported in the *Coimbatore Murugan Mills Limited vs. The Board of Revenue (Commercial Taxes) Chepauk, Madras and another, 1970 STC (25) 469*. In that case, the Board of Revenue passed an order and as per Section 37 of the Madras General Sales Tax Act, 1959, a period of 60 days was prescribed for preferring an appeal. The High Court, on the facts of

that case, condoned the delay in filing the appeal and also held that bona fide prosecuting a writ petition against the order of the Board is a sufficient cause for the delay, in filing the appeal. The High Court in that case ruled that Section 5 of the Limitation Act, 1963 can be invoked to condone the delay in filing the appeal.

The decision relied on will not in any way come to the rescue of the petitioner since there the statute has not prescribed any outer limit for condoning the delay.

18. Learned counsel for the petitioner then referred to the ruling reported in *Collector Land Acquisition Anantnag and another vs. Mst. Katiji and others, 1987 STC (66) 228*. We may straight away say that the said Ruling may not advance the case of the petitioner for the simple reason that it was a case arising under Land Acquisition Act and the Legislature has conferred the power to condone the delay by enacting Section 5 of the Indian Limitation Act in order to enable the Courts to do substantial justice to parties by disposing of matter on merits. The Supreme Court ruled that there is no warrant for according a step-motherly treatment when the "state" is the applicant praying for condonation of delay. It has to be borne in mind that applicability of Section 5 of the Limitation Act has not been excluded.

19. The attention of this Court was again drawn to another ruling reported in *State of Tamil Nadu vs. Saganlai, 1993 STC (88) 17*. In that case, an application was filed under Section 36 (6) of the Tamil Nadu General Sales Tax Act, 1959, with an application under Section 5 of the Limitation Act, 1963, for condonation of delay of 7 years and 158 days in filing the Review Application. The tribunal, on the facts, condoned the delay. In a revision petition, the Revenue contended that there was no scope under Section 36 (6) to invoke Section 5 of the Limitation Act. The Court ruled as under:-

> *"The learned Additional Government Pleader (Taxes) contended that in the light of the language of Section 36 (6) of the Tamil Nadu General Sales Tax Act, there is no scope for condonation of delay or invoking Section 5 of the Limitation Act. In other words, the learned Additional Government Pleader contended that any review will have to be filed within a year and beyond that the Tribunal has no power to entertain the review application. We are unable to*

agree with the learned Additional Government Pleader. The fact that a limitation is prescribed does not mean that application of Section 5 of the Limitation Act is excluded from the purview of the section disabling the Presiding Officer from applying the same when invoked. It is well settled that unless a specific prohibition is there in the Section itself Section 5 of the new Limitation Act will apply, (vide Arrya Vysia Samajam vs. Murugesa Mudaliar, 1990 TNLJ 82). The ratio laid down in the above case squarely applies to the facts of this case. Accordingly, we find there is no substance in the argument of the learned Additional Government Pleader. Consequently, the revision fails and is dismissed. No costs.''

Here again, it has to be pointed out that the statute has not prescribed the number of days only during when the delay can be condoned.

20. Learned counsel also referred to the following rulings:-

(I) *N. Balakrishnan vs. M. Krishnamurthy, AIR 1998 SC 3222;*

(ii) *Sarathy vs. State Bank of India 2000 (3) CTC 552 [SC[;*

(iii) *Subramaniam. C. vs. Tamil Nadu Housing Board, 2000 (3) CTC 727.*

But, here again, we are constrained to point out that in all those cases, the relevant statute has not limited the period during which the delay can be condoned.

21. From the discussions made in paragraphs 8 to 16 supra, the legal position is that the appellant/Assistant Commissioner has no power to condone the delay, whatever may be the reason for the delay, beyond 30 days over and above the period prescribed for filing appeal, i.e.. 50 days from the date of receiving copy of the order. Consequently, it has to be held that the impugned orders passed by the appellant/Assistant Commissioner as well as Taxation Special Tribunal are legal and proper.

22. The prayer in the writ petition is to call for the records relating to the order dated 25.3.1999 passed by the Tamil Nadu Taxation Special Tribunal, viz., the 5th respondent herein in T.P.No.3091 of 1997 read with order dated 27.9.1990 in T.N.G.S.T.No.584757 of 89-90 issued by the third respondent and to quash the same and direct the respondent and

pass orders on merits after giving opportunity of hearing to the petitioner. In this case we have already held that the impugned orders are not liable to be set aside. Once this Court comes to such conclusion, then it would not be possible for this Court to direct the respondent/appellate authority to dispose of the appeal on merits and if such direction is given then it is nothing but this Court extending the period of limitation.

At this juncture, we would like to point out two rulings of the Constitutional Bench of Supreme Court, viz.,

(I) *A. V. Venkateswaran, Collector of Customs vs. Ramchand Sobhraj Wadhwani and another, AIR 1961 SC 1506*, wherein the Supreme Court ruled thus,

> *"If a petitioner has disabled himself from availing himself of the Statutory remedy by his own fault in not doing so within the prescribed time, he cannot certainly be permitted to urge that as a ground for the Court dealing with his petition under Art.226 to exercise its discretion in his favour."*

(ii) In *Sales Tax Commissioner vs. Modi Sugar Mills, AIR 1961 SC 1047*, while interpreting taxing statute, the Supreme Court observed thus,

> *"In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency."*

Of course, the learned counsel for the petitioner placed reliance on the Division Bench decision of this Court reported in *Maheswari Fireworks Industries vs. Commercial Tax Officer and others, 2001 STC (121) 272* and submitted that the High Court while exercising jurisdiction under Art.226 of Constitution of India, even though appeal before the appellate authority was filed beyond 60 days (prescribed time of 30 days to file appeal + 30 days for which period alone appellate authority has power to condone) if the explanations offered by the assessee for not filing appeal within the said period are acceptable, then the High Court can direct the appellate

authority to dispose of the appeal on merits. In the present case, the request of the petitioner is that the appellate authority may be directed to consider the appeal on merits and the assessee did not apply in time as the assessee had by then applied for exemption and was waiting for the orders from the Government and that the Government granted exemption for the year 1990-91. The fact that the request of the assessee was then under consideration by the Government, cannot be an acceptable explanation for not filing the appeal in time. That apart this court is of the view that the ruling of the Supreme Court reported in *Union of India vs. M/s. Popular Construction Co, (supra)*, which came to be rendered after the ruling of the Division Bench of this Court has laid that once the statute prescribed the time limit, it cannot be extended further. In *Maheswari Fireworks Industries vs. Commercial Tax Officer and others, (supra)*, a Division Bench has ruled that the limitation prescribed under Section 31 of the Tamil Nadu General Sales Tax Act cannot be made applicable to the High Court while exercising jurisdiction under Article 226 of Constitution of India. In this case, we are not called upon to decide that issue. But the question is whether on that basis this Court can direct the appellate authority to consider the appeal on merits after the expiry of prescribed time. In our considered view, this Court has no jurisdiction to pass such an order as otherwise it would be nothing but this Court re-writing the provisions of the Act in exercise of its powers under article 226 of Constitution of India. This Court is also inclined to point out that the ruling of the Supreme Court viz. *Mohd. Ashfaq vs. State Transport Appellate Tribunal, U.P,* and *Sales Tax Commissioner vs. Modi Sugar Mills, (cases cited earlier)* were not brought to the notice of that Division Bench.

23. The legal position is as follows:

(a) An appeal under section 30(1) of the Tamil Nadu General Sales Tax Act, 1959 has to be filed within 30 days before the appellate Assistant Commissioner. The appellate Assistant Commissioner is empowered to condone the delay for further period of 30 days if sufficient cause for not presenting the appeal in time is shown and satisfied by the appellate authority.

(b) Under no circumstances, the appellate authority has power to condone the delay beyond 30 days.

(a) While the High Court exercising the jurisdiction under Article 226 of Constitution of India, approves the correctness of the order of the appellate authority, it has no power to direct the appellate authority to consider the appeal on merits as otherwise it would be nothing but Court extending the period of limitation.

(b) Even if the High Court accepts the explanation given by the assessee for not filing the appeal within the period prescribed under the Act, it cannot direct the appellate authority to consider the matter on merits as the High Court exercising jurisdiction under Article 226 of Constitution of India, cannot re-write the provisions of the Act.

24. In this view of the matter, this Court is of the opinion that the writ petition has to fail and consequently the writ petition is dismissed. Connected W.M.P., will stand closed.

25. The learned counsel for the petitioner submits that the petitioner is a co-operative society and that it caters to the needs of only the workers and that the Government itself thought it fit to grant exemption and in fact granted exemption from 1990 onwards, and in those circumstances, the Court may be pleased to clarify that the dismissal of the writ petition will not stand in the way of Government granting any relief by virtue of powers conferred on it.

We examined the request of the petitioner and heard the respondent as well. We make it clear that the dismissal of the writ petition will not stand in the way of Government granting relief by virtue of powers conferred on it under law.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.7.2002

CORAM

THE HONOURABLE Mr. JUSTICE E.PADMANABHAN

CONTEMPT PETITION Nos. 738, 765 AND 766 of 2001

D. Soundararajan ... Petitioner in Cont. Petn.738/2001

1. V.Dhakshinamoorthy

2. I.Thirumurugan ... Petitioners in Cont. Petn.765/2001

T.Sarathy ... Petitioner in Cont. Petn.766/2001

Vs.

1. The Union Territory of Pondicherry,
   Rep. by its Registrar of
   Co-operative Societies,
   Pondicherry.

2. The Pondicherry Co-operative
   Sugar Mills Ltd., Lingareddipalayam,
   Rep. by its Managing Director,
   Pondicherry.

3. The Administrative Officer,
   The Pondicherry Co-operative
   Sugar Mills Ltd., Lingareddipalayam,
   Pondicherry. ... Respondents in all Cont. Petitions

The respondents themselves have understood the legal position and realized that their plea is fallacious and have set aside the earlier selection and also ordered that there will be a de novo selection in terms of the earlier directions issued by this Court in the writ petition. While taking note of the said order and the unconditional apology expressed by the respondents, the contempt proceedings are dropped and the contemnors are discharged.

Advocates appeared:

For Petitioners : Mr. R. Mahadevan

For Respondents : Mr. T. Murugesan,
Government Pleader, Pondicherry.

Contempt petitions under Sections 10 to 12 of the Contempt of Courts Act, 1971 to punish the respondents/contemnors for having committed contempt of Court for disobeying the orders dated 23.11.2000, 8.9.2000 and 8.9.2000 made in W.Ps. 7458, 7490 and 6691 of 1993.

JUDGMENT

Heard Mr. R. Mahadevan learned counsel appearing for the petitioners and Mr. Murugesan learned Senior Counsel appearing for the respondents 2 and 3 / contemnors.

2. On the last occasion, arguments were advanced. This Court pointed out the fallacy in the stand taken by the respondents which has landed them in the present contempt proceedings. On that, the learned Senior Counsel took time to get instructions. Subsequently, the learned Senior Counsel represented that he has advised the contemnors to withdraw the entire selection proceedings and proceed de novo. In other words, the learned Senior Counsel has advised the contemnors to set aside the earlier selection and hold a fresh selection after following the procedure prescribed in this respect. At the request of the learned Senior Counsel, time was granted. Today, a copy of the order dated 25.7.2002 passed by the Managing Director of the Pondicherry Co-operative Sugar Mills Ltd., has been placed before the Court. The material portion of the order reads thus:

> "AND WHEREAS in the course of the hearing of the aforesaid contempt petitions it was observed by the Hon'ble Court that the selection to the post of Cane Assistant (Regular) made on 1st December, 2000 was violative of the orders dated 8th September, 2000 passed by Hon'ble Court and consequently the Managing Director has also handed over a letter to the

learned Government Pleader for Pondicherry in the High Court, Madras informing him that it has been agreed in principle that the selection of candidates to the post of Cane Assistant (Regular) impugned in the contempt petitions could be rescinded and a fresh selection could be made by all the members of the newly constituted recruitment committee and that the matter could accordingly be submitted to the Hon'ble Court, Madras.

NOW THEREFORE, in pursuance of the aforesaid observations of the Hon'ble High Court, Madras, the Administrator hereby rescinds with immediate effect the proceedings in Memorandum No.PCSM/Estt/5-471/2000/8229 dated 1st December, 2000 issued in connection with the selection to the post of Cane Assistant (Regular) to each one of the 12 candidates viz., M/s.R.Thambusamy, G. Govindasamy, R. Kathavarayan, K. Muruganandam, S. Kandasamy, P. Venkatachalam, S. Kalivarathan, R. Kalaiyarasan, M. Ramakrishnan and S. Mannangatti. It is hereby informed that a fresh selection in this regard will be made by the Recruitment Committee and the date and time of the written test and viva voce will be intimated to all the eligible candidates in due course."

2. Therefore, it is seen that the respondents themselves have understood the legal position and realized that their plea is fallacious. In that background, the respondents have set aside the earlier selection and also ordered that there will be a de novo selection in terms of the earlier directions issued by this Court in the writ petition. While taking note of the said order and the unconditional apology expressed by the respondents in their affidavit, the contempt proceedings are dropped and the contemnors are discharged. No costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.10.2002

CORAM

THE HON'BLE Mr. JUSTICE P.D. DINAKARAN

WRIT PETITION No. 38356 of 2002

B. Gayathri ... Petitioner

Vs.

Pondicherry State Co-operative Consumers' Federation Ltd., rep. by its Managing Director, Pondicherry ... Respondent

It is also well settled in law that the Court should refrain itself from interfering with orders of interim suspension pending disciplinary proceedings, unless the same suffers from want of jurisdiction, as interim suspension pending enquiry is not a punishment by itself, but it is only intended to facilitate smooth and speedy enquiry.

Writ petition is disposed with direction.

Case laws referred :

(i) Kannan P. Tamilarasan and others vs. The Director of Sugars etc., 1991-2-LW. 109 : 1989 (I) LLJ 588;

(ii) W. Philip Jeysingh vs. The Joint Registrar of Co-operative Societies, Chidambaranar Region, Tuticorin and two others, 1994-2-LW. 105 : (1994) 1 MLJ 398;

(iii) K. Ganesan vs. The Special Officer, Salem Co-operative Sugar Mills and two others, 1994-2-LW. 102 : ILR (1994) II MAD 629 : 1994 WLR 509;

(iv) M. Thanigachalam vs. Maduranthagam Agricultural Producers Marketing Socity No. P. 864, rep. by its Special Officer, (2000) 3 MLJ 722 : 2000-1-LW. 38 : 2000 (IV) CTC 556 : 2000 (I) LLJ 285 : 2001 WLR 1;

(v) G.I. Mohabood Bhasha vs. Government of Tamil Nadu and another, W.P. No. 31895 of 2002 dated 2.8.2002.

Advocate appeared :

For Petitioner ... Mr. V. Ajaykumar

JUDGMENT

Petition under Article 226 of the Constitution of India praying for issuance of a writ of certiorari as stated therein.

Petitioner was suspended from service on 12.10.1994. Aggrieved by the charge memo dated 18.10.1994, the petitioner has approached this Court for issue of a writ of certiorari to call for the records of the respondent with No. PPCF/Estt/A/722/87 dated 18.10.1994 and to quash the same.

2. By proceedings of the respondent dated 12.10.1994, the petitioner was placed under interim suspension pending disciplinary action into the charges framed against the petitioner in the proceedings dated 18.10.1994, which is impugned in the above writ petition.

3. Approving the decisions of the Full Benches of this Court in

(i) Kannan P. Tamilarasan and others vs. The Director of Sugars etc., 1991-2-LW. 109 : 1989 (I) LLJ 588;

(ii) W. Philip Jeysingh vs. The Joint Registrar of Co-operative Societies, Chidambaranar Region, Tuticorin and two others, 1994-2-LW. 105 : (1994) 1 MLJ 398;

(iii) K. Ganesan vs. The Special Officer, Salem Co-operative Sugar Mills and two others, 1994-2-LW. 102 : ILR (1994) II MAD 629 : 1994 WLR 509,

a larger Bench of this Court consisting of five Judges in *M. Thanigachalam vs. Maduranthagam Agricultural Producers Marketing Socity No. P. 864, rep. by its Special Officer, (2000) 3 MLJ 722 : 2000-1-LW. 38 : 2000 (IV) CTC 556 : 2000 (I) LLJ 285 : 2001 WLR 1* held that writ petition against the co-operative societies is not maintainable in law, unless the petitioner show some special circumstances.

4. Therefore, if the petitioner is aggrieved by the order of interim suspension pending an enquiry or by the impugned charge memo, she is at liberty to work out her remedy before the Joint Registrar of Co-operative Societies by way of revision invoking Section 153 of the Co-operative Societies Act.

5. It is also well settled in law that the Court should refrain itself from interfering with orders of interim suspension pending disciplinary proceedings, unless the same suffers from want of jurisdiction, as the interim suspension pending enquiry is not a punishment by itself, but it is only intended to facilitate the smooth and speedy enquiry, as observed by a Division Bench of this Court, by order dated *2.8.2002* made in *W.P. No. 31895 of 2002 (G.I. Mohabood Bhasha vs. Government of Tamil Nadu and another).*

6. Since the interest of justice requires that any undue delay in holding an enquiry should be avoided, I am obliged to direct the respondent to appoint an enquiry officer, hold an enquiry and pass appropriate order on merits in the disciplinary action initiated against the petitioner, expeditiously, in any event within six months from the date of receipt of a copy of this order, after giving a fair and reasonable opportunity to the petitioner and the respondent shall pay the subsistence allowance to the petitioner pending the disciplinary action, if the petitioner is entitled to the same, as per law.

7. With these observations, this writ petition is disposed of. Consequently connected miscellaneous petitions are closed. No costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.2.2003

CORAM

THE HONOURABLE Mr. B. SUBHASHAN REDDY, CHIEF JUSTICE

AND

THE HONOURABLE Mr. JUSTICE K. RAVIRAJA PANDIAN

W.A. No.3948 of 2002

B. Gayathri ... Appellant

Vs.

Pondicherry State Co-operative Consumers' Federation Ltd., rep. by its Managing Director, Pondicherry. ... Respondent

The suspension pending enquiry is not a punishment but is only a step to facilitate smooth and speedy enquiry. It has been held by the Courts time and again that disciplinary proceedings should not be kept pending indefinitely. The time schedule fixed by the learned single Judge conforms to the said view taken by the Courts consistently.

But it is made clear that if the disciplinary authority does not adhere to the time schedule set by the learned single Judge, on the expiry of the term, the charge memo gets automatically quashed.

Advocate appeared

For Appellant ... Mr. V. Ajaykumar

Appeal against the order dated 10.10.2002 of the learned single Judge passed in W.P. No. 38356 of 2002 *(page 46 ibid).*

JUDGMENT

(The judgment of the Court was delivered by the
Honourable the Chief Justice)

This Writ Appeal is directed against the order of the learned single Judge. The matter relates to the disciplinary proceedings. The appellant was suspended pending enquiry in the year 1994. Thereafter, she has been reinstated into service. The learned counsel for the appellant submits that inasmuch as the suspension was subsisting for a period of four years, that itself is a sufficient punishment. That is why, continuing the disciplinary proceedings will result in double punishment.

2. We do not accede to this contention for, the suspension pending enquiry is not a punishment but is only a step to facilitate smooth and speedy enquiry. In fact, the learned single Judge, taking into consideration the long pendency of disciplinary proceedings, had responded very correctly to dispose of the same within a stipulated time of six months. It has been held by the Courts time and again that disciplinary proceedings should not be kept pending indefinitely. The time schedule fixed by the learned single Judge conforms to the said view taken by the Courts consistently. In the circumstances, we do not find any error or infirmity, legal or otherwise, in the order passed by the learned single Judge. This writ appeal is, therefore, dismissed. But we make it clear that should the disciplinary authority not adhere to the time schedule set by the learned single Judge, on the expiry of the term set by the learned single Judge, the charge memo gets automatically quashed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.9.2003

CORAM

THE HONOURABLE Mr. B. SUBHASHAN REDDY, CHIEF JUSTICE

AND

THE HONOURABLE Mr. JUSTICE A. KULASEKARAN

W.A.M.P. No. 3396 of 2003
in
W.A. No.3948 of 2002

Pondicherry State Co-operative Consumers' Federation Ltd., rep. by its Managing Director, Pondicherry ... Petitioner
(Respondent in W.A. No. 3948/2002 High Court, Madras)

Vs.

B. Gayathri ... Respondent
(Appellant in -do-)

It is expressly clear that the charges are not so serious or grave warranting inflicting of any major penalty and stoppage of one increment without cumulative effect will meet the ends of justice.

Advocates appeared:

For Petitioner ... Mr. N.G.R. Prasad
For Respondent ... Mr. V. Ajay Kumar

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to grant two months time to the petitioner to conclude the enquiry against the respondent as per the order dated 18.2.2003 of this Hon'ble Court in W.A. No. 3948/2002. (Writ Appeal preferred against the order dated 10.10.2002 passed in W.P. No. 38356 of 2002 presented under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling

for the records of the respondent in No. PPCF/Estt./A/722/87 dated 18.10.1994 and quash the same).

JUDGMENT

This petition coming on for hearing upon perusing the petition and the affidavit filed in support thereof and the order of this Court dated 18.2.2003 and made in W.A. No. 3948/2002 *(page 49 ibid)* and upon hearing the arguments of Mr. N.G.R. Prasad, Advocate for the petitioner-Management and of Mr. V. Ajay Kumar, Advocate for the respondent, the Court made the following Order:

[Order of the Court was made by the Hon'ble Chief Justice]

This writ appeal was directed against the order of the learned single Judge which relates to the administrative proceedings. The enquiry was to be concluded and the learned single Judge has directed the enquiry to be expeditiously concluded by stipulating the time of six months.

2. In the writ appeal, we modify the order of the learned single Judge by imposing a default clause, in default of not adhering to the time stipulation for conclusion of the enquiry. Because of several reasons, the enquiry could not be concluded within the stipulated time and, this petition is filed to extend the time for conclusion of the enquiry.

3. When the matter came up on 28.8.2003, we have perused the charges and the charges are very trivial in nature, and it is not worth continuing the proceedings for a long and, we have suggested to both the counsel as to why cannot be the matter be given a quietus by imposing a lighter punishment like one increment without cumulative effect.

4. Mr. N.G.R. Prasad, learned counsel appearing for the management has sought for time to seek instructions from his client. Mr. V. Ajay Kumar, learned counsel for the delinquent had accepted the suggestion of this Court. Today, a letter addressed by the management to Mr. N.G.R. Prasad dated 5.9.2003 is placed before us, from which, it is obvious that the management will abide by such decision as suggested by this Court.

5. The charges framed against the delinquent are as follows:

"(i) That you have violated Rule 12 of the Pondicherry State

Co-operative Consumers' Federation Employees Service Regulations by failing to discharge the duties entrusted to you on 30.9.1994 by office order No. PCCF/H/1018/91;

(ii) That you have willfully committed misconduct by (a) insubordination and disobedience of the lawful and reasonable order of the superior, (b) absenting from the appointed place of work during working hours on 30.9.1994; and (c) refusing to work as per the office order dated 29.9.1994 in Ref. No. PCCF/H/1018/91 within the meaning of clauses 4, 18 and 22 of the Regulation 13 of the above mentioned service regulations."

6. It is expressly clear that the charges are not so serious or grave warranting inflicting of any major penalty and stoppage of one increment without cumulative effect will meet the ends of justice.

7. In the circumstances, we modify the order of this Court in W.A. No. 3948 of 2002 dated 18.2.2003 to the effect that the appellant be inflicted with a punishment of stoppage of one increment without cumulative effect. The order is modified accordingly.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28.6.2004

CORAM

THE HONOURABLE Mr. JUSTICE K. RAVIRAJA PANDIAN

Writ Petition No. 2394 of 2004

and W.P.M.P. No. 2702 of 2004

and W.V.M.P. No. 741 of 2004

B. Navaneetha Kanan
Assistant General Manager,
The Pondicherry Co-operative
Milk Producer's Union Ltd., No.P.1,
Vazhudavoor Road,
Kurumampet,
Pondicherry – 605 009. ... Petitioner

Vs.

1. The Administrator / Managing Director
   The Pondicherry Co-operative
   Milk Producer's Union Ltd., No.P.1,
   Vazhudavoor Road,
   Kurumampet,
   Pondicherry – 605 009.

2. P. Ilango
   The Enquiry Officer
   No.64, Ellaimman Koil Street,
   (First Floor),
   Pondicherry – 605 001.

3. The Registrar of Co-operative Societies
   Government of Pondicherry
   Thattanchavadi
   Pondicherry – 605 009. ... Respondents

A mere perusal of the sequences of events clearly shows that the petitioner, just because the writ petition was admitted and pending before this Court and thinking that he is the authority of the respondent-society, is not appearing for enquiry for the reasons best known to him. If this sort of attitude of the petitioner is allowed by this Court, no enquiry would be properly conducted.

Advocates appeared :

For Petitioner	...	Mr. S. Vadivelu
For Respondents	...	Mr. L. Swaminathan

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus as stated therein.

JUDGMENT

The writ petition is filed for the relief of issuance of a writ of certiorarified mandamus calling for the records of the first respondent in Ref. Ponlait/Estt/P.A. No.16/2004 dated 21.1.2004 and quash the same and direct the respondent to accept the enquiry officer's report dated 28.11.2003 and pay all consequential monetary and service benefits to the petitioner.

2. This Court while admitting the writ petition on February 2004 passed an order directing that the enquiry may go on and the result of the same was directed to be suspended until further orders.

3. Now, the learned counsel for the respondents filed a petition to vacate the stay, placing before this Court, the sequences of the enquiry proceedings right from January 2004 till date.

4. A mere perusal of the sequences of events clearly shows that the petitioner, just because the writ petition was admitted and pending before this Court and thinking that he is the authority of the respondent-society, is not appearing for enquiry from March till date, for the reasons best known to him. If this sort of attitude of the petitioner is allowed by this Court, no enquiry would be properly conducted. However, in order to give a last chance to the writ petitioner, and after hearing the learned counsel for the respondents, the petitioner is directed to appear for the enquiry on 5th July, 2004 and the respondents are directed to conduct the enquiry on a

day-to-day basis and complete the same on or before 15th July, 2004 and pass ultimate orders.

5. With this observation, the writ petition is disposed of. No costs. Consequently, connected WPMP and WVMP are closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.9.2004

CORAM

THE HONOURABLE Mr. JUSTICE P.D. DINAKARAN

AND

THE HONOURABLE Mr. JUSTICE K. RAVIRAJA PANDIAN

W.P.No.16642 of 2003 and W.P.M.P. No.20823 of 2003

Indian Coffee Workers Co-operative Society Ltd. ... Appellant

Vs.

Deputy Commercial Tax Officer and others ... Respondent

Penalty was imposed on the petitioner society to the extent of Rs. 3,58,537 under Section 12(5)(iii) of the TNGST Act for belated payment of tax. The petitioner thereafter filed an application under Section 16B of the TNGST Act for waiver of penalty imposed to the Commissioner to whom the power was vested. The request was rejected on the ground that the assessee has not fulfilled the condition prescribed under Section 16B of the Act and hence the matter came up before the High Court.

On perusal of the impugned order it is observed that the order has not stated that in what way the condition has not been complied with. The petitioner is a co-operative society and applied for exemption from payment of tax in respect of sale of food and drinks in its canteen and the Government, also considering the case, granted the exemption subsequently. The condition contemplated for considering the case of the petitioner for reduction or waiver of penalty has not been considered in the correct perspective. In fact, the respondent, in a non-speaking order, has just rejected the request of the petitioner for reduction or waiver. The action of the respondent is not in conformity with the established legal principles of law that whenever an order is passed, the order must be supported with a reason for coming to such a conclusion. The discretion conferred on the Commissioner has to be exercised in a judicial manner on satisfying the conditions contemplated therein. The provision is incorporated in the statute only to exercise the same and not to put the same just ornamental to the statute.

As a result, the impugned order was set aside, the writ petition was allowed and the matter is remitted to the respondent to consider the application afresh.

Case referred : *L. AR. Arunachalam Pillai and Sons vs. State of Tamil Nadu, [1980] 45 STC 109 (Mad.) [FB].*

Advocates appeared :

For Appellant	...	Mr. N. Murali, Advocate
For Respondent	...	Mr. T. Ayyasamy, Special Government Pleader

JUDGMENT

K. Raviraja Pandian, J.

The petitioner is a co-operative society running a canteen for selling food and drinks. The petitioner seems to have applied to the Government for granting exemption from sales tax in respect of the sales turnover for food and drinks in the said canteen. As a matter of fact, such an exemption has also been granted by the Government in G.O.P. No. 669 CT & RE dated November 21, 1990 in Notification No. 11(1)/CTRE/205/90 Gazette dated December 5, 1990 with effect from April 1, 1990 with reference to Indian Coffee Worker's Co-operative Society Limited, Pondicherry, on the sale of food and drinks in their branches in the State of Tamil Nadu by exercising the power conferred under Section 17(1) of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as 'the Act').

2. In respect of the assessment year 1989-90, as the application for exemption under Section 17 of the Act is pending before the Government, the assessee has not paid the tax. However, subsequently tax amount has been paid. In view of the belated payment of tax under the sales turnover of food and drinks by the assessee, the first respondent levied penalty in a sum of Rs. 3,58,537 under Section 12(5)(iii) of the TNGST Act. The petitioner thereafter filed an application under Section 16B of the TNGST Act for waiver of penalty imposed to the Commissioner to whom the power was vested. The Commissioner by his order dated January 3, 2003 has rejected the application on the ground that the assessee has not fulfilled the condition prescribed under Section 16B of the Act. That order was carried on in original petition before the Taxation Special Tribunal. The Special Tribunal, however, declined to interfere with the order. Hence, the present writ petition.

3. We heard the learned Counsel for the petitioner as well as the learned Special Government Pleader. On a reading of the order dated January 3,

2003 we are of the view that the order is per se a non-speaking order. Section 16(B) of the TNGST Act empowers the authorities to reduce or waive the penalty in certain cases. It is rather apt to quote the provision 16B, which reads as follows:

> *16B. Power to reduce or waive penalty in certain cases.--(1) Notwithstanding anything contained in sub-section (3) of Section 12 or sub-section (2) of Section 16, the Commissioner of Commercial Taxes may, in his discretion, whether on his own motion or otherwise, reduce or waive the amount of penalty imposed or imposable on a dealer, if he is satisfied that such dealer has-*
>
> *(a) voluntarily and in good faith made full and true disclosure of his turnover prior to the detection by any officer of the Commercial Taxes Department;*
>
> *(b) co-operated in any inquiry relating to the assessment of such turnover; and*
>
> *(c) either paid or made satisfactory arrangements for the payment of any tax or any other amount payable in consequence of an order passed under this Act in respect of the relevant assessment year.*
>
> *(2) Every order made under sub-section (1) shall be final and shall not be called into question by any other authority.*

4. From the order of the Commissioner it is clear that the Commissioner has come to the conclusion that the condition for exercise of such power is not existed in the case of the petitioner and stated that the 16B condition has not been complied within a cryptic manner. It has not been stated that in what way the condition has not been complied with. As already stated the petitioner is a co-operative society and applied for exemption from payment of tax in respect of sale of food and drinks in its canteen and the Government, also considering the case, granted the exemption from April 1, 1990. Hence it presupposes that the petitioner's application for granting of exemption from payment of tax in respect of sale of food and drinks ought to have been pending before the Government during the relevant assessment year in which the petitioner was levied penalty.

5. It is not the case of the respondent that the petitioner has not filed the returns by disclosing the sales turnover. On the contrary the sales turnover has been disclosed, but the tax amount has not been paid on the fond hope and in good faith that an order would be passed immediately. But, as usual the Government has passed the order only after an year on November 21, 1990 however with retrospective effect from April 1, 1990. Hence, we are of the prima facie view that the condition contemplated for considering the case of the petitioner for reduction or waiver of penalty has not been considered in the correct perspective in the case of the petitioner. In fact the respondent, in a non-speaking order, has just rejected the request of the petitioner for reduction or waiver. The action of the respondent is not in conformity with the established legal principles of law that whenever an order is passed, the order must be supported with a reason for coming to such a conclusion. The discretion conferred on the Commissioner has to be exercised in a judicial manner on satisfying the conditions contemplated therein. The provision is incorporated in the statute only to exercise the same and not to put the same just ornamental to the statute. It is a settled law that 'If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is his duty to exercise that power which is invested in aid of enforcement of a right' as held in *L. AR. Arunachalam Pillai and Sons vs. State of Tamil Nadu* reported in *[1980] 45 STC 109 (Mad.) [FB].*

6. We, therefore, constrained to set aside the order, however remit the same to the respondent/Commissioner to consider the matter afresh with a direction to the respondent to dispose of the petition dated March 18, 2002 of the petitioner in accordance with law by a speaking order within a period of 8 weeks from the date of receipt of a copy of this order. With this observation, the writ petition is disposed of. No costs. Consequently, W.P.M.P. No. 20823 of 2003 is closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2004

CORAM

THE HONOURABLE Mr. JUSTICE F.M. IBRAHIM KALIFULLA

Writ Petition No. 18159 of 2004

G.R. Veerapathiran ... Petitioner

Vs.

1. The Registrar of Co-operative Societies,
   Thattanchavady,
   Pondicherry.

2. The Managing Director,
   AFT Employees Co-operative Stores Ltd.,
   Mudaliarpet, Pondicherry ... Respondents

The impugned proceedings has been issued by the second respondent in and by which the petitioner has been retired from service with effect from 30.6.2004. Admittedly, the second respondent has not so far amended its regulations or bye-laws enhancing the age of superannuation from 58 to 60 years. Unless such an enhancement is made, it is highly doubtful as to whether the petitioner's prayer can be countenanced.

Advocates appeared :

For Petitioner	...	Mr. V. Ajay Kumar
For Respondents	...	Mr. R. Syed Musthafa, Government Pleader, Pondicherry.

Writ petition filed under Article 226 of the Constitution of India for issue of writ of certiorarified mandamus to call for the records of the second respondent with No. 1/AFTECS-P-2004 dated 31.5.2004 and to quash the same and consequently to direct the respondents to permit the petitioner to continue in service till the age of 60 years, namely 30.6.2006 with all other consequential benefits.

JUDGMENT

The petitioner seeks issuance of writ of certiorarified mandamus to call for the records of the second respondent relating to the proceedings No.1/AFTECS-P-2004 dated 31.5.2004 and to quash the same and consequently to direct the respondents to permit the petitioner to continue in service till the age of 60 years, namely 30.6.2006 with all other consequential benefits.

2. The impugned proceedings dated 31.5.2004 has been issued by the second respondent in and by which the petitioner has been retired from service with effect from 30.6.2004. Admittedly, the second respondent has not so far amended its regulations or bye-laws enhancing the age of superannuation from 58 to 60 years. Unless such an enhancement is made, it is highly doubtful as to whether the petitioner's prayer can be countenanced.

3. However, Mr. V. Ajaykumar, learned counsel for the petitioner contends that by virtue of powers vested with the first respondent under the provisions of the Pondicherry Co-operative Societies Act, 1972, the second respondent is bound to implement the directions made in his communication dated 11.6.1999.

4. Therefore, at best, the petitioner's representation to the first respondent dated 14.6.2004 can only be directed to be disposed of. In the said representation, the petitioner has sought for the intervention of the first respondent to direct the second respondent to implement the first respondent's directives contained in this proceedings on 11.6.1999 in order to continue in the service till he attains 60 years of age.

5. Therefore, the first respondent is hereby directed to dispose of the said representation of the petitioner dated 14.6.2004 and pass orders in accordance with law, after giving necessary opportunity to the petitioner as well as the second respondent within four weeks from the date of receipt of a copy of this order.

6. The writ petition is disposed of in the above terms. W.P. M.P. No. 2/1633 of 2004 is closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 2.12.2005

CORAM

THE HONOURABLE Mr. JUSTICE R. BALASUBRAMANIAN

Writ Petition No. 4267 of 2005
and W.P.M.P. Nos. 4730, 1168 and 16492 of 2005

G. Vasantha ... Petitioner

Vs.

1. The Disciplinary Authority,
   The President, Health Staff Co-operative
   Credit Society Ltd.,
   No.156-A, Kamarajar Salai,
   Karaikal – 609 602.

2. K. Babu ... Respondents

The Presenting Officer himself has to be cross examined as a witness with reference to certain documents, instead of changing the said Presenting Officer by substituting with some other Presenting Officer, the Disciplinary Authority has allowed the entire proceedings to be completed with the help of the very same Presenting Officer. The writ petitioner has been denied the reasonable opportunity to defend the proceedings. This definitely vitiates the dismissal order. Quashing the order impugned, the Court directed the first respondent to appoint a new Presenting Officer and recommence the proceedings.

Advocates appeared:

For Petitioner ... Mr. K. Venkataramani

For Respondent ... Mr. K. Yamunan, for R-1

Prayer:- Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the respondent in connection with the impugned order issued by the first respondents in F1/HSCCS/KKL/DP/2005/496 dated 7.2.2005, quash the same and further direct the first respondent to reinstate the petitioner into service.

JUDGMENT

With the consent of the learnt counsel on either side, the writ petition itself is taken up for final disposal.

2. The writ petitioner challenges the order of dismissal. The main ground put forward is that the Presenting Officer, by name, Mr. M.Shanmuganathan, who came to be appointed in the place of the original Presenting Officer is a witness by himself. Since he is a party to a number of documents, he has to be cross examined on those documents. Since the disciplinary authority did not change the enquiry officer, the writ petitioner made his grievance to the higher authority and the higher authority had written a letter to the society advising it to change the Presenting Officer on the grievance made out by the writ petitioner. Despite that with the very same Presenting Officer, the enquiry was completed and after complying with all the other requirements of law, the writ petitioner came to be dismissed from service.

3. Having regard to the above fact, namely, Mr. M. Shanmughanathan, the Presenting Officer himself has to be cross examined as a witness with reference to certain documents, I have no doubt at all that instead of changing the said Presenting Officer by substituting with some other Presenting Officer and by allowing the entire proceedings to be completed with the help of the very same Presenting Officer, namely, Mr. M. Shanmughanathan, the writ petitioner has been denied the reasonable opportunity to defend the proceedings. This definitely vitiates the dismissal order. Under these circumstances, the following order is passed:

> "The order impugned in the writ petition is quashed; the disciplinary authority is also directed to appoint a new Presenting Officer in the place of Mr. M. Shanmughanathan; the disciplinary authority will recommence from the stage at which Mr.M.Shanmughanathan came into the picture as the

Presenting Officer; opportunities shall be given to the writ petitioner to participate in the enquiry proceedings after the new Presenting Officer is appointed as indicated above; if any document is directed to be furnished to the writ petitioner by the appellate authority then, before recommencing the proceedings, the disciplinary authority is bound to furnish copies of those documents as well and then the enquiry officer shall complete the proceedings so directed to be recommenced, in any event, not later than 30.4.2006."

4. The writ petitioner was under suspension during the pendency of enquiry proceedings and she shall continue to be so till the completion of the enquiry proceedings. If the writ petitioner is entitled to payment of subsistence allowance during the pendency of the enquiry, her employer is bound to pay that to her. The writ petition is disposed of accordingly. Consequently, the connected W.P.M.Ps are also closed. No costs.

Note : The writ appeal against the order was dismissed, vide page No.117.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.12.2005

PRESENT

THE HONOURABLE Mr. JUSTICE A. KULASEKARAN

W. P. M.P. Nos. 43149 and 44092 of 2005

in W.P. No. 40225 and 41051 of 2005

S. Thirumalai ... Petitioner in W.P.M.P. No. 43149/2005

M. Masilamani ... Petitioner in W.P.M.P. No.44092/2005

Vs.

1. The Registrar of Co-operative Societies,
   V.V.P. Nagar,
   Thattanchavady, Pondicherry.

2. Ariyur Primary Agricultural
   Co-operative Bank Limited,
   rep. by its Present
   Ariyur, Pondicherry. ... Respondents in both the petitions

The question that came up for decision is whether the committee is empowered to adjourn the filing of nominations after the election schedule has been announced and issue a notification to start the proceedings from the date of filing of nomination.

On perusal of Rule 32 (19) of the Rules it could be seen that there is no provision to continue from the stage at which the election was stopped. The judgment relied upon by the learned senior counsel for the respondents is also not applicable to the facts and circumstances of the case, since this case vests on different facts. In this case it is stated that even prior to the filling of nomination, election was postponed without fixing any further date. It is alleged that in one particular constituency namely Ananthapuram one person was elected unopposed as he was the only person who filed nomination, whereas it is found mentioned that the election officer postponed the date for election to future date. This Court is unable to understand how the said nomination was allowed to be filed on 7.12.2005. While so what is the necessity again to fix as date for filing nomination on

15.12.2005 as per second notification. The said facts disclose the respondents are not consistent in their stand. The respondents could have issued fresh notification avoiding the said illegality, but hastily proceeded as if they continued from the stage it was stopped, factually the same is also incorrect.

This Court is aware that once election proceeding has started the interference of the Court is not appropriate. However for the reasons mentioned above and also in the larger interest of the members of the society this Court feels the interference under Article 226 is warranted.

Case laws referred :

(i) George vs. Joint Registrar, 1985 KLT 836,

(ii) Madhavan Nambodiri vs. Kammaran, 1992 (2) KLT 567.

Advocates appeared :

For Petitioners ... Mr. N.G. R. Prasad, Senior Advocate for Mr. V. Ajay Kumar, Advocate.

For Respondents ... Mr. T. Murugesan, Government Pleader, Pondicherry.

Petitions praying that in these circumstances stated therein and in the respective affidavits filed therewith the High Court may be pleased to stay the impugned notification dated 12.12.2005 issued by the 2nd respondent and (i) appeared in the Daily Thanthi Newspaper on 13.12.2005 (in W.P.M.P. No.43149/2005] and (ii) published in the 'Daily Thanthi' newspaper on 13.12.2005 [in W.P.M.P. No. 44092/2005] pending W.P. Nos. 40225 and 41051 of 2005 respectively.

JUDGMENT

These petitions coming on for orders upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of Mr. N.G.R. Prasad, Advocate for Mr. V. Ajay Kumar, Advocate for the petitioners and of Mr. T. Murugesan, Government Pleader (Pondicherry) for the respondents the Court made the following order:-

The petitioners in these interim applications have sought for stating the impugned notification dated 12.12.2005 issued by the 2nd respondent and appeared in the 'Daily Thanthi' newspaper on 13.12.2005 pending disposal of the writ petitions.

2. Inasmuch as the issues involved in both the applications are one and the same common order is being passed.

3. Learned senior counsel Mr. N. G.R. Prasad and the learned counsel Mr. Ajay Kumar appearing for the petitioners in the respective writ petitions have submitted that this Court in W.P. No. 11379 of 2005 ordered the bank who were liable to discharge the dues of the petitioner to the society on 1.7.2005, but the same was not complied with, with the result about 300 members like petitioners were deleted from the voters list; that the respondents issued a notification dated 21.11.2005, wherein 30.11.2005 was fixed for publication of electoral list, 3.12.2005 for objection to the electoral list, 5.12.2005 for publication of eligible voters, 7.12.2005 for filing nomination and while that being so, the respondents even before filing any nomination postponed the election by notice dated 7.12.2005 stating that due to unavoidable reasons the election proceedings are adjourned, without even mentioning any further date; that thereafter the respondents have issued a notification dated 12.12.2005 which was published in 'Dina Thanthi' edition on 13.12.2005, announcing the date of filing nomination as 15.12.2005, scrutiny of names on 16.12.2005, publication of the final list of eligible candidates on 16.12.2005, the last date for withdrawal of nomination and publication of the final list of eligible voters on 17.12.2005 and the conduct of election on 23.12.2005 and this second notification dated 12.12.2005 published on 13.12.2005 is contrary to the provisions of Rule 32(1) and (19) of the Pondicherry Cooperative Societies Rules, 1973 and prayed this Court to stay the election process, since the procedure followed by the respondents are not in accordance with law.

4. Mr. T. Murugesan, learned Government Pleader appearing for the respondents submitted that the first notification was issued on 21.11.2005 but on 7.12.2005 namely on the date fixed for receiving nomination papers due to unavoidable circumstances the further process was adjourned indefinitely; that subsequently by notification dated 12.12.2005 the election process commenced the stage where it was stopped and now it is not open to this Court to interfere; that the petitioners being defaulters in payments of loan are not entitled to cast

their vote; that even their application to include the name was filed only after the date fixed for additions and deletions and that it is not necessary to issue another communication giving clear 21 days notice. In support of his contention, learned Government Pleader relied upon the decision reported in *George vs. Joint Registrar (1985 KLT 836)*, wherein the relevant portion reads as follows:

> *"It is also relevant to note that if at any stage of polling, the proceedings are interrupted or obstructed as mentioned in Rule 35(b), the Returning Officer shall have the power to stop the polling recording his reasons. The election can continue thereafter from the stage when it was stopped and there is no necessity to start de novo the election process."*

He also relied on the decision reported in *Madhavan Nambodiri vs. Kammaran [1992 (2) KLT 567]*. The relevant is as follows:

> *"14. From the aforesaid Division Bench decision of this Court also it is clear that the election process once having started, if the actual election could not be held due to any reason whatsoever, it can be continued from the stage at which it was stopped.*
>
> *15. Another learned Single Judge of this Court in Haridas vs. Alleppey Urban Co-operative Bank Ltd. [1991 (2) KLT 310] held that an election process can be proceeded with from the stage at which it was stopped, if it was adjourned under R.35(3) (e) (v) of the Co-operative Societies Rules and that it is not necessary to begin the election process over again.*
>
> *16. From the aforesaid decisions what emerges is that when polling is stopped under Rule 35 (3) (p) of the Rules, the election process can be continued from the stage at which it was stopped. If the election process is adjourned under Rule 35(3) (e) (v) of the Rules, then also the proceedings can be continued from the stage at which it was stopped. Taking into account the setting and purpose of Rule 35, we do not find any reason to make a deviation from the normal rule that an election process having been started, if for any reason had to be stopped in the middle, it can be continued from the stage at which it was stopped. Even in cases not covered by Rule 35(3) (e) (v) and Rule 35(3) (p), it is to be noted that by virtue of the*

provisions contained in Section 28 of the Act and Rule 35 of the Rules, it is for the managing committee to fix the date for election. It is no doubt true that there is no provision in the Act or the Rules as to what should happen if an election could not be held on the original date due to any reason not contemplated under the Rules. But that does not mean that the committee is powerless. " It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective" (Sutherland on Statutory Constructions).

5. Considering the argument of the learned counsel on either side and as well as the relevant documents placed before this Court, this Court is of the view that it is not necessary for this Court at this stage to go into the details as to whether the petitioners names are deleted validly or not, but fact remains that this Court ordered in W.P. No.11379 of 2005 dated 1.7.2005 directing the banks who are liable to settle the dues of about 300 members like petitioners to the respondent society, but it is not complied with. The said 300 members are substantial members cannot be ignored or precluded from voting. It is necessary to find out whether the action of the respondents after postponing the elections even before the nominations are filed issuing another notice without giving 21 clear days of notice to proceed with from the said stage is proper. It would be relevant to read Rule 31(2) and (19) of Pondicherry Co-operative Societies Rules, 1973 which is as follows:

"(2) The election shall be held at a general meeting of the society or at a meeting of the members residing in such area or belonging to such class of members by whom the members are to be elected, as may be specified in the bye-laws specially conveyed for the purpose of which not less than twenty-one clear days notice shall be given to the members. The President or in his absence any other person presiding over the meeting (both being hereinafter in this rule referred to as the Presiding Officer) shall commence and conduct the election notwithstanding that the quorum specified in the by-laws is not present……

(19) If at any stage of the polling, the proceedings are interrupted or obstructed by any riot or affray or if at such election it is not possible to take the poll for any sufficient cause, the polling officer shall have the power to stop the polling, recording his reasons for such an action in the minute book of the society."

6. On perusal of the above, particularly sub clause (19) of the Rules it could be seen that there is no provision to continue from the stage at which the election was stopped. The judgment relied upon by the learned senior counsel for the respondents is also not applicable to the facts and circumstances of the case, since this case vests on different facts. In this case it is stated that even prior to the filling of nomination, election was postponed without fixing any further date. It is alleged in para 11 of the counter of the respondent that one particular constituency namely Ananthapuram one person was elected unopposed as he was only person who filed nominations, whereas in para 8 it is found mentioned that the election officer postponed the date for election to future date. This Court is unable to understand how the said nomination was allowed to be filed on 7.12.2005. While so what is necessity again, date for filing nomination was fixed on 15.12.2005 as per second notification. The said facts disclose the respondents are not consistent in their stand. The respondents could have issued fresh notification avoiding the said illegality, but hastily proceeded as if they continued from the stage it was stopped, factually the same is also incorrect. This Court is aware that once election proceeding started the interference of the Court is not appropriate, however the reasons above mentioned and also in the larger interest of the large members of the society this Court feels the interference under Article 226 is warranted.

7. With the result, there will be an order of interim stay and the respondents are directed to stay the election process, until further orders from this Court. Notice.

Note: This order is only an interim order. Considering the importance involved, it is published. The main petition was dismissed as infructous.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.4.2006

CORAM

THE HON'BLE MR. JUSTICE K. MOHAN RAM

W. P. No. 11466 of 2006 and

WPMP No. 13050 of 2006

1. A. Periathamby
2. A. Natarajan ..... Petitioners

Vs.

1. The Pondicherry Public Works Department
   Staff Co-operative Society Ltd.,
   Pondicherry,
   represented by its President.

2. The Co-operative Officer – Surcharge Inquiry Officer,
   Co-operative Department, Pondicherry.

3. Principal District Court, Pondicherry. ..... Respondents

Section 82 of the Pondicherry Co-operative Societies Act, 1972 – Surcharge – The order of the surcharge inquiry officer, the second respondent, directing the petitioners to make good of the loss at Rs. 88,200 each to the society was confirmed by the third respondent Co-operative Tribunal. The findings of the Tribunal were impugned under Article 226 of the Constitution of India.

Refusing to interfere with the order of the Tribunal and dismissing the writ petition the Court held that the Tribunal has elaborately considered the evidence on record and the various contentions raised by the petitioners and recorded clear findings.

The petitioners are unable to point out any error apparent on the face of the record and unable to show as to why this case will come within the parameters of the law laid down by the Apex Court warranting the interference of the Court under Article 226 of the Constitution of India. The findings recorded by the third respondent/Tribunal are based on the

materials on record and the reasons for arriving at such findings are unassailable. Factual findings unless perverse or legally untenable, cannot be interfered within the exercise of the extraordinary jurisdiction of this Court.

Advocates appeared :

For Petitioners ... Mr. Sai Sriram

For Respondents ... Mr. E. Vijay Anand
For Government Pleader, Pondicherry.

PRAYER: The writ petition filed under Article 226 of the Constitution of India for issue of writ of certiorari, calling for the records on the file of the second respondent bearing Ref. No. Nil dated 13.3.2002 and the fair and decretal order of the third respondent in Co-operative Appeal No. 3 of 2002 dated 8.10.2004 and quash the same.

JUDGMENT

Mr. E. Vijay Anand, learned counsel representing Special Government Pleader, Pondicherry, takes notice for the respondents 1 and 2.

2. The above writ petition has been filed for issuance of a writ of certiorari to quash the fair and decretal order of the third respondent in Co-operative Appeal No. 3 of 2002 dated 8.10.2004, confirming the surcharge order passed by the second respondent dated 13.3.2002 under Section 82(1) of the Pondicherry Co-operative Societies Act, 1972.

3. The short facts which are necessary for disposal of the writ petition are set out below:

The first petitioner was the President and the second petitioner was the Secretary of the Pondicherry Public Works Department Staff Co-operative Society Limited for the period from 1.7.1992 to 30.6.1995. The first petitioner was again elected as President and continued to be as such for one more year i.e., till 19.7.1996. The first petitioner was working as a Junior Engineer and the second petitioner was working as an Overseer in the Public Works Department, Pondicherry.

4. The case of the petitioners is that the day-to-day affairs of the society were looked after by Mr. Sivasubramanian, a Senior Clerk of the society. In

the audit report pertaining to the year 1994-95, it was pointed out that Mr. Sivasubramanian had misappropriated a sum of Rs.71,967 by manipulating and tampering records. The Registrar of Co-operative Societies, Pondicherry ordered an enquiry under Section 75 of the Pondicherry Co-operative Societies Act, 1972 for the period from 1.4.1992 to 13.9.1995. In the enquiry, it was found that the said Sivasubramanian had misappropriated a total sum of Rs. 3,45,699 by falsification of accounts and suppression of cash etc. It was found in the enquiry that the said Sivasubramanian had misappropriated by adopting the following methods:

i) By falsifying the counter foils of cash bills and relevant loan ledgers;

ii) Without issuing cash receipts;

iii) By falsifying sub-day book and loan ledger in respect of recovery of loan from A. Nadarajan, the second petitioner;

iv) By forgery of the signature of Thiru Selvanarasu.

Thereafter, the Registrar of Co-operative Societies issued orders in proceedings No.5/4/1/73/RCS/PLG/H1/95/2005, dated 23.10.1997 authorising the second respondent herein to hold an enquiry under Section 82 of the Act into the misconduct of the board of directors of the society and Mr. S. Sivasubramanian, the Senior Clerk of the society and to make appropriate order as per the provisions of law.

5. The second respondent conducted the enquiry and found in the enquiry report that there was total failure on the part of the petitioners as they were responsible for the day-to-day administration of the society and overall control on the assets of the society as per the bye-laws of the society and the negligence on the part of the petitioners to exercise control over the affairs of the society had become the main cause for committing misappropriation by the senior clerk, Sivasubramanian which in turn caused deficiency in the assets of the society.

6. The second respondent therefore passed orders for recovery of a sum of Rs. 88,200 from each of the petitioners in exercise of his powers conferred under sub-section (1) of Section 82 of the Pondicherry Co-operative Societies Act, 1972.

7. Aggrieved by the orders passed under Section 82(1) of the Act, the petitioners filed an appeal before the third respondent in Co-operative Appeal No. 3/2002. The third respondent/Tribunal dismissed the appeal by an order dated 8.10.2004 and against that order the above writ petition has been filed with a delay of one year and six months.

8. The main contentions of the petitioners in the writ petition are:

(a) For passing a surcharge order under Section 82(1) of the Act, it is necessary to show that the petitioners were guilty of willful negligence and wantonness. The learned Co-operative Tribunal has come to the erroneous conclusion without any basis that the petitioners were guilty of willful negligence warranting the passing of the surcharge order.

(b) The petitioners were holding the offices of President and Secretary of the first respondent society, not on full time basis, but, along with their normal duties as Junior Engineer and Overseer respectively and hence they were not in a position to devote their whole time to the work in the society and had to necessarily rely upon the ministerial assistance in all respects and in the context of this background there was no willful negligence on the part of the petitioners, as envisaged under Section 82(1) of Pondicherry Co-operative Societies Act, 1972.

(c) The Tribunal failed to note that the accounts of the first respondent society were audited every year by the departmental auditors and not a single instance of misappropriation by the Clerk was brought out to the notice of the petitioners throughout their tenure of their office except in respect of the year 1994-95, even though the acts of misappropriation by the Clerk were committed from 1992-93 and therefore since the misappropriation was so cleverly committed so as to escape the scrutiny of the expert auditors, the petitioners could not be fixed with willful negligence.

(d) It is also contended that the acts of misappropriation committed by the Clerk of the society and lack of supervision and control over the employees, even if conceded but not admitted, was not the real effective cause for the loss.

9. Learned counsel for the petitioner reiterated the above said contentions and submitted that under Section 82(1) of Pondicherry Co-operative

Societies Act, 1972, unless willful negligence is made out against the petitioners, proceedings under Section 82(1) cannot be initiated or taken against the petitioners.

10. The third respondent/Tribunal has elaborately considered the various contentions raised by the petitioners and considered the various acts and omissions committed by the petitioners herein. The Tribunal recorded the following findings in paragraph No.12 of the impugned order, which reads as follows:

> "12. Thus, it is found that the first appellant was very much interested in considering the urgency of the members, rather than discharging his duties with utmost care and caution. In other words, it is only a gross neglect or dereliction of duties by the appellants towards the first respondent society and the wrong procedure adopted by them in dealing with the accounts and signing of the cheques, has paved way for the huge misappropriation. In the present case, it cannot be said that the misappropriation or misconduct of the Clerk was due to lack of supervision by the appellants. In fact, the evidences of the appellants clearly go to show that they had wide and sufficient knowledge of all the dealings and acts done by the Clerk, but, the reason given by the appellants either for the adoption of wrong procedures by themselves or for not questioning the wrong procedures adopted by the clerk was that they gave much importance to the urgency of the members or reposed much confidence in the Clerk, rather than discharging their duties judiciously. Thus, the demeanor of the appellants goes to show that they have cleanly approved the illegal and wrongful acts of the clerk and they themselves have sailed along with the Clerk and had adopted wrong procedures of signing cheques without simultaneously verifying the loan applications and the entries in the loan ledger and by attesting the entries of the loan ledger without referring to cash receipts, vouchers, etc and as such they cannot escape from their liability by simply stating that they reposed confidence in the Clerk. This Court finds that there was not only lack of supervision, but also wrongful intention among the appellants and the Clerk, which in turn paved way

> for misappropriation and as such, the act of the appellants has to be considered only as gross or willful negligence committed deliberately with a view to cause loss to the assets of the first respondent society."

Thus it is clear that the Tribunal has elaborately considered the evidence or record and the various contentions raised by the petitioners and recorded clear findings.

11. In a catena of decisions, the Apex Court has laid down the scope of judicial review in such matters and it can be summarized as under:

> *"Judicial review is feasible where it is found that the recorded findings are based on no evidence or the findings are totally perverse or legally untenable. The adequacy or inadequacy of evidence is not permitted, but, in the event of there being a finding which otherwise shocks the judicial conscience of the Court, it is a well-nigh impossibility to decry availability of judicial review at the instance of an affected person."*

12. The learned counsel for the petitioners is unable to point out any error apparent on the face of the record and unable to show as to why this case will come within the parameters of the law laid down by the Apex Court warranting the interference of the Court under Article 226 of the Constitution of India. The findings recorded by the third respondent/Tribunal are based on the materials on record and the reasons for arriving at such findings are unassailable. Factual findings unless perverse or legally untenable, cannot be interfered within the exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, as pointed above.

Accordingly, the writ petition is dismissed. No costs. Consequently, connected WPMP is also dismissed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 4.7.2006

CORAM

THE HONOURABLE Mr. JUSTICE A. C. ARUMUGAPERUMAL ADITYAN

C. R. P. (NPD) No. 1424 of 2005

and

C. M. P. No. 11476 of 2005

Hariputhran ... Petitioner

Vs.

1. The Pondicherry Co-operative Urban Bank,
   Rep. by its Secretary.

2. G. Jothimani ... Respondents

The revision petitioner has not produced any document before the appellate authority to show that apart from the payments disclosed by the records, he has also made some more payments. Under such circumstance, it is not open to the revision petitioner to contend that the payments made by him were not given credit to. Further it is seen from the order of appellate authority that necessary endorsement to vouch the payment has been made in the pass book of the petitioner also by the 1st respondent bank.

The agreed rate of interest is 16% per annum and under Order 34, Rule 11 of C. P. C., the respondent is entitled to claim the agreed rate of interest because it is a mortgage suit. The future rate of interest was fixed at 6% per annum by the appellant authority. So under such circumstances, there is no reason to interfere with the award passed in Co-operative Appeal No. 14/2002, which is neither infirm nor illegal.

Writ petition was dismissed.

Advocates appeared:

For Petitioner	...	Mrs. Usha Raman
For Respondent No.1	...	Mr. A. S. Bharathi, Government Pleader, Pondicherry
For Respondent No. 2	...	Mr. G. N. Jothimani.

Prayer: The civil revision petition, has been filed against the fair and decretal order dated 4.3.2005 in Co-operative Appeal No. 14 of 2002 on the file of the Court of the Principal District Judge at Pondicherry confirming the award dated 5.9.2002 passed by the second respondent / Arbitrator in A. R. C. No. 140/2002.

JUDGMENT

The civil revision petition has been preferred against the award passed in Co-operative Appeal No. 14 of 2002 on the file of the Principal District Court at Pondicherry dated 4.3.2005.

2. The learned counsel appearing for the revision petitioner vehemently contended that there was an arbitrator appointed at first in A. R. C. No. 140/ 2002 and while the said arbitrator was functioning another arbitrator was appointed, who had passed an ex-parte order against the revision petitioner without giving any opportunity to put forward his case before the second arbitrator.

3. The next point raised by the learned counsel is that the interest awarded by the tribunal is exorbitant and that the payments made by the revision petitioner were not given credit to by the 2nd respondent and that prior to A.R.C. No. 140/2002, the 2nd respondent has filed A. R. C. No. 3797/1996 and so A. R. C. No. 140 / 2002 was illegal and void and that the balance amount to be paid by the revision petitioner comes to Rs. 19,113.90 only. All these points have been raised and considered by the Co-operative tribunal viz., The Principal District Judge at Pondicherry, in his order in Co-operative Appeal No. 14/2002.

4. The first contention that while an arbitrator was functioning, the appointment of a second arbitrator and the ex-parte order passed by the second arbitrator will not bind the revision petitioner cannot hold any water because the first arbitrator passed an order to the effect that the accounts maintained are to be set right and since the revision petitioner failed to appear before the second arbitrator an ex-parte order was passed. But the learned counsel appearing for the revision petitioner forcibly contended that the revision petitioner appeared before the second arbitrator but that was suppressed and the revision petitioner was not given an opportunity of hearing. But the revision petitioner has raised all his defence before the appellate authority, who while rejecting the contentions, has observed that the payment of a sum of Rs. 2,500 on 3.1.1994, a sum of Rs. 5,000 on 6.4.1994, a sum of Rs. 10,000 on 4.8.1994, another a sum of Rs. 5,000 on 26.12.1994 and a sum of Rs. 15,000 on 27.3.1995, totally to Rs. 37,500, by the revision petitioner were duly given credit to and if this amount has been deducted, the balance amount comes to Rs. 1,37,490.90. The revision petitioner has not produced any document before the appellate authority to show that apart from the above said payments, the revision petitioner has also made some more payments. Under such circumstance, it is not open to the revision petitioner to contend that the payments made by the revision petitioner were not given credit to. Further it is seen from the order of appellate authority that necessary endorsements to vouch the payment has been made in the pass book of the petitioner also by the 1st respondent bank.

5. The next point raised by the revision petitioner before the appellate authority is that the rate of interest claimed by the respondents was usurious. The agreed rate of interest is 16% per annum and under Order 34, Rule 11 of C. P. C. the respondent is entitled to claim the agreed rate of interest because it is a mortgage suit. The future rate of interest was fixed at 6% per annum by the appellant authority. So under such circumstances, I do not find any reason to interfere with the award passed by the Principal District Judge, Pondicherry in Co-operative Appeal No. 14/2002, which is neither infirm nor illegal.

6. In the result, the civil revision petition is dismissed. Consequently, connected CMP is also dismissed. No costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.9.2006

CORAM

THE HONOURABLE Mr. JUSTICE M. E. N. PATRUDU

Writ Petition No. 7891 of 1999

Sri Jay Maruthi Co-operative
Housing Society Limited No. P. 645,
7, Vallalar Salai,
Venkata Nagar,
Pondicherry – 605 011
rep. by its President,
Mr. K.Parthasarathy ..... Petitioner

Vs.

1. Union of India rep. by
   Union Territory of Pondicherry
   Government of Pondicherry
   rep. by Member-Secretary,
   Town and Country Planning Department,
   Pondicherry.

2. The Pondicherry Planning Authority
   rep. by Member-Secretary,
   Anna Nagar
   Pondicherry ..... Respondents

The petitioner is a co-operative housing society and is the absolute owner of the schedule land and they made an application to the second respondent for granting approval for conversion of the agricultural land into residential land and to permit them to construct houses thereon. The same was rejected by the first respondent on the ground that the issue involved proximity of site to the airport and the request of the petitioner cannot be considered.

The objection is absurd, more so, when residential and multistoried buildings and other activities are being permitted in and around the said

area, the request of the petitioner alone was taken into consideration and rejected. The second respondent is directed to consider the request of the petitioner forthwith and grant approval.

Advocates appeared :

For Petitioners : Ms. S. Harini

For Respondents : Mr. K. K. Sasidharan,
Additional Government Pleader,
Pondicherry.

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus calling for the records comprised in the proceedings of the second respondent dated 26.8.1996 in No.1254/PPA/Z(2)/96 and of first respondent dated 9.3.1998 in No. 375/TCP Board/97-98/477 and quash the said proceedings and further proceedings dated 9.2.1999 and consequently issue mandamus directing the respondents to consider the application for sanction of lay out submitted by the petitioner dated 19.7.1996 and grant approval to the same including if necessary by considering the question of conversion of the lands in question i.e., R.S. No. 14 pt. in Karuvadikuppam Village Pondicherry (Oulgaret Municipality) from agricultural to residential in accordance with the provisions of Pondicherry Town and Country Planning Act and rules made thereunder within such time.

JUDGMENT

The prayer of the petitioner is to issue a direction to the respondents to consider their application and pass necessary orders by granting approval. The petitioner is Sri Jay Maruthi Co-operative Housing Society. The first respondent is the Union of India and the second respondent is the Member Secretary of Pondicherry Planning Authority.

2. The admitted facts are that the petitioner is a co-operative housing society and is the absolute owner of the schedule land and they made an application to the second respondent for granting approval for conversion of the agricultural land into residential land and to permit them to construct houses thereon. The same was rejected by the first respondent on the ground that the issue involved proximity of site to the airport, the

trend of development, the present condition of the site etc., and the request of the petitioner cannot be considered.

3. The petitioners, thereafter made another representation dated 6.1.1998, wherein it is stated that several residential colonies like Kuriniji Nagar, Kumaran Nagar, Ashok Nagar etc., and many other multistoried buildings of Tagore Arts College and a mosque are all lying in the Airport area.

4. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader (Pondicherry) appearing for respondents.

5. Perused all the material documents. I do not find any valid reason for the respondent to reject the representation of the petitioner. Admittedly, the petitioner is the owner of the property. The objection taken by the respondents is that it is likely to affect the airport and its future developments.

6. In my considered opinion, the objection is absurd, more so, when residential and multistoried buildings of Tagore Arts College and other activities are being permitted in and around the said area, the request of the petitioner alone was taken into consideration and rejected.

7. The second respondent is directed to consider the request of the petitioner forthwith and grant approval immediately.

8. With the above direction, the writ petition is allowed. No costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 12.10.2006

CORAM

THE HONOURABLE Mr. JUSTICE M. THANIKACHALAM

C. R. P. (PD). No. 1207 of 2005

A. L. Parguna Pandi ..... Petitioner (Defendant)

Vs.

The Manager,
Mannadipet Commune Co-operative
Housing Society Ltd., No. P. 512,
Madagadipet & Post,
(Via) Pallineliyanur,
Pondicherry – 605 107. .... Respondent (Plaintiff)

Challenging the order of the Co-operative Tribunal, the petitioner claimed that the attachment of property was not effected by proper officer and the mortgaged property cannot be attached as it belonged to joint family. Rejecting the averments, the Court held that since the property was mortgaged by the revision petitioner himself, the question of attachment was valid and need not be gone into. Further since the petitioner himself had mortgaged the property as it belonged to him, the question of going into allegation that the property belonged to joint family does not arise.

The Civil Revision Petition was dismissed.

Advocate appeared:

For Petitioner : Mr. K. Chandrasekaran

For Respondent : No appearance

Civil Revision Petition preferred against the order and decree dated 31.3.2005, made in Co-operative Appeal No. 2 of 2003, on the file of the Principal District Court, Pondicherry, confirming the order and decree

dated 31.12.2002, made in CEP. No. 480 of 2002, on the file of the Arbitrator-cum-Deputy Registrar/ Sale Officer of Co-operative Societies, Pondicherry.

JUDGMENT

This revision is directed against the order, dated 31.3.2005, made in Co-operative Appeal No. 2 of 2003.

2. The revision petitioner, obtained a housing loan from the respondent society, by mortgaging the property. It seems he failed to repay the amount, resulting on award, which was sought to be executed. In the execution proceedings, despite the fact that the property was mortgaged, there was an attachment proceeding, and the property is also said to have been attached, which is challenged in this revision.

3. It is submitted on behalf of the revision petitioner that the attachment was not effected by proper officer, who is empowered, that the mortgaged property cannot be attached and that since the property belonged to joint family, the attachment is invalid, and in this view the revision deserves acceptance.

4. As rightly observed by the learned Principal District Judge, in view of the fact that the property was mortgaged by the revision petitioner, the question of attachment, whether it is valid or not, need not be gone into, since it is superfluous. Therefore, on the ground that there was no proper attachment by proper person, the same cannot be set aside and on this score, the two grounds raised on behalf of the revision petitioner deserve to be rejected.

5. As far as the 3rd ground is concerned, since the petitioner himself had mortgaged the property, as the property belongs to him, the question of going into the allegation that the property belonged to the joint family does not arise, and if at all it is for the other members, to work out their remedy. The learned Principal District Judge, considering the objections raised by the revision petitioner, has rightly dismissed the claim, in which I am unable to find out any error, either on facts or law. Hence, the revision petition is devoid of merits and the same is dismissed. No costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.11.2006

CORAM

THE HONOURABLE Mr. JUSTICE C. NAGAPPAN

WRIT PETITION No. 43498 of 2006 and

M. P. Nos. 1 & 2 of 2006

R. Parasuraman ... Petitioner

Vs.

1. The Registrar of Co-operative Societies, Pondicherry.

2. The President,
The Pondicherry Public Works Department Staff
Co-operative Society Ltd., No. P. 252,
Ghengee Salai,
Pondicherry 605 001.

3. The Secretary,
The Pondicherry Public Works Department Staff
Co-operative Society Ltd., No. P. 252,
Ghengee Salai,
Pondicherry 605 001.

4. The Election Officer,
The Pondicherry Public Works Department Staff
Co-operative Society Ltd., No. P. 252,
Pondicherry 605 001. ... Respondents

Pondicherry Co-operative Societies Act, 1972 – Section 84 and Rule 64 of the Rules - Rule 64 of the Pondicherry Co-operative Societies Rules 1973 provides for reference of disputes under Section 84 of the Act and it is stipulated therein that a dispute relating to or in connection with, any election of officer shall be referred to the Registrar within two months from the date of declaration of the result of such election and hence the writ petition in not maintainable.

The writ petition is dismissed. However, it is open to the petitioner to pursue other legal remedy.

Advocates appeared :

For Petitioner	...	Mr. P. Selvaraj
For Respondents	...	Mr. K. K. Sasidaran Additional Government Pleader, Pondicherry.

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus as stated therein.

JUDGMENT

The petitioner has sought for the issuance of a writ of certiorarified mandamus calling for the records pertaining to the declaration of the result of election of board of directors to the Pondicherry Public Works Department Staff Co-operative Society Limited, Ghengee Salai, Pondicherry, dated 23.9.2006 and directing the respondents to prepare the eligible voters list in accordance with law and conduct afresh election to the board of directors.

2. The petitioner is employed as Works Inspector in Public Works Department, Pondicherry and he is member of the Pondicherry Public Works Department Staff Co-operative Society Limited and he has challenged the election held on 23.9.2006 to elect the board of directors of the society for the period from 1.10.2006 to 30.6.2009 as illegal on the ground that rules have been violated in preparation of eligible voters list and ineligible voters were allowed to participate in the election.

3. Mr. K. K. Sasidaran, learned Additional Government Pleader took notice for all the respondents and heard both sides.

4. Considering the nature of the relief sought for, with the consent of both sides, the writ petition itself is disposed of at the admission stage itself.

5. The learned Additional Government Pleader, Pondicherry submits that Rule 64 of the Pondicherry Co-operative Societies Rules 1973 provides for

reference of disputes under Section 84 of the Act and it is stipulated therein that a dispute relating to or in connection with, any election of officer shall be referred to the Registrar within two months from the date of declaration of the result of such election and hence the writ petition in not maintainable.

6. In view of the specific provision referred to above, the petitioner cannot invoke Article 226 of the Constitution of India to challenge the election of the board of directors.

7. In that view of the matter, the writ petition is dismissed. However, it is open to the petitioner to pursue other legal remedy. No costs. Consequently, M.P. Nos. 1 and 2 of 2006 are also dismissed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2006

CORAM

THE HONOURABLE Mr. JUSTICE V. RAMASUBRAMANIAN

WRIT PETITION No. 36740 of 2006

and

M. P. Nos. 1 and 2 of 2006

S. Baskar @ Kumaravelu ... Petitioner

Vs.

1. The Registrar of Co-operative Societies,
Pondicherry – 605 009.

2. The Special Officer (Co-operatives),
Jawahar Co-operative Housing Society, No. P. 535,
4A, 2nd Cross Street, Anna Nagar,
Pondicherry – 605 005. ... Respondents

The order of supersession of the committee of management of the Jawahar Co-operative Housing Society was challenged on the grounds that :

(I) An isolated act of passing a no confidence motion cannot be a ground for supersession;

(ii) The appointment of Special Officer should be for a specified period and the order did not state the period for which the Special Officer was appointed;

(iii) The financing bank was not consulted before passing the order of supersession;

(iv) The Registrar consulted two institutions, one of which is not the financing bank and hence consultation with an unnecessary party vitiated the order.

Rejecting the claims of the petitioner, the Court held that :

(i) It is not an isolated act which has led to the issue of the impugned order, but a chain of events, starting from the no confidence motion, led to the impugned order. Therefore the opinion formed by the Registrar that the society was not functioning properly, as required under Section 83 (1) (a), cannot be found fault with;

(ii) The first respondent was prepared to hold elections, within any time frame fixed by the Court and that there was no intention at all to have a Special Officer for a period exceeding two years. Under such circumstances, the contention that the failure to specify the period vitiated the impugned order cannot be countenanced;

(iii) The Managing Directors of the Pondicherry State Co-operative Bank and Pondicherry State Co-operative Housing Federation recorded in the note file their views and it is only thereafter the first respondent passed the impugned order. Therefore as a matter of fact, there was no post facto consultation but a pre-consultation. There has been a consultation with the necessary party, before the impugned order was passed and hence the consultation with the Bank cannot vitiate the order.

The writ petition stood dismissed.

Case law referred :

K. Nithyanantham vs. State of Tamil Nadu, 2006-1-L.W. 363 : 2006 (1) CTC 1.

Advocates appeared :

For Petitioner	...	Mr. N. R. Chandran, Senior Counsel for Mr. R. Kannan
For Respondents	...	Mr. K. K. Sasidharan, Additional Government Pleader, Pondicherry.

Writ petition filed under Article 226 of Constitution of India praying for issue of a Writ of Certiorari, calling for the records pertaining to the Proceedings No. 5/6/1/12/RCS/Hsg/F/2006/181 dated 20.9.2006 issued by the first respondent and quash the same.

JUDGMENT

In the elections held on 23.4.2005 to the Jawahar Co-operative Housing Society Limited, nine persons including the petitioner herein, were elected to the board of directors. Their term of office is for a period of three years. From among the members of the committee of management, one Mr. R. Ramalingam was elected as the President.

2. Challenging the election of the said Mr. R. Ramalingam, the petitioner filed an election petition before the Deputy Registrar (Handlooms). Even during the pendency of the said election dispute raised by the petitioner against the said R. Ramalingam (President), a no confidence motion was passed against R. Ramalingam in a meeting of the executive committee held on 12.8.2006.

3. In continuation of the no confidence motion, the petitioner and others also filed a writ petition in W. P. No. 26183 of 2006, seeking a writ of mandamus to forbear the said R. Ramalingam from acting as President and to enforce the no confidence motion passed on 12.8.2006. The writ petition was admitted on 19.8.2006.

4. However, the first respondent issued a show-cause notice dated 21.8.2006, calling upon the committee to show cause as to why the committee should not be superseded. In view of the said development, the writ petition in W. P. No. 26183 of 2006 was disposed of by an order dated 18.9.2006, directing the Deputy Registrar (Handloom) to dispose of the election petition pending before him.

5. Thereafter, the first respondent passed an order dated 20.9.2006, superseding the committee of management and appointing a Special Officer, under Section 83 of The Pondicherry Co-operative Societies Act, 1972. Challenging the said order of supersession dated 20.9.2006, the petitioner filed the present writ petition and the same was admitted on 28.9.2006. However, no stay was granted, resulting in the Special Officer actually taking charge.

6. Therefore, when the petitions for interim injunction and interim stay in M. P. Nos.1 and 2 of 2006 came up for hearing, Mr. N. R. Chandran, learned senior counsel appearing for the petitioner and Mr.K.K.Sasidharan, learned Additional Government Pleader, Pondicherry, by consent, advanced arguments in the main writ petition itself.

7. Mr. N. R. Chandran, learned senior counsel for the petitioner contended that the impugned order is vitiated by mala fide exercise of power and is wholly illegal for the following reasons viz.,:-

(a) that an isolated act on the part of the committee of management in passing a no confidence motion, cannot be a ground for superseding the committee of management;

(b) that the appointment of the Special Officer under the Act should be for a specified period of two years, but the impugned order does not even state the period for which the Special Officer was appointed;

(c) that under Section 83 (6) of The Pondicherry Co-operative Societies Act, 1972, hereinafter called as the `Act', it is mandatory for the Registrar to consult the financing bank before passing an order under Section 83 (1) and that the impugned order does not reflect a pre-consultation but shows only a post facto consultation, thereby vitiating the order;

(d) that as per the counter-affidavit filed by the first respondent, the first respondent held consultations with two institutions, one of which was not the financing bank and hence such consultation with an unnecessary party vitiated the order; and

(e) that the supersession of the board of directors elected just one year ago for a term of three years, amounted to scuttling the democratic process, which was frowned upon by the Supreme Court and by the Full Bench of this Court.

8. Per contra, Mr. K. K. Sasidharan, learned Additional Government Pleader, Pondicherry produced the file and contended –

(a) that the impugned order was not passed on account of a single act of the Committee;

(b) that the appointment of the Special Officer is not intended to go beyond two years;

(c) that the consultation with the financing bank as well as the co-operative bank were held, not post facto, but prior to the issue of the impugned order;

(d) that the consultation with the Pondicherry State Co-operative Bank, which was not the financing bank, cannot be said to be a consultation with an unnecessary party, since the first respondent also held consultation with The Pondicherry State Co-operative Housing Federation Limited, which was actually the Financing Bank; and

(e) that there was no intention to scuttle the democratic process, since the first respondent also wants to hold fresh elections, within a time frame as may be fixed by the Court.

9. I have carefully considered the rival submissions. In so far as the first contention is concerned, it is seen that Section 83 (1) (a) of the Act, the Registrar has powers to dissolve the committee of management and appoint a Special Officer, "if in his opinion, the committee of any registered society is not functioning properly, or willfully disobeys or willfully failed to comply with any lawful orders issued by the Registrar". Though the no confidence motion passed on 12.8.2006 against the President, R. Ramalingam, triggered off the controversy and the same is pointed out as an isolated act by the learned senior counsel for the petitioner, such isolated act appears to have resulted in ugly consequences. In the meeting held on 12.8.2006, the petitioner is alleged to have taken away the minutes book and it appears that pandemonium prevailed in the said meeting, leading to a complaint by the employees to the first respondent. While R. Ramalingam continued to claim to be the President, the petitioner also

claimed to be the President and submitted specimen signature to the bank for operating the bank Account. R. Ramalingam and another director submitted a letter dated 17.8.2006 to the bank not to permit any other person to sign the cheques and operate the account. Thus, it is seen that it is not an isolated act which has led to the issue of the impugned order, but a chain of events, starting from the no confidence motion, led to the impugned order. Therefore the opinion formed by the first respondent that the society was not functioning properly, as required under Section 83 (1) (a), cannot be found fault with. Hence, I am unable to accept the first contention of the learned senior counsel for the petitioner.

10. Regarding the second contention that the appointment of a person under Section 83 (1) (a) has to be for a specified period not exceeding two years and that the failure to mention the period, in the impugned order vitiated the order, it is seen that Section 83 (1) (a) prescribes that after dissolving the committee, a person can be appointed to manage the affairs of the society, for a specified period not exceeding two years. The learned Additional Government Pleader, Pondicherry, submitted that the first respondent is prepared to hold elections, within any time frame fixed by this Court and that there is no intention at all to have a Special Officer for a period exceeding two years. Under such circumstances, I am unable to accept the contention that the failure to specify the period vitiated the impugned order.

11. Regarding the third contention relating to consultation with the financing bank, sub-section (6) of Section 83 of the Act reads as follows:-

> *"(6) Before taking any action under sub-section (1) in respect of any registered society, the Registrar shall inform the financing bank to which the society is indebted and before passing any order, he shall consult the aforesaid bank."*

The petitioner had taken a ground in the writ petition that there was no compliance with the requirement of Section 83 (6). In response, the first respondent stated in para-20 of his counter affidavit, as follows:-

> "20. I respectfully submit that, the writ petitioner's contention that the financing bank was not informed and consulted before ordering supersession is totally incorrect and contrary to truth. The show cause notice issued under sub-section (1) of Section 83 of the Act

was marked to Pondicherry State Co-operative Bank (for brevity "the bank") and The Pondicherry State Co-operative Housing Federation Limited (for brevity "HOUSEFED"). Even though the bank is the financing bank, the society is not indebted to the said bank and it is indebted only to the HOUSEFED, which is an apex of housing societies in the Union territory of Puducherry. Both these institutions, namely the bank and HOUSEFED had concurred with the action proposed to supersede the committee of management of the society. I have forwarded the show cause notice, explanations received from the petitioner and others, my views and decisions on the explanations given and only then the views of the bank and HOUSEFED were obtained."

12. Taking advantage of the language in which the contention of the respondent is couched in the aforesaid paragraph of the counter-affidavit, the learned senior counsel for the petitioner contended that there was only post facto consultation with the Bank, after a decision was taken and hence, it was illegal.

13. In order to test the veracity of the said contention, the file was summoned. The file relating to the impugned proceedings shows that the entire records along with the show cause notice and the explanation were forwarded to the Pondicherry State Co-operative Bank and HOUSEFED, and the Registrar solicited their views, before actually finalizing an action. On 19.9.2006, the Managing Directors of the Bank and HOUSEFED, recorded in the note file at page 21, their views and it is only thereafter, the first respondent passed the impugned order dated 20.9.2006. Therefore as a matter of fact, there was no post facto consultation but a pre-consultation, though the impugned order and the counter-affidavit were not happily worded to reflect the actual state of affairs.

14. The next contention of the learned senior counsel for the petitioner is that if the Pondicherry State Co-operative Bank was not the financing bank, the first respondent ought not to have consulted them, since a consultation with an unnecessary party would also vitiate the decision. But I am unable to countenance the said submission, since the first respondent not merely consulted the Co-operative Bank which was not the financing bank, but consulted HOUSEFED which was actually the financing institution. Thus, there has been a consultation with the

necessary party, before the impugned order was passed and hence the consultation with the Bank cannot vitiate the order.

15. In so far as the last contention of the learned senior counsel for the petitioner is concerned, that there has to be a restoration of the democratic process in a co-operative society, it is submitted by the learned Additional Government Pleader, Pondicherry that the first respondent is prepared to hold elections within any time frame fixed by this Court. While striking down Section 89-A of The Tamil Co-operative Societies Act as unconstitutional, the Full Bench of this Court, in *K. Nithyanantham vs. State of Tamil Nadu, 2006-1-L.W. 363 : 2006 (1) CTC 1*, held that Special Officers cannot continue perennially and that it is important to restore democratic set up in co-operative societies. The learned Additional Government Pleader, Pondicherry, has no quarrel with the said proposition. Therefore, on the ground that the impugned order seeks to nip the electoral process, it cannot be assailed, since it is only a transitory measure.

16. Thus I find no force in any of the contentions of the learned senior counsel for the petitioner. Though the learned Additional Government Pleader, Pondicherry, also assailed the maintainability of the writ petition, on the ground of availability of alternative remedy, I did not go into the same, since the writ petition was already admitted and it is liable to fail even on merits.

17. Under such circumstances, the challenge to the impugned order fails and the first respondent is directed to hold fresh elections to the society, within a period of six months from the date of receipt or production of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE : 28.3.2007
CORAM
THE HONOURABLE Mr. JUSTICE S. J. MUKHOPADHAYA
AND
THE HONOURABLE Mr. JUSTICE V. DHANAPALAN
W. A. No. 394 of 2006
W. P. No. 8892 of 2005 and
W. A. M. P. No. 834 of 2006
W. P. M. P. Nos. 12246 and 12377 of 2005

Vikraman ... Appellant/Petitioner

Vs.

1. Union of India,
   Government of Pondicherry,
   rep. by Chief Secretary,
   Pondicherry.

2. The Registrar of Co-operative Societies,
   Pondicherry.

3. The Sale Officer,
   Pondicherry State Co-operative
   Housing Federation Ltd., No. P. 486,
   Pondicherry. ... Respondents

The petitioner has committed default in the matter of repayment of loan taken from the Pondicherry State Co-operative Housing Federation. He did not comply with the conditions imposed in the interim orders. He was evicted from the house and he alleged that proper procedure was not followed before eviction.

The petitioner admitted that he is not in a position to pay the dues and a huge amount was due from him. The petitioner has also suggested that the property in question could be brought on auction sale to recover the amount. The Court was not inclined to restore possession of the property in question in favour of the petitioner even though it was alleged that he was evicted without following the procedure.

So far as the belongings of the petitioner are concerned, if they are lying inside the premises, the petitioner is given liberty to approach the respondents, who shall hand over the same to the petitioner immediately.

Writ petition and writ appeal were dismissed.

Advocates appeared :

For Appellant/Petitioner	... Mr. K. Chandrasekaran
For Respondents	... Mr. K. K. Sasidaran for R. 1 & 2
	Mr. L. Swaminathan for R. 3.

Writ appeal filed against the order passed by the learned single Judge in WPMP No. 9650 of 2005 dated 20.2.2006 who was pleased to pass an order of temporary injunction against the respondent from in any manner interfering with his peaceful possession and enjoyment of the residential house bearing Door. No. 72 Pallikooda Veedhi, Kuzhparikkalpattu, Bahoor, Pondicherry.

Writ petition No. 8892/2005 filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus calling for the records of the third respondent made in CEP No. 773/97 dated 1.9.2004, quash the same and forbear the respondent from interfering with the petitioner's possession of his property in 72, Pallikoda Veedhi, Bahoor, Pondicherry.

JUDGMENT

S. J. MUKHOPADHAYA, J.

The petitioner/appellant borrowed a sum of Rs. 15 lakhs from the 3rd respondent, Pondicherry State Co-operative Housing Federation Limited, Pondicherry, for housing purpose. Certain instalments were paid, but subsequently the petitioner defaulted. An arbitration proceeding was

initiated by the society by invoking the provisions of the Pondicherry Co-operative Societies Act, but having defaulted to comply with the order passed in the said proceeding, it was dismissed.

2. The 3rd respondent served an attachment notice CEP No. 773/97 dated 1.9.2004 under Section 133 of the Pondicherry Co-operative Societies Act read with Rules 68 and 90 of the Rules made thereunder and Section 27 of the Pondicherry Revenue Recovery Act, 1970. It was informed that if the demanded amount was not paid on or before 22.12.2004, the petitioner may be evicted from the mortgaged property.

3. According to the petitioner, the 3rd respondent, thereafter, came along with large number of policemen, including the Superintendent of Police, the President of the Society and Manager of the Society on 10.3.2005 at about 1.30 p. m. The policemen asked the inmates of the house, including the petitioner to come out of the house immediately. He was not allowed to take any of his belongings, which were inside the house including utensils and wearing apparels. His daughter was studying in law college and her ticket also got caught inside the house. His son, who was studying plus-2, his study material remained inside the house and, thereby, the respondents virtually dragged all the inmates out of the house. Thereafter, the entrance as well as the rear side doors were locked and wooden planks were nailed on the doors. It was further alleged that the respondent having taken such possession, intended to sell the property and at that stage the petitioner moved before this Court filing the present writ petition and prayed to set aside the notice contained in CEP No. 773/97 dated 1.9.2004 and to forbear the respondents from interfering with the petitioner's possession of the house property in question.

4. In the writ petition, the petitioner filed a petition for temporary injunction against the respondents from interfering in any manner with his peaceful possession and enjoyment of the residential house bearing Door No. 72, Pallikoda Veedhi, Bahoor, Pondicherry. As interim conditional order of injunction was passed initially, the respondents filed a petition for vacating the interim order. Both the petitions were heard on 20.2.2006. Learned single Judge, by the impugned order dated 20.2.2006, passed the following order:-

> *"The order dated 17.3.2005 has been passed in WPMP No. 9650 of 2005 which is a self contained order. The order itself is very*

clear that if the condition is not complied with, the interim injunction granted shall stand vacated automatically without reference to this Court. Yet the third respondent in the petition has filed WVMP No. 930 of 2005 to vacate the said order stating that the conditional order has not been complied with.

2. Since as above said order dated 17.3.2005 is a self contained order, no further orders are required to be passed. Since, now it is brought to the notice of this Court that the conditional order has not been complied with, the above WPMP No. 9650 of 2005 is dismissed.

3. For the above said reasons, no orders are necessary in WVMP No. 930 of 2005. Hence it is closed."

5. Against the aforesaid order dated 20.2.2006, the writ appeal in question has been preferred. For the said reason, both the writ appeal and the writ petition were directed to be listed together and were heard and are being disposed of by this common judgment.

6. The respondents, while referred to Section 27 of the Pondicherry Revenue Recovery Act, 1970, which deals with `mode of attachment' also referred to Sections 113 (1) and 136 (1), which relates to recovery of arrears of land revenue, etc. They have also taken plea that the impugned order dated 1.9.2004 was the second time notice of information given to the petitioner. Similar notice of intimation was given on 14.6.2003 against which he moved before the Co-operative Tribunal, Pondicherry and in fact a sum of Rs. 5,61,451 is due as arrears of payment by petitioner as on 30.6.2006. The petitioner being a chronic defaulter, prayer has been made not to interfere under writ jurisdiction.

7. It appears that one or other interim order was passed in appeal, but the petitioner failed to comply with the conditional orders. Even in the writ petition, while conditional interim order of injunction was issued, but the petitioner failed to comply with the court's order. Having noticed that the petitioner all the time defaulted to pay the amount to the respondents and also failed to comply with the conditional orders passed in appeal or in the writ case, learned counsel for the petitioner was asked whether the petitioner is in a position to pay the admitted dues in favour of the Pondicherry State Co-operative Housing Federation Limited. An affidavit in this regard has been filed by the petitioner wherein, while it is stated

that the petitioner is not in a position to pay a single paisa, according to the petitioner the respondents could auction sell the property in question, but only after handing over possession to the petitioner.

8. Learned counsel for the petitioner while submitted that the petitioner is not in a position to pay any amount and that the amount could be recovered by auction sale of the property in question, but submitted that such auction sale could be made only after handing over possession of the property to the petitioner, who was evicted illegally without following the process of law.

9. In the present case, as we find that the petitioner is not in a position to pay the admitted dues and a huge amount of more than Rupees five lakhs and odd is due as on 30.6.2006 and the petitioner has also suggested that the property in question could be brought on auction sale to recover the amount, we are not inclined to restore possession of the property in question in favour of the petitioner even though it is alleged that he was evicted without following the procedure.

10. We, accordingly, dismiss the writ petition as also the writ appeal. Consequently, connected miscellaneous petitions are also dismissed. However there shall be no order as to costs.

For Being Mentioned:-

The writ appeal and writ petition having been set down on this day for being mentioned pursuant to the order of this Court dated 28.3.2007 in the presence of Mr. K. Chandrasekaran, Advocate for the Appellant/Petitioner and of Mr. K. K. Sasidaran for Respondent Nos. 1 & 2 and of Mr. L. Swaminathan for Respondent No. 3, the Court made the following order:

Learned counsel for the appellant/petitioner submitted that though the petitioner could not comply with the earlier conditional order, the conditional interim order of injunction passed in WAMP. No. 834 of 2006 was complied with thereafter. He produced a receipt dated 10.4.2006 in this regard. He referred to paragraph 7 of the judgment and pointed out an error wherein it has been stated that the petitioner failed to comply with the conditional interim order. It is also submitted that though this Court

has dismissed the writ petition and the writ appeal, no observation was made with regard to the goods belonging to the petitioner lying inside the premises is in question.

2. Having heard the learned counsel appearing on both the sides, we direct to read paragraph No. 7 as below:-

> "7. It appears that one or the other, interim order was passed in the appeal, but the petitioner failed to comply with the conditional order, though subsequently the conditional interim order of injunction passed in the writ petition was complied with. Having noticed that the petitioner defaulted to pay the amount to the respondents and did not pay the instalments in time and also failed to comply with the earlier conditional order passed by the Court, the learned counsel for the petitioner was asked whether the petitioner is in a position to pay the admitted dues in favour of the Pondicherry State Co-operative Housing Federation Limited. An affidavit in this regard has been filed by the petitioner wherein, while it is stated that the petitioner is not in a position to pay a single paisa, according to the petitioner, the respondents could auction sell the property in question, but only after handing over possession to the petitioner."

3. So far as the belongings of the petitioner is concerned, if it is lying inside the premises, the petitioner is given liberty to approach the respondents, who shall hand over the same to the petitioner immediately. The order dated 28.3.2007 stands modified / clarified to the extent above.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 9.4.2007

CORAM

THE HONOURABLE Mr. JUSTICE K. CHANDRU

Writ Petition No. 19423 of 2006
and M.P. Nos. 1,2 and 5 of 2006

P. Sambandam ... Petitioner

Vs.

1. The Registrar,
   Co-operative Department,
   Government of Pondicherry,
   Pondicherry.

2. Pondicherry Co-operative Urban Bank
   Ltd., rep. by its Administrator,
   197, Jawaharlal Nehru Street,
   Pondicherry – 605 001.

3. J. Alfred Sandanaradjou

4. Pondicherry Co-operative Urban Bank
   Employees' Welfare Union,
   197, Jawaharlal Nehru Street,
   Pondicherry, rep. by
   S. Balasubramanian.

   [R3 and R4 impleaded as per Order of Court
   dated 13.12.2006 in M.P. No.4 of 2006 in W.P.
   No. 19423/2006] .... Respondents

The relevant bye-laws applicable to the second respondent society deal with the age of superannuation and retirement. In bye-law No. 35, it is clearly stated that every employee shall retire from service on attaining the age of 58 and in the case of special staff like peon and other last grade employees, it is 60. This bye-law has not been amended.

So far as the question about the maintainability of the writ petition is concerned, the only exception carved out by the Larger Bench is a public or a statutory duty discharged by a co-operative society. Therefore, the writ petition will not lie on the grounds raised by the petitioner.

Case law referred:

K.Marappan vs. Deputy Registrar of Co-operative Societies, Namakkal and another, (2006)4 MLJ 641 : 2006(4) CTC 689 :2006-4 L.W.495.

Advocates appeared:

For Petitioner	...	Mr. K. Srinivasamurthy for Mr. A. Nagarajan
For Respondents	...	Mr. T. Murugesan, Government Pleader, Pondicherry.

Writ petition under Article 226 of the Constitution of India, filed to issue a writ of certiorarified mandamus, calling for the records relating to the second respondent's letter in reference PCUB/Estt/3/2006-07, Vol. III dated 1.6.2006 to quash the same and consequently direct the second respondent to implement the direction issued by the first respondent dated 11.6.1999 in reference RCS/CLC/65/99 and to allow the petitioner to continue in service till he attains the age of superannuation at 60 years.

JUDGMENT

The writ petitioner is the Manager of the second respondent bank, which is admittedly the registered co-operative society under the Pondicherry Co-operative Societies Act. When the petitioner is sought to be retired at the age of 58, he wants to retire only at the age of 60. This was on the basis of certain circulars issued by the Co-operative Department. However, relevant bye-laws applicable to the second respondent society deal with the age of superannuation and retirement. In bye-law No. 35, it is clearly stated that every employee shall retire from service on attaining the age of 58 and in the case of special staff like peon and other last grade employees, it is 60. This bye-law has not been amended.

2. So far as the question about the maintainability of the writ petition is concerned, learned counsel for the petitioner states that the second respondent society is administered by an Administrator, whose functioning is under the Registrar's control and is the statutory functioning. Further, there is a circular of the Registrar dated 11.6.1999 stating that there are proposals to increase the age of 58 to 60. On this ground, the learned counsel submits that this will come within the exception provided under the Larger Bench judgment of this Court in *K.Marappan vs. Deputy Registrar of Co-operative Societies, Namakkal and another, (2006) 4 MLJ 641 : 2006 (4) CTC 689 :2006-4 L.W.495.* I am unable to find any such exception, as pleaded by the learned counsel. On the contrary, the Larger Bench considered the question of Special Officer administering the society and also the circular of the Department being available. The only exception carved out by the Larger Bench is a public or a statutory duty discharged by a co-operative society. Therefore, the writ petition will not lie on the grounds raised by the petitioner, which are misconceived.

3. Writ petition is dismissed. The stay granted earlier stands vacated. Learned counsel for the petitioner states that pending stay order, the petitioner is discharging the duties and is not paid salary for the above period. It is open to the petitioner to initiate appropriate proceedings for recovery of the same and the dismissal of the writ petition will not prevent him from agitating for such relief. No costs. Consequently, connected miscellaneous petitions are closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.8.2007

CORAM

THE HONOURABLE Mr. JUSTICE S.J. MUKHOPADHAYA

AND

THE HONOURABLE Ms. JUSTICE K. SUGUNA

W. P. No. 6263 of 2007 and

M. P. Nos.1 to 3 of 2007

1. K. Ramakrishnan
2. K. Vishnudoss ..... Petitioners

Vs.

1. The Chief Secretary to Government
   Government of Puducherry,
   Pudhucherry.

2. The Secretary to Government (Co-operation),
   Chief Secretariat,
   Pudhucherry.

3. The Managing Director.
   Puducherry Co-operative Sugar Mills,
   Lingareddipalayam,
   Katterikuppam Post - 605 502. ..... Respondents

(Prayer amended as per order dated 6.6.2007 by AKJ in MP.No.2/2007 in W.P. No. 6263/07)

According to the petitioners, since the petitioners have registered only with the Pondicherry Co-operative Sugar Mills for their sugarcane, only the said mills has to issue the cutting order to them and the petitioners cannot be directed to approach M/s. E.I.D., Parry (India) Limited, which is highly arbitrary and unreasonable. Since the petitioners were permitted to register with the third respondent alone, the petitioners have grown the sugarcane.

Though the petitioners have originally registered with the third respondent, by notification issued on 17.10.2006, the said cane area in question was resorted to M/s. E.I.D. Parry (India) Limited. This is an administrative decision taken taking into various factors. In obedience of the Government Order alone, the third respondent had accommodated the sugarcane of M/s. New Horizon Sugar Mills, even though by burning its finger in sugar recovery percent loss. Besides, the cane available in the third respondent registered area is more than its crushing capacity and in view of accommodating the cane growers of Horizon Sugar Mills, the mill had to run even in the recovery down period, rendering loss in revenue.

As a right the petitioners cannot seek any cutting order from the third respondent when the Government has allotted the cane area based on number of factors to a particular mill. Only based on the price given to the sugarcane alone the allotment cannot be stated as unreasonable and arbitrary. That apart, except the petitioners all the other farmers who have cultivated the sugarcane at the relevant time have supplied the sugarcane to the M/s. E.I.D. Parry (India) Limited.

Writ petition is dismissed.

Advocates appeared :

For Petitioners : Mr. M. Gnanasekar

For Respondents : Mr. Vijay Anand,
Government Pleader, Pondicherry.

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari after calling for the concerned records relating to G.O. Ms. No.27/Ag dated 17.10.2006 issued by the first respondent and quash the same.

JUDGMENT

The brief facts leading to this case are as follows:

Originally the cane area, which is in question, was with the M/s. Horizon Sugar Mills, Ariyur, Pudhucherry. But on account of the non-functioning of the said Mill, in order to save the cane growers and with a view to protect

the cane growers from the loss temporarily, cane area was withdrawn from the M/s. Horizon Sugar Mills. Since M/s. E.I.D. Parry (India) Limited is the transferee of the M/s. Horizon Sugar Mills, on the steps taken by M/s. E.I.D. Parry (India) Limited, the cane area in question was withdrawn and transferred to M/s. E.I.D. Parry (India) Limited. Consequently, the petitioners have to get the cutting orders only from the M/s. E.I.D. Parry (India) Limited. According to the learned counsel appearing for the petitioners, if their transaction is with the M/s. E.I.D. Parry (India) Limited the petitioners will be put to loss of nearly Rs. 104 per ton and also incentives. Hence, challenging the withdrawal of the said cane area and allotting it to the M/s. E.I.D., Parry (India) Limited, the writ petition is filed.

2. According to the learned counsel appearing for the petitioners, the first petitioner had registered only with the third respondent on 19.10.2005 in respect of 2.5 acres, on 29.10.2005 in respect of 1.75 acres and on 30.6.2006 in respect of 3.15 acres, the second petitioner had registered with the third respondent on 13.10.2005 in respect of 4 acres, on 19.11.2005 in respect of 2.50 acres and on 4.7.2006 in respect of 2.10 acres. Normally, the cutting orders used to be issued by the third respondent within a period of 10 to 12 months. But, in the case of the petitioners, even after the lapse of 15 months, no cutting order was issued by the third respondent. Hence a lawyer notice was issued on 27.10.2006 calling upon the third respondent to issue the cutting order. For the same, a reply was issued by the third respondent on 20.1.2007, wherein the petitioners came to understand that the said cane area was withdrawn from the third respondent and allotted to M/s. E.I.D. Parry (India) Limited and by the said order the petitioners were directed to approach the management of M/s. E.I.D. Parry (India) Limited for getting the cutting orders. According to the learned counsel appearing for the petitioners, since the petitioners have registered only with the third respondent for their sugarcane, consequently, only the third respondent has to issue the cutting order to them and the petitioners cannot be directed to approach M/s. E.I.D., Parry (India) Limited, which according to the learned counsel appearing for the petitioners, is highly arbitrary and unreasonable. Since the petitioners were permitted to register with the third respondent alone, the petitioners have grown the sugarcane.

3. On the other hand, the learned Government Pleader (Puducherry) has submitted that basing on the reasonable cause alone, the sugarcane area in question was withdrawn from the third respondent and transferred

to the M/s. E.I.D. Parry (India) Limited. According to the learned Government Pleader (Puducherry), since M/s. New Horizon Sugar Mills was not functioning, to safeguard the interest of the cane growers, the cane area in question was withdrawn from the M/s. New Horizon Sugar Mills. Subsequently, since the M/s. E.I.D. Parry (India) Limited is the transferee of the M/s. New Horizon Sugar Mills, by the notification issued in G.O. No. 27 Agricultural Department, dated 17.10.2006, the said cane area was transferred to M/s. E.I.D. Parry (India) Limited. That apart, according to the learned Government Pleader (Puducherry), the petitioners do not have any locus standi to question the allotment of the cane area to M/s. E.I.D. Parry (India) Limited. That apart, according to the learned Government Pleader (Puducherry), though a relief is sought for as against the M/s. E.I.D. Parry (India) Limited, the said firm is not impleaded as a party. Hence, on the ground of non-joinder of necessary party itself, the writ petition has to be dismissed. That apart, according to the learned Government Pleader (Puducherry), the third respondent was giving a sum of Rs. 1,130 per ton whereas M/s. E.I.D., Parry (India) Limited is giving Rs. 1,026 per ton. Since, it is a private sugar mill it cannot be forced to accept the price fixed by the respondents in respect of sugarcane. Basing on this, the learned Government Pleader (Puducherry) prays for dismissal of the writ petition.

4. We have considered the submissions of the learned counsel on either side. Though the petitioners have originally registered with the third respondent, by notification issued on 17.10.2006, the said cane area in question was resorted to M/s. E.I.D. Parry (India) Limited. As far as this is concerned, this is an administrative decision taken taking into various factors. As per the averments in the counter affidavit filed by the respondents, in fact, in obedience of the Government Order alone, the third respondent had accommodated the sugarcane of M/s. New Horizon Sugar Mills, even though by burning its finger in sugar recovery percent loss. Besides, the cane available in the third respondent registered area is more than its crushing capacity and in view of the accommodating the cane growers of Horizon Sugar Mills, the mill had to run even in the recovery down period, rendering loss in revenue. That apart, as per the counter affidavit, the cane price is fixed and paid on the basis of the recovery performance of the previous year. The basic statutory minimum price for sugarcane will be announced by Government of India and ultimately State advised price by concerned State Government. The mills will adhere to pay statutory minimum price but in respect of State advised

price only co-operative mills are adhering to it but not private mills. That apart, previously when the cane area in question was with the M/s. New Horizon Sugar Mills, the cane price was lower than that of the third respondent sugar mills. As such, basing on the temporary arrangement, now the petitioner cannot claim that only the third respondent has to issue the cutting order. In fact, as per the averment in the affidavit, the petitioner had registered with the third respondent only on 19.10.2005. While hearing the writ petition, the learned single Judge of this Court has given a direction to the petitioner to supply the sugarcane to M/s. E.I.D. Parry (India) Limited and M/s. E.I.D., Parry (India) Limited should also receive the same. Challenging this order alone, the petitioner had filed W. A. No. 720 of 2007 wherein the order of the learned single Judge was set aside and the writ petition was directed to be posted for final hearing. No cutting order was issued by the M/s. E.I.D. Parry (India) Limited to the petitioners. Since the cane area was registered in the year 2005, in our view, in fact, as on date, the sugarcane might have become dry and in our view taking advantage of the temporary transfer of the territorial jurisdiction of the cane area, the petitioners cannot demand as right for the issue of cutting order by the third respondent and no statutory provision is brought to the notice of this Court also in this regard. However, the learned counsel appearing for the petitioners had relied on the judgment of this Court passed in W.P. Nos.13341 of 2004 and 6919 of 2006 wherein a direction was issued to convene a meeting and to take a decision with regard to supply of sugarcane to the public sector and co-operative mills in preference over the private mills. But this direction has been issued with reference to the Tamil Nadu Government. Basing on this, in our view, as a right the petitioners cannot seek any cutting order from the third respondent when the Government has allotted the cane area basing on number of factors to a particular mill. Only basing on the price given to the sugarcane alone the allotment cannot be stated as unreasonable and arbitrary. That apart, except the petitioners all the other farmers who have cultivated the sugarcane at the relevant time have supplied the sugarcane to the M/s. E.I.D. Parry (India) Limited as per the statement of the learned Government Pleader (Puducherry). Under such circumstances, we do not find any merit in the writ petition and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are dismissed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 16.8.2007

CORAM

THE HONOURABLE Mr. JUSTICE A. KULASEKARAN

W.P. No. 27273/2007

M.P. No. 1/2007

N. Gunasekaran ... Petitioner

Vs.

1. The Registrar of Co-operative Societies,
   Government of Pondicherry, VVP Nagar,
   Thattanchavadi, Pondicherry 605 009.

2. The Pondicherry Public Servants Co-operative
   Society Limited, 133, Kamarajar Salai,
   Pondicherry 605 011.

3. The Co-operative Tribunal-cum- Principal
   District Judge, Pondicherry. ... Respondents

The order of the Co-operative Tribunal, vacating the stay granted in the matter of supersession of the committee of the Pondicherry Public Servants Co-operative Society was challenged in this writ petition. The 3rd respondent Tribunal, in the impugned order, has categorically stated that the irregularities had been listed in the explanation of the petitioner and that the Registrar of Co-operative Societies has taken a decision to dissolve the elected board of directors after consulting the financing bank, and that the Registrar, before dissolving the elected board of directors, considered the explanation submitted by the petitioner and later passed final order.

At this stage the adequacy of reasons for the supersession cannot be gone into by this Court and it can be decided only by the Tribunal, before which the appeal is pending.

The reasons assigned by the 3rd respondent Tribunal in the impugned order for dismissing the stay application are perfectly valid. Hence, this writ petition is liable to be dismissed.

Advocates appeared :

For Petitioner ... Mr. P. V. S. Giridhar,
For M/s. P. V. S. Giridhar Associates

For Respondents ... Mr. E. Vijaya Anand,
Government Advocate,Puducherry.

Prayer:- This writ petition is filed under Art. 226 of the Constitution of India to issue a writ of certiorari to call for the records relating to the order of the 3rd respondent in I.A. No. 4/2007 in Co-op. Appeal No. 1/2007 dated 27.4.2007 and quash the same by allowing I.A. No. 4/2007.

JUDGMENT

1. The petitioner has filed an application in IA. No. 4/2007 in Co-op. Appeal No. 1/2007 before the 3rd respondent Tribunal for interim stay under Section 140 (6) of the Pondicherry Co-operative Societies Act, 1972 against the order dated 15.3.2007 of the 1st respondent, superseding the board of the directors of the 2nd Respondent society. Initially interim stay was granted for certain period and after notice to the respondents, the said stay application was taken for final disposal, pending the said appeal and dismissed, vacating the interim order. Hence, this writ petition has been filed.

2. The learned counsel for the petitioner has submitted that after the petitioner took over charge as President from 1.8.2006, there was no allegations against the board of directors, besides that, neither enquiry was conducted nor any inspection was done and while so, the order of supersession ought not to have been allowed to continue and the 3rd respondent miserably failed to consider the said fact.

3. The 2nd respondent society was superseded on 15.3.2007, as against which, the petitioner has filed an appeal before the 3rd respondent Tribunal in Co-op. Appeal No. 1/2007, in which I.A. No. 4/2007 was filed for interim stay, which was also granted for certain period and the same was vacated on 27.4.2007 by the impugned order. This writ petition has been filed after lapse of about four months, i. e. on 13.8.2007.

4. The 3rd respondent Tribunal, in the impugned order, has categorically stated that the irregularities had been listed in the explanation of the petitioner and that the Registrar of Co-operative Societies has taken a decision to dissolve the elected board of directors after consulting the financing bank, viz., the Pondicherry State Co-operative Bank Limited and that the Registrar, before dissolving the elected board of directors, considered the explanation submitted by the petitioner and later passed final order, hence, that was not the stage to decide as to whether the irregularities pointed out by the petitioner are sufficient or not to dissolve the elected board of directors and if at all, the same can be decided in the said appeal. The reasons assigned by the 3rd respondent Tribunal in the impugned order for dismissing the stay application in I.A.No. 4/2007 are perfectly valid. Hence, this writ petition is liable to be dismissed accordingly, it is dismissed. No costs. Consequently, the connected M.P. is closed. However, the 3rd respondent is directed to dispose of the said appeal within a period of three months from the date of receipt of a copy of this order. It is also needless to mention that while disposing of the said appeal, on merits, the 3rd respondent need not take into account the findings, if any, made in its impugned order dated 27.4.2007 or this order.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.9.2007

CORAM

THE HONOURABLE Mr. JUSTICE K. RAVIRAJA PANDIAN

AND

THE HONOURABLE Mrs. JUSTICE CHITRA VENKATARAMAN

Writ Appeal No. 2448 of 2002

V. Selvaraj ..... Appellant

Vs.

1. Union of India
   rep. by Secretary to
   Government (Co-operation)
   Government of Pondicherry,
   Pondicherry.

2. The Registrar of Co-operative
   Societies, V.V.P. Nagar
   Thattanchavadi
   Pondicherry.

3. The Administrator
   The Pondicherry Co-operative
   Urban Bank Limited
   No. 197, J.N. Street
   Pondicherry. ..... Respondents

Writ petition was filed to declare clause 26 (i) of the bye-laws of the Pondicherry Co-operative Urban Bank Limited as ultra vires and violative of the Pondicherry Co-operative Societies Act and consequently direct the respondents to provide for reservation for weaker sections in the board of management of the third respondent society.

There was no scope for ordering such an amendment in a writ petition in as much as in the event of the appellant seeking for such an amendment in the

proper manner that would involve a detailed procedure to be followed by the competent authorities and then only it would be possible to find out as to whether such an amendment is really called for and or whether the provision is in consonance with the provisions of the main Act.

No interference is warranted to the finding of the learned single Judge and the writ appeal stood dismissed.

Advocate appeared :

For Appellant	:	Mr. G.R. Swaminathan
For Respondents	:	No appearance.

Writ Appeal filed under Clause 15 of Letters Patent against the Order dated 17.7.2002 made in W.P.No.25349 of 2002.

W.P. No. 25349 of 2002:- Petition filed under Article 226 of the Constitution of India to issue a writ of declaration declaring that clause 26 (1) of the bye-laws of the Pondicherry Co-operative Urban Bank Ltd is ultra vires and violative of the Pondicherry Co-operative Societies Act and consequently directing the respondents to provide for reservation for weaker sections on the board management of the third respondent society.

JUDGMENT

(Judgment of the Court was delivered by
K. RAVIRAJA PANDIAN, J.)

The correctness of the order dated 17.7.2002 passed by the learned single Judge in W.P.No.25349 of 2002 is questioned in this writ appeal.

2. The appellant herein filed a writ petition seeking for the relief of writ of declaration to declare clause 26 (i) of the bye-laws of the Pondicherry Co-operative Urban Bank Limited as ultra vires and violative of the Pondicherry Co-operative Societies Act and consequently direct the respondents to provide for reservation for weaker sections on the board of management of the third respondent society.

3. The learned single Judge in limine disposed of the writ petition on the premise that the remedy for the appellant was only to seek appropriate amendment to the bye-laws by moving the competent authorities, even assuming without going into the merits of the case that clause 26(i) of the bye-laws of the Pondicherry Co-operative Urban Bank Limited was not in consonance with the parent Act Pondicherry Co-operative Societies Act. The learned Judge further found that there was no scope for ordering such an amendment in a writ petition in as much as in the event of the appellant seeking for such an amendment in the proper manner that would involve a detailed procedure to be followed by the competent authorities and then only it would be possible to find out as to whether such an amendment is really called for and or whether the provision is in consonance with the provisions of the main Act. On that reasoning, the learned Judge dismissed the writ petition by observing that it is open to the appellant to seek for necessary amendment by following the procedure prescribed under the Act and further directed that the authority concerned shall deal with the same in accordance with law.

4. When the grievance of the appellant was thus directed to be redressed by the concerned authority, we find that there is no illegality or irregularity in the said order so as to allow the writ appeal. Hence, the writ appeal is dismissed. However, there is no order as to costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.4.2008

CORAM

THE HONOURABLE Mr. JUSTICE ELIPE DHARMA RAO

AND

THE HONOURABLE Mr. JUSTICE M. VENUGOPAL

W.A. No. 1116 of 2006

The Disciplinary Authority,
The President,
Health Staff Co-operative Credit
Society Ltd.,Karaikal. ..... Appellant/ 1st Respondent

Vs.

1. G. Vasantha

2. K. Babu ..... Respondents/
Petitioner/ 2nd Respondent

In the present case, the officer has played dual role not only as the presenting officer, but also as a witness. The writ appeal is liable to be dismissed on the ground of non-compliance of the order passed by the learned single Judge of this Court and also for not carrying out the instructions given by the Deputy Registrar (Planning) to change the presenting officer as he was a witness. Therefore, on these two grounds, the writ appeal fails and is dismissed.

Case law referred: *R.M. Shah vs. Bombay Port Trust, 1976-II-LLJ 263*

Advocates appeared :

For Appellant : Mr. Thiagarajan, Senior Counsel
for M/s. Arulselvam Associates

For Respondents : Mr. K. Venkatramani for R. 1

Writ Appeal filed under clause 15 of the Letters Patent against the order of this Court dated 2.12.2005 and made in W.P. No. 4267/2005 petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus to call for the records of the respondents in connection with the impugned order issued by the first respondent in F1/HSCCS/KKL/2005/496 dated 7.2.2005; quash the same and further direct the first respondent to reinstate the petitioner into service.

JUDGMENT
(Judgment of the Court was delivered by
ELIPE DHARMA RAO, J.)

The writ appeal is directed against the order passed by a learned single Judge of this Court dated 2.12.2005 made in W.P. No. 4267 of 2005, wherein the correctness of the order of dismissal of the first respondent herein was assailed on the main ground that the presenting Officer by name M. Shanmuganathan, who came to be appointed in the place of the original presenting officer, is a witness by himself, who has to be cross-examined by the writ petitioner.

2. It is brought to the notice of this Court that the Deputy Registrar (Planning), Government of Pondicherry, Co-operative Department, who by order dated 21.1.2005, has given a direction to take necessary action to change the presenting officer and also to furnish the required documents requested by the suspended official and to submit the fact within five days from the date of receipt of that order. But, even without complying said order or obeying the instructions given by the Deputy Registrar, the appellant completed the enquiry and thereafter passed the impugned order dated 7.2.2005. Therefore, a writ petition was filed before this Court seeking to quash the same and this Court, by order dated 2.12.2005 quashed the order of dismissal. The operative portion of the order is as follows:-

> "The order impugned in the writ petition is quashed; the disciplinary authority is also directed to appoint a new presenting officer in the place of Mr. M. Shanmuganathan; the disciplinary enquiry will recommence from the stage at which Mr. M. Shanmuganathan came into the picture as the

presenting officer; opportunities shall be given to the writ petitioner to participate in the enquiry proceedings after the new presenting officer is appointed as indicated above; if any document is directed to be furnished to the writ petitioner by the appellate authority then, before recommencing the proceedings, the disciplinary authority is bound to furnish copies of those documents as well and then the enquiry officer shall complete the proceedings so directed to be recommenced, in any event, not later than 30.4.2006."

3. Aggrieved of the above, the writ appeal has been preferred by the Disciplinary Authority, contending that earlier the representation of the first respondent for changing the presenting officer was negatived by his well considered order dated 20.11.2004 against which no steps have been taken by the 1st respondent and hence that order has become final. The learned counsel for the appellant has relied on a judgment of the Division Bench of the Bombay High Court reported in *1976-II-LLJ 263 (R.M. Shah vs. Bombay Port Trust)* wherein an enquiry was initiated by the Port Trust and it was questioned on the ground that one of the Police Officers, who was a party to the investigation, was appointed as a presenting officer. In these circumstances, the Division Bench has held that naming a Police Officer as presenting officer at the enquiry is neither illegal nor irregular much less can it lead to the inference that because of the presence of the Police Officer, the enquiry was initiated at the instance of the police. There is no rule or regulation preventing the presence of a police officer as a presenting officer in the domestic enquiry. Admittedly, as soon as the petitioner was suspended from service, the investigation was handed over to the C.B.I. The C.B.I. on their own has collected evidence in addition to the evidence which was collected by the department. On behalf of the department, a coordinating officer was deputed to remain present at the enquiry. Since, however, much of the evidence was collected by the C.B.I. and the C.B.I. had volunteered to give assistance in the matter of production of evidence, it was probably thought convenient to nominate one of the officers of the C.B.I. connected with the investigation as the presenting officer. The job of the presenting officer was only to produce evidence before the enquiry officer. There was no other role played by the presenting officer.

4. The above referred to judgment cannot be applied to the case on hand as there was no other role played by the presenting officer therein. But, in the present case, the officer has played dual role not only as the presenting officer, but also as a witness.

5. Considering the facts and circumstances of the case, the writ appeal is liable to be dismissed on the ground of non-compliance of the order passed by the learned single Judge of this Court, in his order dated 2.12.2005 and also for not carrying out the instructions given by the Deputy Registrar (Planning) in his order dated 21.1.2005 to change the presenting officer as he is a witness. Therefore, on these two grounds, the writ appeal fails and is dismissed. The order of the learned single Judge of this Court dated 2.12.2005 is confirmed. The appellant and the Officers concerned are directed to comply with the order passed by the learned single Judge of this Court dated 2.12.2005 within period of six months from the date of receipt of a copy of this order.

Subject to the above direction, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 18.6.2008

CORAM

THE HONOURABLE Mr. JUSTICE K. CHANDRU

W. P. No. 1565 of 2003

B. Sathiyaseelan ... Petitioner

Vs.

1. The Registrar of Co-operative Societies,
   Pondicherry.

2. The Special Officer,
   Muthirapalayam Primary Agricultural
   Co-operative Bank Limited,
   Muthirapalayam,
   Pondicherry.

3. Management Committee
   rep. by its President. ... Respondents

Pondicherry Co-operative Societies Act, 1972 – Section 84- Disputes - If any member of the society including the petitioner feels aggrieved since the board of directors have got away after committing financial irregularities and no steps have been taken by the Registrar or his subordinate to recover the amounts swindled from society, it is open to file a dispute under Section 84 of the Act. Unless a member raises a specific dispute with reference to the irregularities or misappropriation committed by its erstwhile directors, no directions can be given by this Court. It is open to the petitioner to raise appropriate dispute under Section 84 against the erstwhile board of directors and certainly the authorities concerned shall go into the matter and pass appropriate award in terms of Section 84. Writ petition was dismissed.

Advocates appeared:

For Petitioner	...	Mr. V. Ajayakumar
For Respondents:	...	Mr. T. Murugesan, Government Pleader for Pondicherry for R-1,
		Mr. Syed Mustaffa for R-2

Petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus to direct the first respondent to take action against the erstwhile President and other members of the Management Committee in their personal capacity, both civil and criminal proceedings.

JUDGMENT

The petitioner is the member of the second respondent society. The managing committee of the society committed several irregularities for which a show cause notice was given by the Registrar under Section 83 of the Pondicherry Co-operative Societies Act 1972 asking them to show cause as to why the board should not be dissolved.

2. In support of the said show cause notice, the financial irregularities of each board member were ascertained and intimated and after receiving the reply from the members, the society was dissolved and it has been handed over to the Special Officer. The said action has not been under challenge by any members of superseded board. In any event, the members of the society including the petitioner feels aggrieved since the board of directors have got away after committing financial irregularities and no steps have been taken by the Registrar or his subordinate to recover the amounts swindled from the society. In such case, it is not as if the Pondicherry Co-operative Societies Act 1972 is helpless. Section 84 of the Act provides for the dispute to be raised by any member against any other members or committee or society with reference to the business of the registered society. Certainly, the issue is covered by Chapter 9, more particularly, Section 84 and unless a member raises a specific dispute with reference to the irregularities or misappropriation committed by its erstwhile directors, no directions can be given by this Court.

3. Though Mr. Ajayakumar claims that the members have sent individual representations dated 18.10.2002, the said representations do not

disclose any specific cause of action to bring it under Section 84. Therefore, this writ petition is misconceived. However, it is open to the petitioner to raise appropriate dispute under Section 84 against the erstwhile board of directors and certainly the authorities concerned shall go into the matter and pass appropriate award in terms of Section 84. If such a dispute is raised by the petitioner or any other members within two weeks from the date of receipt of a copy of the order, the same shall be considered by the Arbitrator under Section 84 in accordance with law and on merits without reference to the limitation.

4. The writ petition is dismissed except to the extent indicated above. No costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 6.8.2008

CORAM

THE HONOURABLE Mr.JUSTICE F.M. IBRAHIM KALIFULLA

W.P. Nos. 29577 AND 29878 of 2002

and W.P. M.P. No. 48424 of 2002 and

W.V.M.P. Nos. 1348 of 2002 and 2510 of 2005

W.P. No. 29577 of 2002

1. R. Thambusamy
2. G. Govindasamy
3. K. Muruganandam
4. S. Mannagetti
5. S. Kalivaradhan
6. R. Venkatachalam
7. M. Ramakrishnan ... Petitioners

Vs.

1. The Union Territory of Pondicherry,
   Represented by its Registrar of
   Co-operative Societies,
   Pondicherry.
2. The Managing Director,
   Pondicherry Co-operative Sugar Mills Ltd.,
   Lingarreddypalayam,
   Pondicherry.
3. The Administrative Officer,
   Pondicherry Co-operative Sugar Mills Ltd.,
   Pondicherry.
4. I. Thirumurugan. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari, calling for the records of the 2nd respondent relating to his proceedings No. PSCM/Estt/5-471/2002/2557, dated 25.7.2002 and quash the same.

W.P. No. 29878 of 2002

1. T. Kathavarayan
2. R. Kalaiarasan
3. S. Kandasamy
4. A. Jayabalan
5. A. Shanmugam ... Petitioners

Vs.

1. Pondicherry Co-operative Sugar Mills Ltd.,
   rep. by its Managing Director,
   Lingareddypalayam,
   Pondicherry.

2. Thirumurugan

3. T. Sarathy

4. V. Dhakshinamoorthy

5. D. Soundarajan
   (R2 to R5 impleaded as per order
   dated 7.3.2006 in W.P.M.P.No.40476/2005) ... Respondents

In the relevant rules except stating that the selection committee should consist of the Managing Director, Chief Cane Officer, Controller of Finance, Administrative Officer and two non-official directors, there is no other stipulations in the rules to the effect that in order to make the selection valid, there should be any quorum from amongst the committee members. If that be so, the mere non-attendance of the Administrator in the place of two non-official directors by itself would not invalidate the selection proceedings,

and consequently the promotion orders issued to the petitioners based on the selection process held by the committee could not have been rescinded.

Therefore, the impugned order of the second respondent in having rescinding the selection proceedings merely on the ground that it gave an assurance in the contempt proceedings to rescind it cannot be sustained. Consequently, the order of appointment issued to the petitioner shall stand confirmed.

Cases referred :

(i) *Shri Ishwar Chandra vs. Shri Satyanarain Sinha and others, (1972) 3 SCC 383 : AIR 1972 SC 1812 : 1972 Lab IC 909 : (1972) 3 SCR 796.*

(ii) *J. Kumar vs. Union of India and others, 1981 (Supp) SCC 35.*

(iii) *Abdul Razack Sahib vs. Mrs. Azizunnissa Begum and others, AIR 1970 Mad 14 : 1970 Crl LJ 55.*

Advocates appeared :

For Petitioners in W.P. No.29577/2002	:	Mr. K. Alagirisamy, Senior Counsel for Mr. R. Kannan.
For Petitioners in W.P.No.29878/2002	:	Ms. R. Vaigai
For Respondents R2 & R3 in W.P.No.29577/2002 and R1 in W.P.No.29878/2002	:	Mr. T.R. Rajaraman
For Respondent 1 W.P. No.29577/2002	:	Mr. T. Murugesan Government Pleader (Pondicherry)
For Respondents R2 to R5 in W.P. No.29878/2002 and for R4 in W.P.No.29577/2002	:	Mr. R. Mahadevan

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus, to quash the order No. PCSM/ESTT/5-471/2002/2557, dated 25.7.2002, issued by the 1st respondent after calling for the concerned records from it and consequently direct the 1st respondent to continue the petitioners as Cane Assistants with all attendant benefits.

COMMON JUDGMENT

In both these writ petitions, the challenge is to the order of the second respondent dated 25.7.2002, in and by which, the promotion granted to the petitioners as Cane Assistant in the order dated 27.12.2000, came to be rescinded.

2. The brief facts which are required to be stated are that the petitioners were all working in the Pondicherry Co-operative Sugar Mills Limited and by virtue of the post held and qualification possessed by them in the year 1991/92, they were all eligible to be considered for promotion to the post of Cane Assistant. It is stated that the strength of the post of Cane Assistant was 25 in that year and the same was increased to 35 by May 1991. A circular was issued on 4.8.1992, for filling up the post of Cane Assistant. The candidates who were eligible were called for interview for the 16 vacancies and from among them the petitioners who were 12 in number were selected.

3. The selection of the petitioners were challenged by the contesting respondents viz., respondents 2 to 5 in W.P. Nos. 6691, 7458 and 7490 of 1993 and by an order dated 8.9.2000, the writ petitions were allowed and the selection of the petitioners were set aside on the sole ground that the selection committee which included an expert member was not a validly constituted committee. While setting aside the selection, the learned Judge directed that the petitioners should be allowed to continue for three months within which period a fresh selection to be made by constituting a fresh committee as per the recruitment rules. Thereafter, the committee was constituted afresh which made the selection from amongst all the eligible candidates including the petitioners. There was a written test and an interview. The petitioners who came out successful in the written test came to be selected and were issued with separate orders of appointment

dated 27.12.2000, as per the recruitment rules relating to the post of Cane Assistant.

4. The recruitment committee consisted of Managing Director, Chief Cane Officer, Controller of Finance, Administrative Officer and the Administrator in the place of two non-official directors. Since the board of directors were not available as on the date of selection, it was the Administrator who was to represent the non-official directors. It is stated that the recruitment committee held an interview on 1.12.2000, and on that date the Administrator was not present. It is stated that the Administrator specifically informed the committee that since he was obliged to attend some important assignment on 01.12.2000, at the head quarters at New Delhi, the other members of the recruitment committee could proceed with the selection as the call notices were already issued to the candidates. The committee therefore proceeded with the selection and in that selection, the petitioners came out successful and were issued with the orders of appointment as Cane Assistants dated 27.12.2000.

5. In the above stated background, the contesting respondents filed Contempt Petition Nos. 738, 765 and 766 of 2001 alleging violation of the orders of this Court dated 8.9.2000 and 23.11.2000 passed in W.P. Nos. 7458, 7490 and 6691 of 1993 respectively. When the contempt petitions were pending, an affidavit came to be filed by the second respondent, based on the observations of this Court, that the selection proceedings dated 1.12.2000, were in violation of its orders; by taking the stand that they have decided to rescind the selection proceedings dated 1.12.2000. Recording the said statement found in the affidavit, the contempt proceedings was closed on 26.7.2002. It is in the above stated background, the impugned order dated 25.7.2002, came to be issued rescinding the order of promotion issued to the petitioners.

6. Assailing the impugned order, Mr. K. Alagirisamy, learned senior counsel representing the learned counsel for the petitioners in W.P. No. 29577 of 2002 and Ms. R. Vaigai, learned counsel for the petitioners in W.P. No. 29878 of 2002 contended that cancellation of their promotion, by the order impugned was wholly illegal, in as much as, there was no violation either in the constitution of the committee or in the manner of selection made by the said committee. According to the learned senior counsel, when the selection and appointment was given by a validly constituted committee and by following the procedure prescribed under

the relevant rules, merely because the second and the third respondent made certain wrong statements in the contempt proceedings in order to get rid of the said proceedings without application of mind, the petitioners cannot be deprived of their valid right to retain the promotion accorded to them. In support of their submissions they placed reliance upon the decisions of the Hon'ble Supreme Court in *Shri Ishwar Chandra vs. Shri Satyanarain Sinha and others*, reported in *(1972) 3 SCC 383* : *AIR 1972 SC 1812 : 1972 Lab IC 909 : (1972) 3 SCR 796* and *J. Kumar vs. Union of India and others, 1981 (Supp) SCC 35*.

7. Per contra Mr. Mahadevan learned counsel appearing for the respondents 2 to 5 in W.P. No. 29878 of 2002 relied heavily upon the orders passed in the contempt proceedings and contended that the respondents 2 and 3 have tacitly admitted the invalidity of the selection proceedings and on that very score, the impugned order should be upheld. In other words, the learned counsel contended that when the appointing authority himself having admitted the flaw in the issuance of the order of promotion, there is nothing more to be considered to sustain the impugned orders.

8. Having heard the learned counsel for the petitioners as well as the learned counsel for the respondents and on perusing the materials placed before the Court, I find that the impugned order of the second respondent is not legally sustainable. In order to examine the correctness of the impugned order what all required to be seen is the constitution of the committee which went into the selection for promotion of the various candidates including the petitioners.

9. According to the rules, the Managing Director, Chief Cane Officer, Controller of Finance, Administrative Officer and two non-official directors were to hold the selection. It is not in dispute that in the absence of the board of directors, the Administrator can validly represent them, who will automatically get inducted into the selection committee. Thus in the present case, the selection committee consisted of the Managing Director, Chief Cane Officer, Controller of Finance, Administrative Officer as well as the Administrator. It is not in dispute that the petitioners were all eligible candidates as per the recruitment rules and that their selection to the post of Cane Assistant (Regular) based on their qualification and their

performance in the selection process is not in dispute. The impugned order came to be issued solely because in the contempt proceedings, this Court observed that the selection committee did not validly function on the date of selection viz., 1.12.2000. On the date of selection, the Administrator did not participate since he had to go to Delhi on some important official assignment.

10. In the earlier order dated 8.9.2000, when W.P. Nos. 6691, 7458 and 7490 of 1993 were allowed and the earlier selection was set aside, this Court only directed the second and third respondent to hold a fresh selection by constituting an appropriate committee in as much as in the earlier selection committee, an expert member came to be inducted whose induction was not in accordance with the recruitment rules. Apart from directing the second and third respondent to hold a fresh selection by constituting a committee in accordance with the rules and complete the selection within three months, there was no other direction to the said respondents. Therefore, it runs beyond one's comprehension as to whether there was any scope at all to find fault with the selection made on 1.12.2000, on the ground that the Administrator did not participate in the committee proceedings on the date of selection. Therefore, the rescinding of the order of promotion issued to the petitioners by voluntarily submitting to such a consequence fearing contempt action cannot be a ground to sustain the order impugned in these writ petitions. In this context it will be worthwhile to refer to the decision of this court reported in *AIR 1970 Mad 14 : 1970 Crl LJ 55 (Abdul Razack Sahib vs. Mrs. Azizunnissa Begum and others)*. In the said decision, it has been stated as under in paragraph 3:

> *"3. In Ramalingam Vs. Mahalinga Nadar (AIR 1966 Mad 21), we formulated the principle of contempt jurisdiction thus—*
>
> *"Essentially contempt of Court is a matter which concerns the administration of justice and the dignity and authority of judicial tribunals; a party can bring to the notice of Court, facts constituting what may appear to amount to contempt of Court, for such action as the Court deems it expedient to adopt. But, essentially, jurisdiction in contempt is not a right of a party, to be invoked for the redressal of his grievances; nor is it a mode by which the rights of a party, adjudicated upon by a tribunal, can be enforced against another party."*

If we may use what may be considered an irrelevant expression, having regard to the high function of a Court of Justice, proceedings by way of contempt of Court should not be used as a 'legal thumbscrew' by a party against his opponent for enforcement of his claim. But that is what the petitioners have attempted in this case."

11. Therefore, in my considered view, the correctness or otherwise of the impugned order will have to be examined independently irrespective of what transpired in the contempt proceedings. Once I steer clear of the said position, the only other relevant point to be considered is whether the selection held by the present committee on 1.12.2000, based on which the promotion order came to be issued could have been rescinded on any other ground. In this context, what is to be seen is whether the non-participation of the Administrator in the committee proceedings on 1.12.2000, could have in any way affected the manner of selection of the petitioners for being promoted to the post of Cane Assistant (Regular). In that respect, the decision relied upon by the learned senior counsel for the petitioners reported in *(1972) 3 SCC 383* and *1981 (Supp) SCC 36* would fully support their stand.

12. In the decision reported in *Shri Ishwar Chandra vs. Shri Satyanarain Sinha and others (supra)* the Hon'ble Supreme Court has held in para 10 as follows:

"10 .....It is also not denied that the meeting held by two of the three members on April 4, 1970, was legal because sufficient notice was given to all the three members. If for one reason or the other one of them could not attend, that does not make the meeting of others illegal. In such circumstances, where there is no rule or regulation or any other provision for fixing the quorum, the presence of the majority of the members would constitute it a valid meeting and matters considered thereat cannot be held to be invalid."

Similarly, in the decision reported in *1981 (Supp) SCC 36 (J. Kumar vs. Union of India and others)* the Hon'ble Supreme Court has held as under:

> *"The main grouse of the petitioner whom we have heard in person is that respondents 4 and 5, against whom the appeal is mainly directed, are members of the selection board which is meeting tomorrow and which is to interview him. We are told by learned Counsel for the Union of India that no minimum number of members is required to form the board and that even if a couple of members out of the strength of present nine stay the proceedings of the board would not be invalidated. In the circumstances we direct that respondents 4 and 5 shall not take part in the proceedings of the board at its meeting to be held tomorrow and the day after insofar as selection for promotions to the posts of Group Captains are concerned. Except for this no relief is granted to the petitioner. The order made by this Court on October 28, 1980 shall remain valid and binding."*

Going by the ratio laid down in the above referred to decisions of the Hon'ble Supreme Court, when the case on hand is examined, in the relevant rules except stating that the selection committee should consist of the Managing Director, Chief Cane Officer, Controller of Finance, Administrative Officer and two non-official Directors, there is no other stipulations in the rules to the effect that in order to make the selection valid, there should be any quorum from amongst the committee members. If that be so, the mere non-attendance of the Administrator in the place of two non-official directors by itself would not invalidate the selection proceedings held on 1.12.2000, and consequently the promotion orders issued to the petitioners based on the selection process held by the committee on 1.12.2000, could not have been rescinded. Therefore, the impugned order of the second respondent dated 25.7.2002 in having rescinding the selection proceedings dated 1.12.2000 merely on the

ground that it gave an assurance in the contempt proceedings to rescind it cannot be sustained. Consequently, the order of appointment issued to the petitioner dated 27.12.2000, shall stand confirmed.

13. While entertaining these writ petitions interim orders were granted on 12.8.2002 and thereby the petitioners continue to function as Cane Assistants which post they were holding right from the year 1992. The interim injunction thus granted was continued by an order dated 20.8.2002 and was also subsequently made absolute by an order dated 22.9.2003.

14. In the light of my above conclusion, the writ petitions are allowed and the impugned orders are set aside and there will be no order as to costs. All the miscellaneous petitions are closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 8.8.2008

CORAM

THE HONOURABLE Mr. JUSTICE K.VENKATARAMAN

Writ Petition No.15392 of 2008 and

M.P.Nos.1 to 3 of 2008

IMCOLA (Exports) Limited, rep. by
its Head International Trading
Mr. D. Thiruloka Chander. ... Petitioner

Vs.

1. The Pondicherry Co-operative
   Sugar Mills Ltd., a co-operative
   society registered under the
   Pondicherry Co-operative Societies Act,
   Lingareddipalayam,
   Katterikuppam,
   Pondicherry-605 502.

2. The Managing Director,
   The Pondicherry Co-operative
   Sugar Mills Ltd,
   Lingareddipalayam,
   Katterikuppam,
   Pondicherry-605 502.

3. The Administrator,
   The Pondicherry Co-operative
   Sugar Mills Ltd,
   Lingareddipalayam,
   Katterikuppam,
   Pondicherry-605 502. ... Respondents

In this writ petition, the cancellation of sale order by the society was challenged. On behalf of the society, it was contended that the petitioner has instituted the writ petition against a co-operative society and no writ will lie against a co-operative society. Held, if the financial assistance of the State is so much as to meet almost the entire expenditure of the society, it would afford some indication of the society being impregnated with Governmental character. In the case on hand, the share capital of the Government of Pondicherry is Rs. 45,40,75,000, which is 98.1% of the entire share capital. Furthermore, now the committee has been dissolved and an Administrator has been appointed for the society. In view of those facts, the Court was of the considered opinion that the first respondent society could be called as a 'State' within the meaning of Article 12 of the Constitution of India and the writ would lie against the first respondent.

Another plea was taken by the society that the remedy to the petitioner is only by filing a civil suit. Rejecting the argument, the Court held that the petitioner is engaged in the business of exporting molasses to various countries and if the petitioner is driven to the Civil Court for release of the balance quantity of molasses, then the petitioner could get the remedy in the Civil Court only after a couple of years. In the meantime, as contended by the petitioner, the customers in various countries would squeeze the petitioner for fulfillment of the commitments made by the petitioner. Furthermore, the petitioner, at best, would be entitled for damages and not the specific relief of enforcement of the sale order. Hence, considering the above factors, that the remedy of the petitioner under the given circumstance would be only to avail the writ jurisdiction and not by way of filing the suit before the Civil Court. Even though, it is a matter of contractual obligation, it cannot be said that totally the petitioner cannot seek the relief inviting the jurisdiction of the Writ Court.

Case laws referred:

(i) K.Marappan vs. Deputy Registrar of Co-operative Societies, Namakkal, and another (2006)4 MLJ 641 : 2006(4) CTC 689 :2006-4 L.W.495,

(ii) Ajay Hasia and others vs. Khalid Mujib Sehrewardhi and others, AIR 1981 SC 487 : (1981) 1 LLJ 103 SC : (1981) 1 SCC 722 : (1981) 2 SCR 79.

Advocates appeared :

For Petitioner : Mr. P.S. Raman, Senior Counsel,
for Mrs. Pushpa Menon

For Respondents : Mr. T. Murugesan, Government Pleader,
Pondicherry.

Writ petition has been filed under Article 226 of The Constitution of India to issue a Writ of mandamus directing the first respondent to fulfill the terms of the sale order made in Ref. PCSM / SS/ MOL / 2007-2008 / 699, dated 3rd March, 2008 by supplying the balance quantity of molasses amounting to 5411.210 MTs.

JUDGMENT

The petitioner has approached this Court by filing the present writ petition to quash the order of respondents 1 and 2 culminating in the cancellation order dated 25.6.2008 and to direct the first respondent to fulfill the terms of the sale order dated 3.3.2008 by supplying the balance quantity of molasses amounting to 5411.210 MTs to the petitioner by accepting the payment of Rs.92,50,000.

2. The short matrix of the matter is set out here under:-

(a) The petitioner company is engaged in the business of exporting molasses to various countries. The first respondent is a sugar industry and one of the main by products is molasses. One of the statutory duties of the first respondent is to sell and dispose of the said product by means of open tender cum auction.

(b) On 7.2.2008, the first respondent issued a tender notice for sales of 10,000 MTs of 'A' grade molasses produced during the year 2007-08. The petitioner took part in the tender cum auction and he was selected for the same and a sale order was issued by the first respondent to the petitioner on 3.3.2008, in and by which the first respondent has to sell 10,000 MTs of molasses at the rate of Rs.2,050 per MT to the petitioner. The documents specified in the sale order were duly submitted by the petitioner to the first respondent. As per the sale order, the petitioner company has to lift 5000

MTs of molasses on or before 31.7.2008. No objection certificate had been obtained from the competent authority on 7.3.2008. Rs.10,00,000 had been paid for the total quantity of 10,000 MTs molasses. On 5.3.2008, the petitioner paid a sum of Rs.1,00,25,000 by way of demand draft to the first respondent towards the cost of 5,000 MTs of molasses scheduled to be lifted by them on or before 31.3.2008. The first respondent, on the said date, had in possession of only 3,000 MTs of molasses. The petitioner started to lift the molasses from 7.3.2008. By 17.4.2008, the petitioner could lift 4588.790 MTs of molasses. This was due to the insufficient stock of molasses with the first respondent and on many occasions, the petitioner's trucks had to leave the mill premises without being able to lift the molasses. Thus, the first respondent has been in a position to supply the petitioner only 4,588.790 MTs of molasses out of 5,000 MTs, which was promised to be given on or before 31.3.2008. The balance of molasses had not been supplied. When the petitioner was ready and willing to pay the purchase price for the balance quantity of 5,000 MTs of molasses at the time of tendering the first draft on the advice of the second respondent, the then Managing Director of the first respondent, the petitioner withheld the amount for the balance of 5,000 MTs of molasses. However, the petitioner paid the balance amount of Rs.92,50,000 to the first respondent along with a letter dated 10.06.2008. Receipt dated 12.6.2008 had been issued for the payment made. It was also encashed by the first respondent. The petitioner had addressed numerous letters to the respondents for the supply of the balance molasses. By then, the price of molasses went up. In view of the same, the first respondent is evading the supply of balance of molasses and hence, the petitioner had approached this Court by filing the present writ petition.

3. Counter affidavit had been filed by the second respondent on his behalf and on behalf of respondents 1 and 3 also which sets out the following facts:-

(a) The first respondent is a co-operative society registered under the Pondicherry Co-operative Societies Act, 1972. The society is fully governed by its own bye-laws and service regulations and hence, to describe its activities to be borne out of a statute is not correct. Hence, the allegation that the first respondent society is a State within the meaning of Article 12 of the Constitution of India is absolutely incorrect. The writ petition is, therefore not maintainable and liable to be dismissed in limine.

(b) Since a contractual obligation is sought to be enforced, the writ petition is not maintainable under Article 226 of The Constitution of India.

(c) The petitioner ought to have paid the entire purchase price for the intended purchase of molasses as per the sale order dated 3.3.2008. Since the petitioner violated the terms and conditions, it is not entitled to any claim and it cannot enforce the contract.

(d) As per the sale order dated 3.3.2008, the petitioner should have paid a sum of Rs.2,05,00,000 before 13.3.2008 towards the costs of 10,000 MTs of molasses at Rs.2,050 per MT. On receipt of the sale order, the petitioner had only made part payment of Rs.1,02,50,000 by way of demand draft on 5.3.2008, which is a clear violation of the terms and conditions of the sale order dated 3.3.2008. Having received part payment from the petitioner towards the cost of 5,000 MTs of molasses, the first respondent mill agreed to release the supply of molasses only to this extent before 31.3.2008. But in violation of the term 6 of the sale order, the petitioner lifted only 4,591.720 MTs.

(e) As on 31.05.2008, the first respondent Mill had its stock of 4,058.727 MTs of molasses and therefore, the allegation that the first respondent mill had only about 3,000 MTs of molasses is not correct and the same is denied. It is not correct to say that the first respondent was not possessing sufficient stock of molasses. It had maintained sufficient stock of molasses for supply to the petitioner in terms of the sale order dated 3.3.2008.

(f) The demand draft paid by latter for a sum of Rs.92,50,000 is a belated one and the amount had been refunded to the petitioner by the second respondent by proceedings dated 26.6.2008. The said demand draft had been returned since the petitioner paid the said amount belatedly.

(g) The payment had not been made as per the terms and conditions of the sale order dated 3.3.2008 and hence, the sale order for the remaining quantity of 5,000 MTs of molasses was cancelled by the second respondent as per clause 16 of the tender conditions dated 7.2.2008.

Thus, the respondents sought for the dismissal of the writ petition.

4. Mr. P.S. Raman, learned Senior Counsel appearing for the petitioner and Mr. T. Murugesan, learned Government Pleader for Pondicherry appearing for the respondents have made their submissions on the basis of the pleadings set out above.

5. Mr. P.S. Raman, learned Senior Counsel appearing for the petitioner would mainly submit that –

(a) The writ petition is perfectly maintainable before this Court under Article 226 of the Constitution of India.

(b) The first respondent failed to supply the quantity of 5,000 MTs of molasses due on 31.3.2008 as there was shortfall of supply of 411.210 MTs.

(c) The respondents having accepted the payment from the petitioner are estopped from raising untenable grounds for non-supply of the balance molasses.

(d) The respondents' action is causing huge loss to the petitioner since they would be unable to fulfill the commitment to the overseas buyers and the reputation would be at stake.

(e) The respondents have not given any notice to the petitioner for withholding the balance quantity due under the sale order and this is in violation of principles of natural justice under Article 14, 19 and 21 of The Constitution of India.

6. Per contra, Mr. T. Murugesan, learned Government Pleader, Pondicherry, appearing for the respondents has contended that –

(a) The first respondent is only a society registered under the Pondicherry Co-operative Societies Act, 1972 and in view of the Full Bench decision of this Court in *K.Marappan vs. Deputy Registrar of Co-operative Societies, Namakkal and another* reported in *(2006)4 MLJ 641 : 2006(4) CTC 689 :2006-4 L.W.495*, the writ petition itself is not maintainable before this Court and the same is liable to be dismissed in limine.

(b) Since the petitioner is trying to enforce the contractual obligation, the remedy of the petitioner is only to approach the Civil Court and not before

this Court by filing the writ petition under Article 226 of The Constitution of India.

(c) It is not correct to say that sufficient stocks were not available with the respondents to supply the same to the petitioner. The respondents had sufficient quantity of molasses and the same could not be supplied in view of the fact that the balance amount had been paid by the petitioner belatedly.

(d) The petitioner having violated the terms and conditions of the sale order, cannot be heard to say that the respondents shall supply molasses even after the petitioner failed to fulfill the terms and conditions.

7. On the basis of the above pleadings and the submissions made by the learned Senior Counsel appearing for the petitioner and the learned Government Pleader, Pondicherry, appearing for the respondents, now it has to be seen whether the petitioner is entitled for the relief that has been sought for in the writ petition.

8. The undisputed facts are:-

(i) 7.2.2008 - sale tender notice was issued by the respondents with condition forms.

(ii) On 22.2.2008 - tender forms had been submitted by the petitioner along with earnest money deposit.

(iii) On 3.3.2008 - sale order was issued by the respondents in favour of the petitioner.

(iv) On 5.3.2008 - demand draft was paid by the petitioner in favour of the respondents towards the cost of 5,000 MTs of molasses at the rate of Rs.2,050 per MT.

(v) On 7.3.2008 - No objection certificate was issued by the Deputy Commissioner of Excise (Government of Pondicherry) for lifting the molasses.

(vi) On 25.4.2008 - Letter from the petitioner to the respondents requesting the short supply of 8.340 MTs along with the balance quantity of 5411.210 MTs.

(vii) On 10.6.2008 - Letter from the petitioner requesting the respondents to deliver the molasses enclosing a demand draft for Rs. 92,50,000.

(viii) On 12.6.2006 - Receipt had been issued by the respondents towards the payment made by the petitioner.

(ix) On 25.6.2008 - Communication by the first respondent to the petitioner enclosing demand draft for Rs.92,50,000, rejecting the request to supply balance quantity of molasses as agreed previously.

9. But, however, the facts in dispute are:-

That the petitioner had not paid the amounts as per the sale order, but, however, paid only for lifting 5,000 MTs of molasses and not for the full quantity of 10,000 MTs of molasses.

10. Before dealing with the merits of the matter, it has to be seen whether the writ petition is maintainable on the two grounds raised by the learned Government Pleader, Pondicherry, appearing for the respondents. On the ground of maintainability, the learned Government Pleader, Pondicherry, would submit that (i) since the respondents is a society, writ will not lie and (ii) since the matter in issue is a contractual obligation, the remedy of the petitioner is to approach the Civil Court. On those two grounds, the learned Government Pleader, Pondicherry, made elaborate arguments.

11. As far as the first count is concerned, it is contended that since the first respondent is a society registered under the Co-operative Societies Act, as per the Full Bench decision of this Court, writ will not lie. Learned Government Pleader, Pondicherry would further submit that no public authority is involved in the matter in issue and hence, the writ will not lie.

12. Per contra, learned Senior Counsel appearing for the petitioner would submit that the first respondent is a State run co-operative sugar mill under Article 12 of the Constitution of India and hence, it is amenable to writ jurisdiction. Learned Senior Counsel further submits that even though the Government of Pondicherry owns one share, the value of one share is Rs.45,40,75,000, whereas the non-producer members even though own 46 shares, the value is only Rs.13,50,000 and the purchaser members even though own shares to the tune of 12,325, the value is Rs.3,70,00,000 only. Thus, according to the learned Senior Counsel appearing for the petitioner, out of the total share capital of Rs.49,24,25,000, the share capital owned by the Government of Pondicherry is Rs.45,40,75,000, which works out to about 98.1% of the

total share capital. Further, according to the learned Senior Counsel appearing for the petitioner, the term of the committee expired on 31.7.1989 and the first respondent society is being administered by the Administrator appointed by the Government of Pondicherry. Hence, according to the learned Senior Counsel, the writ will lie against the first respondent.

13. I have carefully considered the submissions made by the learned Senior Counsel appearing for the petitioner and the learned Government Pleader, Pondicherry, appearing for the respondents.

14. The question whether a writ will lie against the co-operative societies or not came into consideration before the Full Bench of this Court in the year 2001 and thereafter in the year 2006. The original thinking was that writ will not lie against the co-operative societies. However, the latter Full Bench of this Court has taken a view that a writ will lie under certain circumstances. The same is reported in *K.Marappan vs. Deputy Registrar of Co-operative Societies, Namakkal and another* [supra]. In the said judgment, their Lordships have elaborately considered several judgments including the case in *Ajay Hasia and others vs. Khalid Mujib Sehrewardhi and others, AIR 1981 SC 487 : (1981) 1 LLJ 103 SC : (1981) 1 SCC 722 : (1981) 2 SCR 79*, wherein the Hon'ble Apex Court had laid down the circumstance under which a writ will lie. The test laid down in the above said case is extracted here under:-

> *"(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.*
>
> *(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.*
>
> *(3) It may also be a relevant factor .... whether the corporation enjoys monopoly status which is State-conferred or State-protected.*

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) 'Specifically', if a department of Government is transferred to a Corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government".

The Court observed as follows:

"31. The tests to determine whether a body falls within the definition of 'State' in Article 12 laid down in Ramana with the Constitution Bench imparimatur in Ajay Hasia form the keystone of the subsequent jurisprudential superstructure judicially crafted on the subject which is apparent from a chronological consideration of the authorities cited."

15. The Full Bench of this Court thus after elaborately considering several judgments of this Court as well as the Hon'ble Apex Court, has finally held in para 21, as follows:-

21. From the above discussion, the following propositions emerge:

(i) If a particular co-operative society can be characterised as a 'State' within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be 'an Authority' within the meaning and for the purpose of Article 226 of the Constitution. In such a situation, an order passed by a society in violation of the bye-laws can be corrected by way of writ petition.

(ii) Applying the tests in Ajay Hasia vs. Khalid Mujib Sehrewardi (supra) it is held that a co-operative society carrying on banking business cannot be termed as 'an

instrumentality of the State' within the meaning of Article 12 of the Constitution.

(iii) Even if a society cannot be characterised as a 'State' within the meaning of Article 12 of the Constitution, a writ would lie against it to enforce a statutory public duty cast upon the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a 'person' or 'an authority' within the meaning of Article 226 of the Constitution and what is material is the nature of the statutory duty placed upon it and the Court will enforce such statutory public duty. Although it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity.

(iv) A society, which is not a 'State' would not normally be amenable to the writ jurisdiction under Article 226 of the Constitution, but in certain circumstances, a writ may issue to such private bodies or persons as there may be statutory provisions which need to be complied with by all concerned including societies. If they violate such statutory provisions, a writ would be issued for compliance of those provisions.

(v) Where a Special Officer is appointed in respect of a co-operative society which cannot be characterised as a 'State', a writ would lie when the case falls under clauses (iii) and (iv) above.

(vi) The bye-laws made by a co-operative society registered under the Tamil Nadu Co-operative Societies Act, 1983 do not have the force of law. Hence, where a society cannot be characterised as a 'State', the service conditions of its employees governed by its bye-laws cannot be enforced through a writ petition.

(vii) In the absence of special circumstances, the Court will not ordinarily exercise power under Article 226 of the Constitution of India when the Act provides for an alternative remedy.

(viii) The decision in M.Thanikkachalam Vs. Madhuranthagam Agricultural Co-operative Society (supra), is no longer good law, in view of the decision of the seven-Judge Bench of the Supreme Court in Pradeep Kumar Biswas Vs. Indian Institute of Chemical Technology (supra) and the other decisions referred to here before."

16. While applying the above tests laid down by the Hon'ble Apex court as well as this Court, it emerges that if the financial assistance of the State is so much as to meet almost the entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character. In the case on hand, as rightly pointed out by the learned Senior Counsel appearing for the petitioner, the share capital of the Government of Pondicherry is Rs.45,40,75,000, which is 98.1% of the entire share capital. Furthermore, now the committee has been dissolved and an Administrator has been appointed for the society. In view of those facts, I am of the considered opinion that the first respondent society could be called as a "State" within the meaning of Section 12 of the Constitution of India and the writ would lie against the first respondent.

17. On the second count, it has to be seen whether the petitioner has got any efficacious, effective and alternative remedy, except approaching the writ jurisdiction. In the case on hand, it is the case of the petitioner that respondents 1 to 3 are refusing to release the balance quantity of molasses as per the sale order dated 3.3.2008. But, on the other hand, it is the case of the respondents that the entire amount has not been paid by the petitioner within the time prescribed and hence supply not made. It has to be seen, whether for the redressal expressed by the petitioner, filing of the suit would be an efficacious, effective and alternative remedy. In my considered opinion it may not. The reason is that the petitioner is engaged in the business of exporting molasses to various countries and if the petitioner is driven to the Civil Court for release of the balance quantity of molasses, then the petitioner could get the remedy in the Civil Court only after a couple of years. In the meantime, as contended by the learned Senior Counsel appearing for the petitioner, the customers in various countries would squeeze the petitioner for fulfillment of the commitments made by the petitioner. Furthermore, the petitioner, at best, would be entitled for damages and not the specific relief of enforcement of the sale order. Hence, I am of the considered opinion, considering the above relevant factors, that the remedy of the petitioner under the given

circumstance would be only to avail the writ jurisdiction and not by way of filing the suit before the Civil Court. Even though, it is a matter of contractual obligation, it cannot be said that totally the petitioner cannot seek the relief inviting the jurisdiction of the Writ Court. Thus, the argument made by the learned Government Pleader, Pondicherry, appearing for the respondents have to be rejected.

18. Then the matter has to be considered on merits and it has to be decided whether the petitioner is entitled for the relief which he has sought for in the writ petition.

19. It is not in dispute that by the sale order dated 3.3.2008, the first respondent had agreed to supply 10,000 MTs of molasses. It is also not in dispute that the petitioner had paid the earnest money deposit to the first respondent to the tune of Rs.10,00,000. As per the sale order, the petitioner has to lift 5,000 MTs of molasses on or before 31.3.2008 and the balance of 5,000 MTs of molasses on or before 31.7.2008. The petitioner, in fact paid an amount of Rs.1,00,25,000 by way of demand draft to the first respondent, which is the cost of 5,000 MTs of molasses scheduled to be lifted by them by 31.3.2008. It is the case of the petitioner that at the relevant point of time, the first respondent had in its possession only about 3,000 MTs of molasses. By 17.4.2008, the petitioner had lifted 4,588.790 MTs of molasses and the balance of 5,000 MTs of molasses could not be lifted, according to the petitioner, due to insufficient stock of molasses with the first respondent. Though counter affidavit had been filed disputing the said fact, in para 8 of the counter affidavit, the first respondent has stated that as on 31.5.2008, the first respondent mill had 4,058.726 MTs of molasses. This will clearly indicate that the first respondent did not have enough stock of molasses to be lifted by the petitioner. Furthermore, there is only a bald denial for the averment that the first respondent had only about 3,000 MTs of molasses at the relevant point of time. Yet another fact that has to be seen is that the petitioner paid the balance amount of Rs.92,50,000 by way of demand draft to the first respondent along with a letter dated 10.6.2008 and the same has been received by the first respondent and a receipt dated 12.6.2008 was issued by the first respondent. The demand draft has already been encashed by the first respondent. However, the said amount has been returned to the petitioner after taking demand draft by a communication to the petitioner dated 26.6.2008. If really the first respondent was serious about the non-

payment of the amount by the petitioner in respect of the lifting of the balance of 5,000 MTs of molasses, there is no reason for accepting the payment made by the petitioner and passing on the receipt for the said amount, encashing the demand draft and later returning it to the petitioner by taking demand draft in favour of the petitioner. These facts will clearly establish that the first respondent was neither in possession of the required quantity for the supply of balance molasses nor they are serious about the non-payment of the total amount for the entire 10,000 MTs of molasses on one count. This makes me to believe the statement made by the petitioner that enough stocks were not available with the first respondent for supplying the same to the petitioner and also it makes me to believe that in view of the rise (*sic)* in price, the first respondent is now taking a plea that since the petitioner had not paid the entire amount at one count, the first respondent refused to supply the balance of 5,000 MTs of molasses to the petitioner.

20. Considering the above facts and circumstances, I am of the considered opinion, that the plea put forth by the respondents has to be rejected *in toto* and the petitioner is entitled for the relief, which he has sought for in this writ petition.

21. In fine, the writ petition stands allowed and the first respondent is directed to supply the balance of molasses to the petitioner as per the sale order dated 3.3.2008. No order as to costs. Consequently, connected petitions are closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.8.2008

CORAM

THE HONOURABLE Mr. JUSTICE N. PAUL VASANTHAKUMAR

W. P. No. 16822 of 2008 and

M. P. No. 1 of 2008

G. Vasantha ... Petitioner

Vs.

1. The Disciplinary Authority/President,
   Health Staff Co-op Credit Society Ltd., No. P 428,
   3/A St. Francis Street,
   Karaikal 609 602.

2. The Deputy Registrar (Planning),
   Co-operative Department,
   VVP Nagar,
   Thattanchavady, Puducherry ..... Respondents

When the directions of the Court are not adhered, it is open to the petitioner to file a contempt petition for non-compliance of the order. A writ petition cannot be maintained to carry out the direction of the Court.

Advocate appeared :

For Petitioner ... Mr. K. Venkataramani, S.C.,
For Mr. M. Muthappan

Prayer: Writ petition filed under Article 226 of Constitution of India praying for a writ of certiorari, calling for the records of the 1st respondent in connection with letter No. F1/HSCCS/KKL/DP/2008-09/593 dated 7.7.2008 and quash the same and direct the respondents to pay subsistence allowance to the petitioner from September 2006 to till the disposal of the disciplinary proceedings.

JUDGMENT

The prayer in the writ petition is to quash the order dated 7.7.2008 and direct the respondents to pay subsistence allowance to the petitioner from September 2006 to till the disposal of the disciplinary proceedings.

2. The grievance of the petitioner is that on the earlier occasion, the petitioner filed a writ petition in W. P. No. 4267 of 2005 (*page 63 ibid*), wherein, the learned Single Judge in Paragraph No. 4 has held as follows:-

> "The writ petitioner was under suspension during pendency of the enquiry proceedings and she shall continue to be so till the completion of the enquiry proceedings. If the petitioner is entitled to payment of subsistence allowance during the pendency of the enquiry, her employer is bound to pay that to her. The writ petition is disposed of accordingly. Consequently, the connected WPMPs are also closed."

3. As against the said order passed by the learned single Judge, the respondents filed writ appeal in W. A. No. 1116 of 2006 and by order dated 21.4.2008 (*page 117 ibid*), the Division Bench dismissed the writ appeal by observing as follows:

> "Considering the facts and circumstances of the case, the writ appeal is liable to be dismissed on the ground of non-compliance of the order passed by the learned single Judge of this Court, in his order dated 02.12.2005 and also for not carrying out the instructions given by the Deputy Registrar (Planning) in his order dated 21.01.2005 to change the Presenting Officer as he is a witness. Therefore, on these two grounds, the writ appeal fails and is dismissed. The order of the learned Single Judge of this Court dated 2.12.2005 is confirmed. The appellant and the officers concerned are directed to comply with the order passed by the learned single Judge of this Court dated 2.12.2005 within a period of six months from the date of receipt of a copy of this order.
>
> Subject to the above direction, the writ appeal is dismissed."

4. Since there is a direction by the Division Bench to comply with the order passed by the learned Single Judge dated 2.12.2005 within a period of six months, the writ petition is not maintainable. If the petitioner is aggrieved for the non-compliance of the said order, it is open to the petitioner to file contempt petition against the second respondent for non-payment of subsistence allowance.

5. In view of the above, the writ petition is dismissed. However, liberty is given to the petitioner to initiate appropriate contempt proceedings. No costs. Consequently, connected miscellaneous petition is also dismissed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.8.2009

CORAM

THE HONOURABLE Mr. JUSTICE M.M. SUNDRESH

W. P. No. 582 of 2002

K. Ramadoss ..... Petitioner

Vs.

1. The President,
   Thirunallar Village Co-operative
   Agricultural Credit Society Ltd., No. P. 38,
   Thirunallar,
   Pondicherry State.

2. The Deputy Registrar of Co-operative
   Societies, Karaikal,
   Pondicherry State

3. Addl. District Court,
   Karaikal. .....Respondents

The petitioner was appointed as a driver. The tractor which was driven by him was sold. In pursuant to the same, the first respondent has sent a memo to the petitioner that in view of the financial constraint, it has been decided to retrench the petitioner from service. But however, an option was given to the petitioner to accept the post of salesman which is available with the society. In pursuant to the said memo, the petitioner gave a representation that he was willing to accept the post as salesman with a request that his existing scale of pay may be considered. The society on consideration of the said letter has appointed the petitioner as a salesman by fixing this scale of pay.

The petitioner, not having satisfied with the said order has raised a dispute before the second respondent seeking an enhanced scale of pay as well as seniority from the date of his appointment. The claim of the petitioner was rejected by the second respondent which was confirmed by the third respondent.

The petitioner submitted that he was made to give the consent letter due to the threat of the first respondent that he would be retrenched from service. Held, the petitioner after having given the consent letter cannot turn around and challenge the proceedings by which he is appointed as a salesman. It is seen that the petitioner gave the said consent letter in order to avoid the retrenchment. A perusal of the order of the first respondent appointing the petitioner as a salesman would clearly indicate that it is a fresh order of appointment. It is not disputed by the petitioner that he has been appointed with all his seniority. Therefore, the petitioner cannot challenge the said order at a belated stage. After given his consent to escape the order of retrenchment, the contention of the petitioner is that he has been forced to give such a letter cannot be accepted, since the petitioner has accepted the said order and acted on it. The writ petition was dismissed.

Advocates appeared:

For Petitioner	:	Mr. A. Muthukumar
For Respondents	:	Mr. K. Rajashrinivas for R-1
		Government Pleader for R2 & R3

PRAYER: This writ petition has been filed under 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records of the second respondent made in Dispute No.15/1999 dated 1.8.2000 and that of the third respondent made in C.M.A.No.7 of 2000 dated 16.7.2001, quash the same and direct the first respondent to post the petitioner to the post of Junior Clerk with all monetary benefits.

JUDGMENT

The petitioner herein was appointed as a driver in the year 1987 with the first respondent. Thereafter, his services were regularized on 1.4.1991. The tractor which was driven by the petitioner was sold by the first respondent on 23.3.1995. In pursuant to the same the first respondent has sent a memo dated 31.8.1996 to the petitioner that in view of the financial constraint, it has been decided to retrench the petitioner from service. But however, an option was given to the petitioner to accept the post of salesman which is available with the first respondent. In pursuant to the said memo, the petitioner gave a representation that he is willing to

accept the post as salesman with a request that his existing scale of pay may be considered.

2. After receipt of the said representation dated 7.9.1996 an order was passed on 19.9.1996, fixing scale of pay and the petitioner was directed to give an unconditional acceptance letter. In pursuant to the same, the petitioner gave an unconditional acceptance letter on 23.9.1996 with a request to consider the earlier scale of pay with seniority. The first respondent on consideration of the said letter dated 23.9.1996 has appointed the petitioner as a salesman by fixing this scale of pay.

3. The petitioner, not having satisfied with the said order has raised a dispute before the second respondent seeking an enhanced scale of pay as well as seniority from the date of his appointment from 1987 onwards. According to the petitioner that if the said seniority is taken into consideration, he would be entitled to get the post of Clerk on higher pay and allowances. The second respondent has rejected the said request and the said order of the second respondent was also confirmed by the third respondent. The second respondent has granted the request for payment of revised scale as fixed on 1.4.1933 and directed the arrears to be paid to the petitioner. However, the request of the petitioner for counting his seniority of his services rendered as driver was rejected. Challenging the same, above writ petition has been filed.

4. The learned counsel for the petitioner submitted that the petitioner was made to give the consent letter due to the threat of the first respondent that he would be retrenched from service. According to the learned counsel, when the petitioner is the senior person, the other junior employees ought to have been retrenched. It is further submitted that the petitioner having been appointed from the year 1987 his seniority cannot be rejected and even in his representations he has continued his request for the seniority. Therefore, the leaned counsel submitted that the orders passed by the respondents 2 and 3 will have to be set aside and the respondents herein will have to be directed to re-fix the seniority of the petitioner by taking into consideration of the services rendered by the petitioner as a driver from the year 1987 onwards.

5. Per contra, the learned counsel for the first respondent submitted that the petitioner gave his consent in order to avoid the retrenchment against him. Therefore, the petitioner after having accepted the post of

salesman by giving the consent letter cannot go back and challenge the said order. It is further submitted that a person who is the beneficiary of the order and who has accepted the same cannot be allowed to challenge the same thereafter. The learned counsel submitted that the petitioner has been appointed as a salesman and there is no question of counting his seniority and appointing him as a clerk.

6. As rightly contended by the learned counsel for the first respondent, the petitioner after having given the consent letter cannot turn around and challenge the proceedings by which he is appointed as a salesman. It is seen that the petitioner gave the said consent letter in order to avoid the retrenchment. A perusal of the order of the first respondent appointing the petitioner as a salesman would clearly indicate that it is a fresh order of appointment. It is not disputed by the petitioner that the petitioner has been appointed with all his seniority. Therefore, the petitioner cannot challenge the said order at a belated stage. After given his consent to escape the order of retrenchment, the contention of the petitioner is that he has been forced to give such a letter cannot be accepted, since the petitioner has accepted the said order and acted on it. Therefore, this court is of opinion that the orders passed by the respondents 2 and 3 did not suffer any irregularity warranting interference. Accordingly, this writ petition is dismissed. No costs. Consequently, W.M.P.No.893 of 2002 is dismissed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 2.9.2009

CORAM

THE HONOURABLE Mr. JUSTICE S. NAGAMUTHU

W. P. No. 24125 of 2008

B. Sujatha
Rep. by her Power of Attorney,Mr. Baskar A
No. 60, New Arch Street,
Thiruvarur Road,
Nagapattinam. ..... Petitioner

Vs.

1.The Regional Officer,
Department of Shipping, Road Transport
and Highways,
No.C-1-A, Rajaji Bhavan, Besant Nagar,
Chennai -90.

2. The Chief Secretary,
Government of Pondicherry,
Secretariat, Pondicherry.

3. The Collector (Revenue),
Karaikal District,
Union Territory of Pondicherry.

4. The Chief Engineer,
National Highways,
Lal Bahadur Shastri Street,
Pondicherry.

5. The Executive Engineer,
Public Works Department & National Highways,
Church Street, Karaikal Town,
Union Territory of Pondicherry.

6. The Town Planning Authority,
Kamaraj Building,
Karaikal.

7. The General Manager (Retail),
South Barath Petroleum Corporation Limited,
No. 1 Ranaganathan Garden,
Anna Nagar, Chennai – 40.

8. The Managing Director,
The Pondicherry State Co-operative
Consumers Federation Limited,
(CONFED), Pondicherry. ..... Respondents

The grievance of the petitioner is that the location of the petrol and diesel retail out-let of the Pondicherry State Co-operative Consumers Federation is against the provisions of the Petroleum Act, 1934 as the lands wherein the out-let has been established are all Gramanatham lands and the same cannot be used for the said purpose.

If it is the case of the petitioner that the eighth respondent is running the retail out-let without following the statutory provisions and without required permission from the first respondent, if he is interested in the public, he can always workout his remedies by initiating proceedings by way of public interest litigation. The petitioner has not stated anywhere in the affidavit as to what is his right which is affected which he seeks to protect.

Writ petition cannot be entertained and is dismissed.

Advocates appeared :

For Petitioner	:	Mr. V. Balakrishnan
For respondents	:	Mr. N. Mala, Government Advocate, Puducherry For R 2, 3, 4 & 6

Mr. R. Yashodvardhan, SC
For Mr. K. Raja Srinivas for R8

Mr. Krishna Srinivas for
M/s. S. Ramakrishnan & Associates
for R7

No Appearance for R 1 and 5

Petition filed under Article 226 of the Constitution of India, for issuance of a writ of mandamus, directing the respondents 1 to 7 to de-energise 8th respondent bunk situated at S. Nos. 118/2A, 118/2B, 118/2D and 118/2E, No. 37, Keelavanjore, Vanjore Village, Karaikal District, Pondicherry.

JUDGMENT

The petitioner is a retail seller of petrol and diesel. The eighth respondent, which is a co-operative society, has established a petrol and diesel retail out-let in question as a dealer of the seventh respondent. The said out-let is situated in S. Nos. 118/2A, 118/2B, 118/2D and 118/2E at No. 37, Keelavanjore, Vanjore Village, Karaikal District, Pondicherry. The grievance of the petitioner is that the location of the said petrol and diesel retail out-let is against the provisions of the Petroleum Act, 1934 as the lands wherein the out-let has been established are all Gramanatham lands and the same cannot be used for the said purpose. It is further stated that no permission from the first respondent as required has been obtained. In this regard, the petitioner has made a representation. But, so far no action has been taken on the same is his grievance.

2. The learned counsel appearing for the eighth respondent would raise a preliminary objection. According to him, the out-let has been functioning from the year 2004 onwards and he has complied with all the legal requirements. But, however, he would submit that the petitioner has got no locus standi to maintain this writ petition.

3. The learned counsel appearing for the seventh respondent supported the stand taken by the learned counsel appearing for the eighth respondent.

4. Since question of maintainability has been raised by the learned senior counsel appearing for the eighth respondent, I deem it appropriate to consider the said question first.

5. According to the learned senior counsel appearing for the eighth respondent, the petitioner has got no personal interest in the transaction and therefore, the writ petition cannot be maintained. In my considered opinion, if it is the case of the petitioner that the eighth respondent is running the retail out-let without following the statutory provisions and without required permission from the first respondent, if he is interested in the public, he can always workout his remedies by initiating proceedings by way of public interest litigation. In this writ petition, the petitioner has not stated anywhere in the affidavit as to what is his right, which is affected, which he seeks to protect. Thus, for the relief sought for in the writ petition that too on the grounds raised in the affidavit, the writ petition cannot be entertained by this Court. If once I hold that the petitioner has got no locus standi to maintain the writ petition, I cannot go into the other grounds. All such grounds are left open for the petitioner to work out his remedies in the manner known to law.

6. In the result, the writ petition fails and the same is accordingly dismissed. Consequently, M. P. No. 1 of 2008 is closed. No costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 14.9.2009

CORAM

THE HONOURABLE Mr. JUSTICE M.M. SUNDRESH

W.P. No. 22828 of 2008

E. Gunasekaran ... Petitioner

Vs.

The Managing Director,
Pondicherry Co-operative Milk
Producers' Union Ltd.,
Kurumampettai,
Puducherry – 605 009. ... Respondent

A decision made by the respondent which is a policy one cannot be interfered unless the same is tainted with malafides and based upon irrelevant considerations. When the respondent has taken a conscious policy decision and come to the conclusion, the petitioner cannot challenge the same since he is not the person aggrieved. The petitioner cannot insist that a particular condition should be included in the notification as a tender condition.

The petitioner has no legal right to insist that a particular condition should be incorporated and the petitioner is also not able to establish any arbitrariness, irregularity or malafide in a policy decision made by the respondent.

Writ petition was dismissed.

Case laws referred:

(i) Swamidhas vs. the Chief Engineer, National Highways, 2001 (4) CTC 257 ;

(ii) Directorate of Education vs. Educomp Datamatics Ltd., 2004 (3) CTC 295;

(iii) Sri Amman Associates vs. State of Tamil Nadu, 2005 (4) CTC 399.

Advocates appeared:

For Petitioner	...	Ms. S. Hemalatha
For Respondent	...	Mr. L. Swaminathan Special Government Pleader, Puducherry.

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records for the tender proceedings pursuant to notification dated 10.9.2008 on the file of the Pondicherry Co-operative Milk Producers' Union Ltd., Puducherry – 605 009, inviting tenders for engaging vehicle of transport / distribution of milk and milk products to various centres, quash the same and direct the respondent to invite tenders including for insulated vehicles.

JUDGMENT

The petitioner herein has filed the present petition seeking a writ of certiorarified mandamus calling for the records of the tender proceedings pursuant to the notification dated 10.9.2008 issued by the respondent herein.

2. The case of the petitioner is that the notification has been issued by the respondent on 10.9.2008 calling for tenders for the distribution of milk through the vehicles. However, in the said notification there is no condition to the effect that the insulated vehicles alone should be used. Therefore, the grievance of the petitioner is that without including the said condition that the insulated vehicles alone should be used for carrying milk the notification is bad in law and therefore, the tender should not be allowed to proceed with.

3. A counter affidavit has been filed by the respondent stating that the entire writ petition is misconceived in law and facts. The petitioner and his wife were the successful tenderers for the earlier period having granted three routes each. However, they were not able to use the routes which have been allotted to them since they did not have the adequate insulated vehicles. Hence, number of opportunities have been given to the petitioner and his wife followed by the show cause notices. Therefore, it is stated in the counter affidavit that having failed to produce sufficient insulated

vehicles the petitioner cannot file the present writ petition. Moreover the jurisdiction of this Hon'ble High Court to invoke power under Article 226 of the Constitution of India is very limited since the decision made by the respondent is one of a policy. According to the learned counsel, the decision has been taken to dispense with the insulated vehicles in view of the fact that faster vehicles are used and chilling plants have been constructed thereafter. Therefore, the respondent has thought it fit to remove the said condition since the same is unnecessary and unwarranted. According to the present system, the supplies are made faster and the said decision has been taken in view of the fact that number of routes have been increased. Therefore, the said decision taken based upon the relevant materials cannot be interfered with under Article 226 of the Constitution of India.

4. As rightly contended by the learned counsel for the respondent a decision made by the respondent which is a policy one cannot be interfered unless the same is tainted with malafides and based upon irrelevant considerations. When the respondent has taken a conscious policy decision and come to the conclusion, the petitioner cannot challenge the same since he is not the person aggrieved. The petitioner cannot insist that a particular condition should be included in the notification as a tender condition. Moreover, as seen from the counter affidavit the petitioner himself could not produce sufficient vehicles for the earlier period. In the judgment reported in *Swamidhas vs. the Chief Engineer, National Highways, 2001 (4) CTC 257* the Hon'ble Division Bench was pleased to observed as follows:

> "3. In contractual matters, the jurisdiction of the High Court under Article 226 of the Constitution of India is very limited. The learned counsel for the petitioners cited the judgment in *R.D. Shetty vs. International Airport Authority of India, AIR 1979 SC 1628* in support of their argument that in Governmental contracts, the power under Article 226 of the Constitution can be exercised if the action of the authorities is arbitrary as such arbitrary action violates the Fundamental Right of Equality guaranteed under Article 14 of the Indian Constitution. There cannot be any dispute with regard to the said legal proposition. In all the latter judgments of the Apex Court, the said ratio decidendi has been followed. But the question is whether imposition of the above condition No. 5 is

arbitrary. We are conscious of the fact that the appellants are being deprived of their rights to bid even at the threshold as they are denied the tender schedules. Keeping that in mind, we proceed further to test the arbitrariness or otherwise of the above condition No. 5.

4. Technical report was filed by the second respondent pursuant to the requisition by this Court and we perused the same. It is stated that there are 100 central mixing plants and pavers owned by the individuals / companies, and they are currently in use throughout the State. This is not denied. By this, it is made out that the imposition of condition is not made to suit only one or a few individuals. In so far as the technical aspects are concerned, it is stated that this kind of machinery is being used all over India and that in fact, the State of Tamil Nadu is a forerunner in using this machinery ever since early 1960's in Madras city roads, and that the quality of the said works has been good and lasted long. Undisputedly, the laying of roads by using central mixing plants and pavers ensures long term durability and serviceability. It is also stated that by this process the recurring maintenance expenditure is minimized thereby reducing the financial burden to the Government. That apart, the technical specification relating to this user of machinery for laying the superior quality of roads is followed throughout India. This was pursuant to the specifications for roads and bridge works issued by M.O.S.T. published by the Indian Roads Congress, which is an apex body in so far as standards and specifications for roads and bridges are concerned. In Clause 504 of the Technical specification, it has been stipulated that 'Bituminous macadam shall be prepared in a Hot Mix Plant of adequate capacity and capable of yielding a mix of proper and uniform quality with thoroughly coated aggregates'. When this was put to the learned counsel for the appellant, they fairly agreed that the machinery which has been specified and which is being used, certainly gives a superior quality of roads. Then, the limitation of this Court is narrowed down. Now, the point to be considered is as to whether there is any nexus for imposition of condition of ownership or not.

5. Learned counsel for the appellants submits that there is no nexus for imposition of condition for ownership of machinery even at the threshold, at the time of furnishing the tender schedule and that it is suffice if the readiness and willingness of possession of machinery is shown at the time of entering into contract if the bid is accepted. Mr. V. Prakash, learned counsel, also submits that the length of the road to be laid is only 3 kms., costing Rs. 3,90,000 and the cost of setting up the machinery will be more than the said tender work and that it is not at all feasible and viable for the contractors owning the machinery to execute the above work. That is not the concern of this Court to examine. Whether the acceptance of work and execution thereof is feasible and viable, is the concern of the party who makes a bid. The authority tendering the work is only concerned about the execution and the money payable therefor. In every contract, there will be clauses for due execution of the work and the consequences in default thereof. The laying of public road is important and urgent. Time schedule is three months from the date of awarding of contract. The authorities cannot and need not wait for the contractors like appellants to acquire the machinery by way of lease from other owners. In fact, that is a contingent situation. Even after contract is struck, there is no guarantee that machinery will be provided and if provided, as to the quality and working condition of the machinery. The public work cannot wait, risking such contingencies. As such, the authorities have rightly felt that there should be an imposition of ownership of the machinery, as if such machinery is at the ready disposal of such successful contractor/s they can readily start the work and successfully complete the same within the time schedule. What is more, in view of numerous such contractors owning machinery, by no stretch of imagination can it be said that the imposition of condition No. 5 is a tailor-made to suit one or a few individuals. In the circumstances, we find that the imposition of condition No. 5 has got a nexus with the object to be achieved, and that it is neither arbitrary nor unreasonable an there is no infringement of any Fundamental Right of the appellants. In the circumstances, the complaint of the appellants that they

were unreasonably deprived of supply of tender schedules, cannot be countenanced and the writ appeals fail and are accordingly dismissed. No costs. Consequently, C.M.Ps are also dismissed."

5. The Hon'ble Apex Court in the judgment reported *Directorate of Education vs. Educomp Datamatics Ltd., 2004 (3) CTC 295* has observed as follows:

"9. It is well settled now that the Courts can scrutinize the award of the contracts by the Government or its agencies in exercise of its powers of judicial review to prevent arbitrariness or favouritism. However, there are inherent limitations in the exercise of the power of judicial review in such matters. The point as to the extent of judicial review permissible in contractual matters while inviting bids by issuing tenders has been examined in depth by this Court in *Tata Cellular vs. Union of India, 1994 (6) SCC 651*. After examining the entire case law the following principles have been deduced.

"94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative Body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by malafides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

10. In *Air India Limited vs. Cochin International Airport Limited, 2000 (2) SCC 617*, this Court observed:

"The award of a contract, whether it is by a private party or by a public Body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bonafide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision-making process and interfere if it is found vitiated by malafides, unreasonableness and arbitrariness."

> 11. This principle was again restated by this Court in *Monarch Infrastructure (P) Ltd. vs. Commissioner, Ulhasnagar Municipal Corporation and others, 2000 (5) SCC 287*. It was held that the terms and conditions in the tender are prescribed by the Government bearing in mind the nature of contract and in such matters the authority calling for the tender is the best judge to prescribe the terms and conditions of the tender. It is not for the Courts to say whether the conditions prescribed in the tender under consideration were better than the one prescribed in the earlier tender invitations.
>
> 12. It has clearly been held in these decisions that the terms of the invitation to tender are not open to judicial scrutiny the same being in the realm of contract. That the Government must have a free hand in setting the terms of the tender. It must have reasonable play in its points as a necessary concomitant for an administrative body in an administrative sphere. The Courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory, malafide or actuated by bias. It is entitled to pragmatic adjustments which may be called for by the particular circumstances. The Courts cannot strike down the terms of the tender prescribed by the government because it feels that some other terms in the tender would have been fair, wiser or logical. The Courts can interfere only if the policy decision is arbitrary, discriminatory or malafide."

6. The said decision of the Hon'ble Apex Court was also followed by a learned single Judge of the Hon'ble High Court reported in *Sri Amman Associates vs. State of Tamil Nadu, 2005 (4) CTC 399* wherein the learned single Judge was pleased to hold that the Court should not interfere with the terms of the tender notice unless the same is shown as arbitrary, discriminatory or tainted with malafides. On a perusal of the above said judgment, this Court is of the opinion that the ratio laid down by the judgment referred above is squarely applicable to the present case. The petitioner has no legal right to insist that a particular condition should be

incorporated and the petitioner is also not able to establish any arbitrariness, irregularity or malafide in a policy decision made by the respondent.

7. Under those circumstances, the writ petition is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.10.2009

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P. No. 20283 of 1999

V. Balakrishnan ..... Petitioner

Vs.

1. The Registrar Co-operative Societies,
   Pondicherry.

2. Pondicherry Co-operative Sugar Mills Ltd.,
   Lingareddipalayam,
   Pondicherry -1. ..... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus or any other appropriate writ, direction or order, directing the respondents to consider the claim of the petitioner for promotion to the post of Office Manager/Administrative Officer in the second respondent Sugar Mill.

According to the petitioner, he was fully eligible for the post of Office Manager/Administrative Officer, since he satisfies the qualifications stipulated in the recruitment rules. The petitioner submitted a representation staking his claim. As could be seen from the counter affidavit that the department / respondent does not dispute that the petitioner's suitability for the post and there is no dispute regarding the petitioner's qualifications, for being considered for promotion to the post of Administrative Officer.

In any event the respondents cannot refuse to take into consideration the representations submitted by the petitioner and allow the matter to remain in cold storage. Hence the writ petition is allowed as prayed for and the respondents are directed to consider the claim of the petitioner for promotion to the post of Administrative Officer.

Writ petition was allowed.

Advocates appeared :

For Petitioners : Mr. R. Ravi

For Respondent : Mr. T. Murugesan
Government Pleader,
Pondicherry - for R-1

Mr. R. Thirugnanam,
Government Advocate
for R-2

JUDGMENT

The prayer in the above writ petition is for issuance of writ of mandamus to direct the respondents to consider the claim of the petitioner for promoting him to the post of Office Manager / Administrative Officer in the second respondent sugar mill, Lingareddipalayam, Pondicherry.

2. Originally the petitioner was selected and appointed as Superintendent trainee in the second respondent mill on 1.7.1983. Thereafter he was re-designated as Head Clerk on 13.3.1985 and upgraded to the post of supervisor from 1.6.1986. The petitioner was awarded Grade-B on 18.7.1992 and he has a blemish less service record. As on date of filing the writ petition, he had put in 16 ½ years of service. The petitioner was also granted Selection Grade. The next avenue or promotion from the post of Superintendent in co-operative sugar mill is to post of Officer Manager / Administrative Officer. According to the petitioner, the nomenclature adopted by the second respondent sugar mill for the said post is Administrative Officer.

3. It is seen from the recruitment rules for the post of Administrative Officer, the post could be filled up by deputation, failing which by promotion, failing both by direct recruitment. The post is a selection post and the educational qualification for the post is graduate from any recognized university with 10 years experience in a supervisory capacity in an industrial concern preferably in sugar factory or under Government. MBA / Law degree shall be preferable. In terms of Rule 11 in the case of recruitment by promotion / deputation, by deputation from the post of Deputy Registrar of Co-operative Department so long as the management

requires. Thereafter by promotion from among the personnel in any of the supervisory posts in Pondicherry Co-operative Sugar Mills Ltd., who fulfills the requisite qualification as indicated under Col. No.7 of the Rules (as referred above) with five years experience in supervisory capacity both failing by direct recruitment.

4. According to the petitioner, he is fully eligible for the said post, since he satisfies the qualifications stipulated in the recruitment rules. Since the post of Administrative Officer in the second respondent mill was not filled from May 1998 to May 1999, the petitioner was given additional charge to look after the works of the Administrative Officer in March 1999 and he was also paid extra allowance for discharging the duties of higher responsibility. The petitioner has further stated that the second respondent even during July 1991 conferred similar benefits to personnel working in the second respondent mill in 11 categories of posts and the settlement under Section 12(3) of the Industrial Disputes Act was also entered into between the union and the management of the second respondent mill on 19.3.1999, whereby it was agreed that the pattern available in Tamil Nadu co-operative sugar mills shall be followed in the second respondent mill. In view of the same, the petitioner submitted a representation on 22.7.1999. Since there was no response, he has also sent another representation on 11.8.1999 and since there he was no action by the respondents, the present writ petition has been filed.

5. The second respondent has filed a counter affidavit, in which after admitting the details regarding the service particulars of the petitioner, the second respondent has stated about the various promotions granted to the petitioner and the pay scale which was sanctioned to the petitioner with effect from 1.7.2008. It is further stated in the counter affidavit that as per the provision in the recruitment rules, it is justifiable on the part of the management to exercise the rule of discretion to fill-up the post of Administrative Manager by deputation in the cadre of Deputy Registrar from Government of Puducherry. It is further stated that it is not in dispute that petitioner has put in 23 years of service and he was given two promotions, i.e., from Head Clerk (Clerical – 1) to Purchase Superintendent (Supervisory-C cadre), then from Superintendent (Purchase) to Superintendent (Administration) and he has been sanctioned two selection scale of pay and posted in higher grade scales of pay applicable to Supervisory Administrative Cadre as of now. It is further

stated that the respondent mill appointed a Two-Member Committee with a retired judge of this Court Hon'ble Mr. Justice Gnanapragasam as its Chairman to evolve a separate wage/salary policy and other service related issues for the employees of the second respondent mills. The said committee's recommendation has been approved by the Government with slight modifications and due to this wage policy and service conditions of the second respondent mill has been designed, regardless of the system followed in Tamil Nadu. As could be seen from the counter affidavit that the department / respondent does not dispute that the petitioners suitability for the post and there is no dispute regarding the petitioner's qualifications, for being considered for promotion to the post of Administrative Officer. It is stated that pattern followed in Tamil Nadu need not be followed under the new wage policy, which has been adopted by the respondents. In any event the respondents cannot refuse to take into consideration the representations submitted by the petitioner as early as on 22.7.1999 and the reminder dated 11.8.1999 and allow the matter to remain in cold storage.

6. It is further admitted that the petitioner has been permitted to function as Administrative Officer from 31.3.1999 to 9.5.1999 and he was also paid additional allowance for higher responsibility discharged by him during the said period. Therefore, I am of the considered view that the respondents are bound to consider the claim made by the petitioner, in accordance with the recruitment rules. Hence the writ petition is allowed as prayed for and the respondents are directed to consider the claim of the petitioner for promotion to the post of Administrative Officer in the second respondent sugar mill and pass orders in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 22.10.2009

CORAM

THE HONOURABLE Mr. JUSTICE R. SUDHAKAR

Writ Petition No. 37081 of 2005

J. Anthonisamy. ..... Petitioner

Vs.

1. The Registrar of Co-operative Societies,
   Co-operative Department,
   Pondicherry.

2. The Administrator / Managing Director,
   The Pondicherry Co-operative Milk
   Producers' Union Ltd., No. P.1,
   Kurumampet,
   Pondicherry – 605 009. .... Respondents

The Registrar of Co-operative Societies held that since the termination of service is a consequence of the disciplinary proceedings, he cannot adjudicate the matter in view of the bar under Section 84 of the Pondicherry Co-operative Societies Act, 1972. The petitioner was advised to seek remedy under the Industrial Disputes Act, 1947.

It was submitted by the petitioner that a right of appeal is provided under the subsidiary regulations governing the service conditions of the employees. The petitioner has to therefore, seek remedy in accordance with the rules.

The writ petition is disposed of by granting liberty to the petitioner to file an appeal before the competent authority and canvass his rights before the said authority in accordance with law.

Advocates appeared :

For Petitioner	: Mr. Ishtiaq Ahmed
For Respondents	: Mr. P. Vijay Anand for Government Pleader, Pondicherry
	No appearance for R-2

Writ petition is filled under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus, calling for records of the second respondent in Ref: PCMPU/Estt/A/76/71-VOL III dated 17.2.2005 and the order of the first respondent passed in Proceeding No.5/7/1/31/RCS/ Dairy/2005/78 dated 28.9.2005 and quash these orders and consequently direct the respondents to reinstate the petitioner in service with full backwages and other consequential service benefits.

JUDGMENT

This writ petition is filed praying to issue a writ of certiorarified mandamus, calling for records of the second respondent in Ref: PCMPU/Estt/A/76/71-VOL III dated 17.2.2005 and the order of the first respondent passed in Proceeding No.5/7/1/31/RCS/Dairy/2005/78 dated 28.9.2005 and quash these orders and consequently direct the respondents to reinstate the petitioner in service with full backwages and other consequential service benefits.

2. The writ petitioner, working as a plant operator in Pondicherry Co-operative Milk Producers' Union, was placed under suspension with effect from 28.5.2004. Thereafter, a charge sheet was issued on 29.7.2004. An enquiry report was submitted on 26.11.2004. Based on the enquiry report, the order of dismissal was issued by the second respondent, the Administrator/ Managing Director, Pondicherry Co-operative Milk Producers' Union on 17.2.2005. Petitioner preferred an appeal to the Registrar of Co-operative Societies, the first respondent on 3.3.2005. Since no order has been passed, petitioner filed W.P. No. 23862 of 2005 to direct the first respondent, the Registrar of Co-operative Societies to dispose of the appeal within a stipulated time. By order dated 26.7.2005, this Court directed the Registrar of Co-operative Societies to consider the appeal filed by the petitioner dated 3.3.2005 and pass orders on the same on merits and in accordance with law within four months from the date of receipt of a copy of the order.

3. The Registrar of Co-operative Societies, by order dated 28.9.2005, held that since the termination of service is a consequence of the disciplinary proceedings, he cannot adjudicate the matter in view of the bar under Section 84 of the Pondicherry Co-operative Societies Act, 1972. The petitioner was advised to seek remedy under the Industrial Disputes Act, 1947. Hence, the writ petition.

4. A counter has been filed by the first respondent, the Registrar of Co-operative Societies. According to the Registrar of Co-operative Societies, under Section 84(1) of the Pondicherry Co-operative Societies Act, 1972 there is a specific bar and the Registrar cannot adjudicate the disputes relating to a disciplinary action taken by the society or by the committee against a paid servant of the society.

5. At the time of final hearing, learned counsel for the petitioner pointed out that specific rules have been framed and approved by the Registrar of Co-operative Societies which governs the service conditions of the employees of the Union and it takes effect from 1.7.1980. In the said rules insofar as disciplinary matters are concerned it is covered under Chapter IV. The relevant rules are Rules 35 to 50 of the Service Regulations of the employees of the Pondicherry Co-operative Milk Producers' Union Ltd. A right of appeal is provided under Rule 46. The writ petitioner has to therefore, seek remedy in accordance with the rules.

6. In view of the above, the writ petition is disposed off by granting liberty to the petitioner to file an appeal before the competent authority and canvass his rights before the said authority in accordance with law.

7. The appeal was erroneously filed before the Registrar of Co-operative Societies and has been disposed off on 28.9.2005. The present writ petition has been filed by the petitioner before this Court on 14.11.2005. The pendency of the matter before the Registrar of Co-operative Societies, the first respondent and before this Court shall be taken into consideration by the appellate/ appropriate authority under the rules for the purpose of limitation, if any. Counsel for the petitioner pleaded that the petitioner, was 57 years old at the time of dismissal. He pleaded that the authority may be directed to dispose off the matter within a time frame. In the event of an appeal being filed and canvassed before the appellate authority, the appellate authority may consider and dispose the appeal as expeditiously as possible, preferably within a period of six months from the date of filing the appeal. No order as to costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.11.2009

CORAM

THE HONOURABLE Mr. JUSTICE N. KIRUBAKARAN

W. P. No. 6382 of 2003

&

W. M.P. No. 8208 of 2003

M. Rajavelu ..... Petitioner

Vs.

1. The Pondicherry Co-operative
   Housing Society Ltd.,
   by its Secretary,
   Illango Nagar,
   Pondicherry.

2. The Deputy Registrar of
   Co-operative Societies (Consumers),
   Pondicherry.

3. The Co-operative Societies Tribunal,
   Pondicherry. ..... Respondents

The petitioner challenged the order of the first respondent housing society cancelling the plot allotted to him. The said order was confirmed by the second respondent and further confirmed by the Co-operative Tribunal, the third respondent herein. Against the order of the Tribunal, writ petition was filed.

The Court directed the parties to sort out the difference and arrive at a settlement. The society was prepared to allot a plot. On calculation of interest on the amount deposited by the petitioner, the petitioner sought a higher per cent of interest.

Held, it is a well known fact that the value of the property got multiplied and it is very difficult to get any property in Pondicherry for the fair price fixed by the respondents. Considering the reasonableness of the offer made by the respondents and also taking into consideration of the fact that the petitioner paid the entire sale consideration in 1976, this Court is of the opinion that the rate offered by the society is a fair one and accordingly the petitioner is directed to pay the money within a period of three months and on receipt of the said amount the first respondent is directed to execute the sale deed within one week thereafter without making any amount as further demand. The writ petition was ordered accordingly.

Advocates appeared :

For Petitioner	:	Mr. S.K. Venketeswara Rao
For Respondent No. 1	:	Mr. R. Natarajan
For Respondent No. 2	:	Mrs. D. Geetha Additional Government Pleader

Writ petition filed under Article 226 of the Constitution of India, praying for the issue a writ of certiorarified mandamus calling for the records relating to Co-operative Appeal No.1/98 on the file of the Co-operative Tribunal at Pondicherry resulting in the judgment and decree dated 29.11.2000 confirming the order dated 29th June, 1994 in A.R.C.No.4363 of 1990 of the Court of the Deputy Registrar of Co-operative Societies (Consumers), Pondicherry refusing to set aside the order dated 23.1.1994 of the Pondicherry Co-operative Housing Society Limited, cancelling the allotment of plot to the petitioner and quash the same or in the alternative direct the Pondicherry Co-operative Housing Society to allot a plot to the petitioner of his choice and out of turn basis at the original cost already paid by the petitioner.

JUDGMENT

The petitioner has approached this Court challenging the order passed by the third respondent confirming the order passed by the second respondent cancelling the allotment order by the first respondent.

2. The facts of the case as follows:-

The petitioner being a member of the first respondent housing society, applied for allotment of a plot on 7.5.1970, at Plot No.3 at Venkata Nagar Extension, Saramveli Olugaret Commune, Pondicherry and the same was

allotted by a letter dated 11.2.1976. The petitioner paid the entire cost as demanded and applied for permission to construct a house, from Town Planning Authority on 1.2.1978. The revised plan was also submitted on 25.1.1984, which was subsequently cancelled on 19.8.1985, by the Town Planning Authority. Against the cancellation of plan, an appeal was filed before the Appellate Authority, namely Town and Country Planning Board. While proceedings is pending before the Town Planning Authority, the first respondent society cancelled the allotment of plot given to the petitioner on 23.1.1984 on the ground that he did not commence the construction within the stipulated time and also on the ground that the he did not avail loan from the society.

3. Aggrieved by the cancellation of plan the petitioner filed O.S. No.1030 of 1989 on the file of the Second Additional District Munsif, Pondicherry, which was dismissed on 29.7.1987. The appeal filed before the Additional District Judge was also dismissed on 19.10.1989, giving liberty to the petitioner to move the Registrar of Co-operative Societies under Section 84 of the Pondicherry Co-operative Societies Act, 1972.

4. Thereafter, the petitioner filed a case No.6368 of 1990 before the Registrar of Co-operative Societies, Pondicherry and the same was numbered as A.R.C.No.4368 of 1990, which prayed for setting aside the cancellation order dated 23.1.1984. By an order dated 20.6.1994, the second respondent held that the cancellation of plot was not justified, and a direction was given to allot a plot to the petitioner out of turn as he was entitled to the plot at the prevailing rate.

5. Not satisfying with the order passed by the second respondent, further appeal under Section 141 of the Act was filed before the third respondent. The Tribunal namely, the third respondent by a judgment dated 29.11.2000, directed the first respondent society, to allot a plot of his choice without a lot, when the respondent's society proceeds next allotment of plots to its members at the rate fixed for all members. Aggrieved by the order passed by the Tribunal the writ petitioner has approached this Court.

6. When the matter was taken up for hearing, it was suggested to Mr. S.K. Venkateswara Rao, learned counsel for the petitioner and Mr. R. Natarajan, learned counsel for the first respondent, to sort out the difference and arrive at a settlement.

7. Mr. R. Natarajan, learned counsel for the first respondent produced a chart in which it is shown that three vacant plots at Dr. Puratchi Thalaivi Nagar, Dharmapuri, Puducherry are available measuring about 1477 sq.ft. , 1722 and 1970 sq.ft., respectively.

8. Plot No.3 measuring about 1970 sq.ft., is stated to be valued at Rs.19,70,000 at the present market value. Taking into consideration of the money paid by the petitioner in 1974-1976, giving interest at the rate of 7.75%, the aforesaid property was offered to the petitioner at the rate of Rs.56,000. To put it in nutshell the petitioner would get the plot No.3 measuring about 1970 sq.ft., by paying Rs.56,000 as on date. However Mr. S.R. Venkateswara Rao, learned counsel for the petitioner submitted that the rate of interest is at 10% not at 7.75% as counted by learned counsel for the respondents, and he produced a calculation, memo fixing about Rs.23,000 as interest.

9. It is a well known fact that the value of the property got multiplied and it is very difficult to get any property in Pondicherry for the fair price fixed by the respondents. Considering the reasonableness of the offer made by the respondents and also taking into consideration of the fact that the petitioner paid the entire sale consideration in 1976, this Court is of the opinion that the rate offered for Plot No.3 at Dr. Puratchi Thalaivi Nagar, Dharmapuri, Puducherry measuring about 1970 sq.ft., is a fair one and accordingly the petitioner is directed to pay a sum of Rs.56,000 within a period of three months from the date of the receipt of a copy of this order and on receipt of the said amount the first respondent is directed to execute the sale deed within one week thereafter without making any amount as further demand.

10. Accordingly, the writ petition is ordered. Consequently, connected miscellaneous petition is also closed. No costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.11.2009

CORAM

THE HONOURABLE Mr. JUSTICE K. CHANDRU

W. P. No. 13751 of 2009

and

M.P. No. 1 of 2009

V. Venkatesan ... Petitioner

Vs.

1. The Registrar of Co-operative Societies,
   V.V.P. Nagar, Thattanchavadi,
   Puducherry-605 009.

2. The Deputy Registrar of Co-operative
   Societies (Legal), Co-operative Department,
   V.V.P. Nagar, Thattanchavadi,
   Puducherry-605 009.

3. The Koonichempet Primary
   Agricultural Co-operative Bank
   rep. by its President,
   Koonichempet,
   Puducherry-605 501.

4. E. Devachandran,
   Senior Inspector/Election Officer,
   Co-operative Department,
   Thattanchavadi,
   Puducherry-605 009.

5. V. Seenuvasamoorty,
Newly Elected Director,
Reddiar Street,
Korikeni post,
Koonichempet,
Puducherry-605 501. ... Respondents

Puducherry Co-operative Societies Act, 1972 – S. 141 – Revision powers of the Registrar - The petitioner contended that under Section 84 of the Puducherry Co-operative Societies Act, power has been conferred on the Registrar for hearing disputes touching the business of the society. Therefore, when that power is delegated to a subordinate, he also exercised the same power as that of the Registrar. Therefore, the revisional remedy under Section 141 of the Puducherry Co-operative Societies Act is either illusory or it was not practicable to file such revision.

By virtue of the power of delegation under Section 161 read with Section 171 (3) of the Puducherry Co-operative Societies Act, the power has been delegated to a subordinate to the Registrar. When there is a valid delegation of power to a subordinate of the Registrar, the power of the Revision can thus be exercised by the Registrar, as he does exercise any authority under Section 84. In case where power is delegated to a subordinate authority and if the original authority himself had exercised such a power, there is no impediment for the very same authority to review his own order on an appropriate application. Even otherwise, the contention raised by the petitioner that the Registrar is disqualified from hearing the revision, though he is not the authority, who decided the initial matter under Section 84 of the Puducherry Co-operative Societies Act cannot be countenanced.

The statutory revisional remedy or the appellate remedy provided under the Act must be exercised before approaching this Court under Article 226 of the Constitution of India. The writ petition was dismissed and the petitioner was directed to work out his remedies before the revisional authority.

Case laws referred :

(i) Government of Andhra Pradesh vs. Ramanaiah, (2009) 7 SCC 165 : JT 2009 (6) SC 606 : 2009 (8) SCALE 408 : 2010 (1) SLJ 1 (SC);

(ii) *G. Paneerselvam vs. Deputy Registrar of Co-operative Societies, Tirupur, 2009 (2) MLJ 901;*

(iii) *A. Balaraman vs. Deputy Registrar of Co-operative Societies, Cheyyar, Thiruvannamalai, (2009) 3 MLJ 1032 : 2009-1-LW. 681.*

Advocates appeared :

For Petitioner : Mr. L. Swaminathan

For Respondents : Ms. Mala, Special Government Pleader, Puducherry, for R1 to R3

Mrs. S. Radhagopalan for R5

Prayer: Petition under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the order in NMD No. 11/2008 dated 12.3.2009 on the file of the Deputy Registrar of Co-operative Societies (Legal), Co-operative Department, Puducherry and quash the same.

JUDGMENT

The petitioner is a member of the third respondent co-operative bank. The petitioner had filed a petition under Section 84 of the Puducherry Co-operative Societies Act, 1972 to disqualify the 5th respondent, who was a newly elected director of the third respondent co-operative society. According to the petitioner, the 5th respondent is disqualified under Section 34(1) (b) (i) of the Puducherry Co-operative Societies Act, as he had dues with various societies.

2. The 2nd respondent, who is a delegated authority under Section 84 of the Puducherry Co-operative Societies Act and who heard the dispute, passed the impugned order dated 12.3.2009 rejecting the case of the petitioner. The petitioner did not prefer any revision in terms of Section 141 of the Puducherry Co-operative Societies Act but chose to file the present writ petition directly before this Court.

3. Notice was ordered in the writ petition. On behalf of the 2nd respondent, a counter affidavit dated 25.8.2009 had been filed. Attention was drawn to the Court to Section 141 of the Act regarding the revisional

power of the Registrar. It was stated that the Puducherry Co-operative Societies Act is a self-contained code and it has given revisional power to the Registrar. Therefore, the petitioner cannot file a writ petition without exhausting the statutory alternative remedy. In the affidavit filed in support of the writ petition, there is no reference as to why the petitioner did not exercise the statutory alternative remedy and it is silent.

4. However, the learned counsel for the petitioner contended that under Section 84 of the Puducherry Co-operative Societies Act, power has been conferred on the Registrar for hearing disputes touching the business of the society. Therefore, when that power is delegated to a subordinate, he also exercised the same power as that of the Registrar. Therefore, the revisional remedy under Section 141 of the Puducherry Co-operative Societies Act is either illusory or it was not practicable to file such revision.

5. By virtue of Section 161 of the Puducherry Co-operative Societies Act, by a notification in the official gazette, the Government can authorize any authority or officer to exercise any of the powers vested in it by this Act. Therefore, by virtue of the power of delegation under Section 161 read with Section 171 (3) of the Puducherry Co-operative Societies Act, the power has been delegated to a subordinate to the Registrar. When there is a valid delegation of power to a subordinate of the Registrar, the power of the Revision can thus be exercised by the Registrar, as he does exercise any authority under Section 84.

6. The Supreme Court, more or less in similar circumstances, vide its judgment in *Government of Andhra Pradesh vs. Ramanaiah* reported in *(2009) 7 SCC 165* : *JT 2009 (6) SC 606 : 2009 (8) SCALE 408 : 2010 (1) SLJ 1 (SC)* had stated that in case where power is delegated to a subordinate authority and if the original authority himself had exercised such a power, there is no impediment for the very same authority to review his own order on an appropriate application. Even otherwise, the contention raised by the petitioner that the Registrar is disqualified from hearing the revision, though he is not the authority, who decided the initial matter under Section 84 of the Puducherry Co-operative Societies Act cannot be countenanced by this Court.

7. This Court in an identical circumstance with reference to the Tamil Nadu Co-operative Societies Act, 1983, vide its judgment in *G. Paneerselvam vs. Deputy Registrar of Co-operative Societies, Tirupur*

reported in *2009 (2) MLJ 901* has taken a view that the statutory revisional remedy or the appellate remedy provided under the Tamil Nadu Co-operative Societies Act must be exercised before approaching this Court under Article 226 of the Constitution of India. This view was confirmed by a Division Bench of this Court in *A. Balaraman vs. Deputy Registrar of Co-operative Societies, Cheyyar, Thiruvannamalai* reported in *(2009) 3 MLJ 1032 : 2009-1-LW. 681*.

8. In the light of the same, the writ petition will stand dismissed. However, there will be no order as to costs. The connected miscellaneous petition stands closed.

9. Since the petitioner has been directed to file a revision before the revisional authority if he is so advised and accordingly files any revision within two weeks from the date of receipt of a copy of this order, the appropriate revisional authority shall consider the same without reference to the limitation and pass orders on merits after due notice to parties within a reasonable time.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 6.4.2010

CORAM

THE HONOURABLE Mr. JUSTICE K. CHANDRU

W. P. Nos. 43480 of 2006 and 5110 of 2010

and M. P.No.1 of 2010

1. R. Ramamurthy
2. K. Baskaran
3. R. Mohan
4. R. Natarajan
5. P. Balasubramanian
6. S. Sivaperuman
7. N. Karunakaran
8. Gabiriel
9. R. Babu
10. K. Karthikeyan
11. Sundaresan
12. A. Deivasigamani
13. A. Balasundaram
14. G. Kalimuthu
15. Malaiyalathan
16. A. Naser @ Batcha

... Petitioners in
W. P. No. 43480 of 2006

V. Selvaraj

... Petitioner in
W. P. No. 5110 of 2010

Vs.

1. Union of India
   Union Territory of Pondicherry
   Rep. by the Secretary to Government,
   Government of Pondicherry,
   Pondicherry.

2. The Registrar of Co-operative Societies,
   Co-operative Department,
   Government of Pondicherry,
   Pondicherry – 605 009.

3. The Pondicherry State Weavers Co-operative Society
   Ltd.,No.P.57, rep. by its Managing Director,
   Pondicherry – 605 009.

4. V. Selvaraju

5. R. Kaliaperumal

6. P. Magesh ... Respondents
   W. P. No. 43480 or 2006

1. The Managing Director,
   The Puducherry State Weavers'
   Co-operative Society Ltd., No.P.57,
   Industrial Estate, Thattanchavady,
   Puducherry – 605 009.

2. V. Murugan
3. V. Sundaresan
4. D. Saravanamoorthy
5. S. Sudharsan
6. R. Velu
7. A. Deivasigamani
8. S. Balasundaram
9. G. Kalimuthu
10. M. Murugan
11. M. Murugan II
12. R. Ramamurthy
13. R. Rajulu
14. K. Baskaran
15. M. Valarmathi
16. R. Mohan
17. P. Victor Bentick
18. P. Balasubramanian
19. R. Natarajan

20. S. Sivakumar
21. S. Sivaperuman
22. N. Karunakaran
23. K. K. Gabriel
24. B. Malayalathan
25. A. Nazar @ Batcha
26. K. Kumar
27. K. Azhagappan
28. V. Counesegarane
29. K. Karthikeyan
30. R. Babou
31. N. Ganesh
32. N. Jaya

... Respondents in
W. P. No. 5110 of 2010

The prayer of the petitioners is to implement the principle of equal pay for equal work and to fix their scale of pay on par with the respondents 4 to 6. The official respondents stated that at the time of appointing the respondents 4, 5 and 6 as fresh recruits after their service in Pondicherry Co-operative Textile Processing Society (TEXPRO) an inadvertent order was given fixing their salary at higher level. This was rectified and an order was passed on 10.1.2007 fixing their salary at Rs.3,600 – 8,200. The excess payment made to them was recovered in 24 monthly installments. The entire excess salary was recovered from them. In view of the above the prayer of writ petitioners that equal pay should be given for equal work is met and there is no anomaly of pay between the petitioners and the respondents 3, 4 and 5.

It was contended by the official respondents that the petitioner and two others have challenged the order dated 10.1.2007 through their employees union in the conciliation proceedings, the said order which forms the foundation for re-fixing the salary at Rs.3,600 with effect from 23.5.2005 was not impugned by the petitioner in this writ petition. Hence his challenge to the seniority list dated 23.2.2010 is hollow and liable to be dismissed.

Further, no writ will lie against a co-operative society. On these premises, the writ petitions were dismissed.

***Case law referred** :*

K.Marappan vs. Deputy Registrar of Co-operative Societies, Namakkal and another, (2006)4 MLJ 641 : 2006(4) CTC 689 :2006-4 L.W.495.

Advocates appeared:

For Petitioner in W. P. No. 43480 of 2006	: Mr. T. P. Manoharan
For Respondents W. P. No. 5110 of 2010	: Mr. B. Manoharan
For Respondents 1 to 3 in W. P. No. 43480 of 2006 For Respondent - 1 in W. P. No. 5110 of 2010	: Ms. N. Mala Additional Government Pleader, Pondicherry, for R1
For Respondent - 4 W. P. No. 43480 or 2006	: Mr. B. Manoharan

PRAYER IN W. P. No. 43480 of 2006: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of writ mandamus, directing the respondents 2 and 3 to implement the principle of equal pay for equal work, fix the scale of pay for the petitioners also on par with the scale of pay fixed by them for the respondents 4, 5 and 6 i.e., at Rs.4400-100-6400-120-11200 along with allowances with effect from 1.1.2004 and pay the same to them along with periodical increments and allowances.

PRAYER IN W. P. No. 5110 of 2010: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of writ of certiorarified mandamus calling for the records in Memorandum dated 23.2.2010 in proceedings No. PSWCS/Estt./A1/34/2002 on the file of the 1st respondent and quash the same and consequently direct the 1st respondent to consider the petitioner's date of joining as 1.1.1991 and place him in the appropriate place in the seniority list and give other benefits.

COMMON JUDGMENT

Heard both sides.

2. The petitioners (16 in number) have filed the writ petition in W. P. No. 43480 of 2006 seeking for a direction to the respondents 2 and 3 to implement the principle of "equal pay for equal work" and fix the scale of pay of petitioners on pay with the scale of pay fixed by them for the respondents 4, 5 and 6 i.e., at Rs. 4400-100-6400-120-11200 together with allowance with effect from 1.4.2004 and also to grant periodical increments.

3. When the matter came up for admission on 10.11.2006, the learned counsel for the respondents took notice and subsequently, the fourth respondent in the said writ petition has filed a writ petition in W. P. No. 5110 of 2010 seeking to challenge the order dated 23.2.2010 passed by the Managing Director of the Puducherry State Weavers' Co-operative Society Limited, Puducherry and after setting aside the same, consider the petitioner's date of joining as 1.1.1991 and to place him in the appropriate place in the seniority list and to give him other benefits.

4. In the order dated 23.2.2010, the petitioner was informed that the petitioner V. Selvaraj, Helper was taken as fresh employee with effect from 23.5.2005 and therefore, his plea for restoring him to service with effect from 1.1.1991 cannot be considered and it is also stated that seniority was subject to the outcome of the writ petition in W.P. No. 43480 of 2006.

5. In view of the stand taken by the respondents, this Court directed the writ petition in W. P. No. 5110 of 2010 to be tagged along with the present writ petition in W. P. No. 43480 of 2006 so that a common order can be passed.

6. On notice from this Court in the earlier writ petition, Ms. N. Mala, learned Additional Government Pleader (Puducherry) has produced a written instruction dated 23.10.2010 received from the Managing Director, The Puducherry State Weavers' Co-operative Society Ltd. In the written instruction, in para Nos.2 and 3, it was stated as follows:

> *"2. In this connection, we are to state that at the time of appointing the respondents 4, 5 and 6 as fresh recruits after*

their service in Pondicherry Co-operative Textile Processing Society (TEXPRO) an inadvertent order was given fixing their salary at higher level. This was rectified and an order was passed on 10.1.2007 fixing their salary at Rs.3,600 – 8,200. The excess payment made to them was recovered in 24 monthly installments. The entire excess salary was recovered from them.

3. In view of the above the prayer of writ petitioners that equal pay should be given for equal work is met and there is no anomaly of pay between the petitioners and the respondents 3, 4 and 5. The W. P. No. 43480 of 2006 has thus become infructuous. This may kindly be informed to the Hon'ble Court as and when the above case comes up for hearing."

7. In the light of the same, no relief can be granted to the petitioners and hence, the writ petition in W. P. No. 43480 of 2006 stands dismissed.

8. In W. P. No. 5110 of 2010, a counter affidavit dated 23.3.2010 was filed by the first respondent – Managing Director. In the counter affidavit, in para Nos.11 and 12, it was stated as follows:

"11. I respectfully submit that the packers, peons, helpers and yarn building workers are in the last rung in the hierarchy and for the last 15 years no promotion was given to them. Considering their plight and with a view to give them elevation, as a first step their seniority was to be finalized. The tentative seniority list was published on 5.2.2009 calling for their objection. Objection was filed by some employees, including the writ petitioner. The objections were not sustainable and a final seniority list was published on 13.11.2009. Nothing further was heard from the writ petitioner. However, a further chance was given to them by memorandum dated 26.11.2009. The writ petitioner, by his letter dated 1.12.2009 sought to reconsider his position and fix him in the seniority taking his regularization from 1.1.1991. This plea was found untenable inasmuch as he was taken in PONTEX as a fresh recruit with effect from 23.5.2005. This issue was settled in view of the order dated 10.1.2007. Rejecting the plea of the writ petitioner, the seniority was finalized by order dated 23.2.2010, which is

impugned in this writ petition. It is respectfully submitted that it was specifically mentioned in the said order that the order of seniority was subject to the outcome of the W. P. No. 43480 of 2006.

12. I respectfully submit that though the petitioner and two others have challenged the order dated 10.1.2007 through their employees union in the conciliation proceedings, the said order which forms the foundation for re-fixing the salary at Rs.3,600 with effect from 23.5.2005 was not impugned by the petitioner in this writ petition. Hence his challenge to the seniority list dated 23.2.2010 is hollow and liable to be dismissed."

9. Besides this, a further objection was taken that the first respondent is a co-operative society registered under the Puducherry Co-operative Societies Act. The writ petition is not maintainable in the light of the Larger Bench judgment of this Court in *K.Marappan vs. Deputy Registrar of Co-operative Societies, Namakkal* and another reported in *(2006)4 MLJ 641 : 2006(4) CTC 689 :2006-4 L.W.495.*

10. In the light of the stand taken by the first respondent-society, no relief can be granted to the petitioner. Hence, the writ petition in W. P. No. 5110 of 2010 also stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 8.4.2010

CORAM

THE HON'BLE Mr. JUSTICE K. CHANDRU

W. P. No. 23255 of 2001

SPINCO Labour Union,
Rep. by its Secretary N. Ramesh .... Petitioner

Vs.

1. Registrar of Co-operative Societies,
   Co-operative Department,
   Pondicherry.

2. Development Commissioner – cum –
   Administrator (SPINCO),
   Chief Secretariat,
   Pondicherry.

3. The Pondicherry Co-operative Spinning Mills Ltd.,
   Thirubuvanai, Pondicherry,
   Rep. by Managing Director

4. Labour Commissioner,
   Chief Secretariat, Pondicherry. .... Respondents

The Labour Union has filed the writ petition seeking for a direction to the respondents to constitute an Industrial Tribunal, as per the provisions of the Industrial Disputes Act and to refer the issue of revision of wages.

The Commission headed by Justice Dr. David Annousamy has already submitted a report and a copy of the report was also given to the petitioner union. If the petitioner union is not satisfied, then the only course open to them is to raise an appropriate dispute, specifying their stand regarding the

Commission's recommendation and ultimately, before the Labour Department. The appropriate Government will consider the same by referring for adjudication. The present attempt to forestall the Commission's report or prevent the respondents from taking decision on the basis of the Commission's report is not clearly maintainable. Writ petition stands dismissed.

Advocates appeared :

For Petitioner	:	Mr. V. Ajayakumar
For Respondent	:	Mr. A. S. Bharathi, Government Advocate, Pondicherry

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of mandamus, directing the 4th respondent to constitute a Tribunal as per the Industrial Disputes Act and to refer the issue of revision of wages as per the orders issued by the 1st respondent dated 21.9.1999 and the assurance given subsequently by the management.

JUDGMENT

Heard both sides.

2. The petitioner is a trade union. They have filed the present writ petition seeking for a direction to the respondents, which includes the Labour Commissioner, Puducherry as fourth respondent, to constitute an Industrial Tribunal, as per the provisions of the Industrial Disputes Act and to refer the issue of revision of wages as per the orders issued by the first respondent dated 21.9.1999 and also the assurance given subsequently by the management.

3. Vide the communication dated 21.9.1999, the first respondent communicated that a tripartite committee was constituted to recommend pay scales in respect of the workers / trainees to be regularized as workers in the Pondicherry Co-operative Spinning Mills Ltd., Thirubhuvanai. The said issue was considered by the Government and the trainees working in the SPINCO were directed to be regularised in terms of the settlement in

the case of Jayaprakash Narayanan Co-operative Spinning Mills, Karaikal. It was also stated that the revision of pay scales of the employees including the pay parity for the breaks will be referred to the Tribunal, for working out a pay structure, as in the case of Anglo French Textile employees.

4. In the affidavit filed in support of the writ petition, the petitioner has stated that with reference to the wages of trainee employees, already a writ petition was filed before this Court in W. P. No. 20922 of 2000. However, it is now stated that the said writ petition has been disposed of in favour of the workmen. It is the present case of the workman that instead of referring the matter to the Tribunal, the respondents should constitute a Committee for examining the question of wage revision. It is also stated that the One Man Commission ordering enquiry by the One Man Commission is also not warranted. Therefore, the Union has come forward to file the present writ petition to forestall any report given by the One Man Commission.

5. It is now transpires that the Commission headed by Justice Dr. David Annousamy has already submitted a report and a copy of the report was also given to the petitioner-union. If the petitioner-union is not satisfied, then the only course open to them is to raise an appropriate dispute, specifying their stand regarding the Commission's recommendation and ultimately, before the Government Labour Department. The appropriate Government will consider the same referring for adjudication. The present attempt to forestall the Commission's report or prevent the respondents from taking decision on the basis of the Commission's report is not clearly maintainable. Hence, the writ petition stands dismissed. No costs.

IN THE HIGH COURT OF MADRAS

DATE : 30.4.2010

CORAM

THE HONOURABLE Mr. JUSTICE V. DHANAPALAN

C.R.P. NPD Nos. 787 and 788 of 2003
and C.M.P. No. 8525 of 2003

Pondicherry State Weavers
Co-operative Society Limited, No. P. 57,
represented by its Managing Director,
Industrial Estate, Thattanchavadi,
Pondicherry State ... Petitioner

Vs.

S. Ramamirtham ... Respondent

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Sections 8(5) and 10(2)(i) - Revision petitioner is the tenant in the demised premises under the respondent. A rent agreement was executed between the parties and the same expired in the year 1997. The respondent-landlord requested the tenant to hand over the vacant possession. The respondent received the rent till June 1998, after which she refused to receive the rent, despite sending the same by money order. For 2 years, the revision petitioner did not pay any rent and after a delay of 2 years, the revision petitioner filed a petition under Section 8 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, for depositing the rent. It is clear that the tenant has committed default in payment of rent from June 1998 onwards. Therefore, on the ground of willful default, the eviction inflicted against the petitioner / tenant is sustainable.

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Sections 2(6), 2(6-A) & 10(3)(iii) – Definition of 'family' – The claim of the respondent/ landlady is that she requires the premises to set up a jewellery shop for her 'foster son'. It is well settled that a 'foster son' also can be treated as a member of the family under Section 2(6-A) of the Act and therefore, it can be held that the landlady has proved her bona fide requirement of the premises for her foster son.

Therefore, with this bona fide intention, the landlady has rightly requested the tenant for handing over the vacant possession of the premises and when the tenant failed to do so, she made a petition before the Rent Controller under Sections 10(2)(i) and 10(3)(iii) of the Act on the grounds of willful default and owner's occupation. The landlady has established her case on both these grounds for eviction of the tenant and both the Courts below have rightly ordered the eviction of the tenant.

There is no infirmity or irregularity in the orders passed by the Courts below and accordingly the Civil Revision Petitions stood dismissed.

Cases referred

(i) K.V. Muthu vs. Angamuthu Ammal, (1997) 2 SCC 53 : AIR 1997 SC 628,
(ii) M.P. Ramanujammal vs. C. Parankujam, 1990 TLNJ 220
(iii) R. Sudhandhira Devi vs. K. Navanithakrishna, 2005 (4) MLJ 127

Advocates appeared

For Petitioner	...	Ms. R.T. Shyamala
For Respondent	...	Ms. K.M. Nalinishree

Prayer : These Revision Petitions are filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 23 / 73 (as amended by Act 1 / 80), against the order and decree dated, 1.4.2003 in RCA No.2 of 2002 passed by the Rent Control Appellate Authority (Principal Subordinate Judge) at Nagapattinam confirming the judgment and decree dated 8.4.2002 in RCOP No.30 of 2000 passed by the Rent Controller (District Munif) at Nagapattinam.

JUDGMENT

These Revision Petitions arose out of the order, dated 1.4.2003 in R.C.A. No.2 of 2002 passed by the Rent Control Appellate Authority (Principal Subordinate Judge) at Nagapattinam confirming the judgment and decree dated 8.4.2002 in R.C.O.P. No. 30 of 2000 passed by the Rent Controller (District Munsif) at Nagapattinam.

2. The brief facts, which are necessary for disposal of these revisions, can be stated briefly as below:

3. The revision petitioner is the tenant under the respondent herein in respect of the demised premises. The petitioner is a weavers society, being represented by its Managing Director, having its office at Thattanchavadi, Pondicherry State. The petitioner took the property on lease on 11.2.1978 on monthly rent of Rs. 100 and a sum of Rs. 500 was paid towards advance. The rent amount was revised periodically from time to time and as on the date of filing the Rent Control proceedings, the rent was at Rs. 400 and advance amount was Rs. 2,000. According to the petitioner, the rent amount was paid regularly without any default up to 30.6.1998 and thereafter, when the payment of rent was offered, the respondent refused to receive and demanded additional amount of Rs. 50. The petitioner also agreed the same and ready to pay the rent, but the respondent refused to receive and hence, the petitioner sent the rent through money order, which was also refused by the respondent. Thereafter, the petitioner sent a legal notice requesting the respondent to give her bank account to deposit the rent regularly, for which also there is no reply. In such circumstances, finding no other alternative, the petitioner filed a petition in R.C.O.P. No.30 of 2000 under Section 8(5) of the Tamil Nadu Buildings (Lease and Rent Control) Act (hereinafter referred to 'the Act') before the Rent Controller, Nagapattinam praying to permit the petitioner to deposit the rent amount of Rs. 9,000 towards rent for 20 months payable from July 1998 till October 2000.

4. During pendency of the above said petition, the respondent/landlady filed a petition in R.C.O.P. No.2 of 2001 under Section 10(2)(i) and 10(3)(iii) of the Act for eviction of the petitioner on the ground of willful default and owner's occupation. According to the respondent/landlady, the tenant occupied the premises initially on monthly rent of Rs. 100 with advance of Rs.500, which subsequently increased and on the date of filing the petition, the rent was at Rs. 400 and advance of Rs. 2,000. On 6.7.1983, the tenant executed an unregistered lease deed for a period of one year and later on 23.8.1994, he executed a lease deed for a period of three years. It is agreed that the monthly rent should be paid on or before 10th of every succeeding month of English calendar. The tenant used to pay the rent by way of demand draft enclosing a letter. On 8.6.1998, the tenant sent Rs. 400 towards rent by way of demand draft, that that time, the landlady specifically informed the tenant that she requires the demised premises for her foster son, namely Sekar to carry on jewellery business. The rental agreement expired on

23.8.1997 and the landlady demanded the tenant to hand over vacant possession of the premises. However, the tenant neither vacated the premises nor paid the rent from June 1998. In such circumstances, the landlady has come forward with the eviction petition.

5. By a common order, dated 8.4.2002, the Rent Controller while dismissing the petition filed by the tenant, allowed the eviction petition filed by the landlady, directing the tenant to vacate and hand over the possession of the premises to the landlady within three months from the date of the order. Aggrieved by the said common order, the tenant has preferred appeals in R.C.A. Nos. 1 and 2 of 2002 before the Rent Control Appellate Authority, Nagapattinam.

6. By common judgment, dated 1.4.2003, the learned Rent Control Appellate Authority, Nagapattinam, having considered all the facts and circumstances of the case, dismissed the appeals preferred by the tenant while confirming the findings of the Rent Controller in respect of eviction on the ground of owner's occupation only and rejected the eviction on the ground of willful default. Aggrieved by the concurrent findings of the Courts below, the revision petitioner/tenant has filed the present revision petitions.

7. Assailing the findings of the Courts below, Mrs. R.T. Shyamala, learned counsel appearing for the revision petitioner/tenant submits that admittedly, the tenant has paid the rents regularly without any default till 30.6.1998 and thereafter, the landlady started to refuse to receive the rent despite the tenant offered the rent even by way of money order and that no particulars regarding bank account were furnished by the landlady enabling the tenant to deposit the rent and hence the tenant has come forward with a petition before the Rent Controller to deposit the rent amount which shows the bona fide of the tenant and therefore, there is no evidence to show that the tenant has committed willful default in payment of rent. She also submits that though the Rent Controller negatived this aspect, however, the Rent Control Appellate Authority has rightly analyzed and held that there is no willful default on the part of the tenant. The learned counsel further submits that both the Courts below have not dealt with the matter regarding bona fide requirement of the premises by the landlady while ordering eviction against the tenant despite the fact that the landlady has failed to establish her case for eviction on the ground of owner's occupation. It is also submitted that there is no evidence

regarding the steps taken by the landlady including monetary capacity to start the jewellery business for her foster son. She pointed out that the landlady sought for eviction on the ground of owner's occupation since the premises are required to start jewellery business by her foster son, who is her brother's son, however, it is settled that 'foster son' cannot be treated as a son in the eye of law and further in Section 2(6-A) of the Act, 'foster son' is not included as 'family member' for whose behalf eviction can be sought for. The learned counsel also submits that even otherwise, the landlady failed to prove that her so-called foster son is not occupying any non-residential premises for business purpose in order to claim eviction against the tenant.

8. With the above submissions, the learned counsel appearing for the tenant sought for setting aside the eviction order inflicted against the tenant by the Courts below by impugned orders. In support of her submissions, the learned counsel relied upon the following decisions, viz.,—

(a) In *K.V. Muthu vs. Angamuthu Ammal, (1997) 2 SCC 53 : AIR 1997 SC 628*, wherein, requisites for being treated the 'foster son' as member of the landlord's family were enunciated by the Hon'ble Supreme Court in para 27 and 31 as under:

> "27. If a child comes to a person or is found by that person as forlorn child or the parents of that child, may be, on account of their poverty or their family circumstances, bring that child to the other person and request him to bring up that child which is accepted by that person and such child is brought up from the infancy as the own son by that person who loves that child as his own, nourishes and brings him up, looks after his education in the school, college or university and bears all the expenses, such child has to be treated as the son of that person particularly if that person holds the child out as his own. Care, therefore, in rearing up the child need not always be parental. It can be even that of a 'foster father'. In such a situation, the son so brought up would be the 'foster son' of that person and since the devotion with which he was brought up, the love and care which he received from that person were like those

which that person would have given to his real son, the 'foster son' would certainly be a member of the family."

"31. From the above, it would appear that it is not in every case that a son who is not the real son of a person would be treated to be a member of family of that person but would depend upon the facts and circumstances of a particular case."

(b) In *M.P. Ramanujammal vs. C. Parankujam, 1990 TLNJ 220*, for the proposition that the expression 'any son' in Section 2(8) of the Act will not be taken in 'a foster son'. It has been held so by this Court in para 10 as follows:

"10. Learned counsel for the appellant further contended that Srinivasa Mudaliar was brought up by Loganayaki Ammal and her husband Ranganatha Mudaliar as their foster son and the expression 'any son' in Section 2(8) will include a 'foster son' also. I am unable to accept this contention of the learned counsel for the appellant. The expression 'any son' in Section 2(8) of the Act cannot include 'a foster son' because the word 'any' in Section 2(8) when read along with Sections 2(8)(i) and 2(8)(ii) only refers to, in the case of a residential building, to that particular son who is living with the tenant in the building as a member of the family up to the date of death of the tenant or in the case of non-residential building that particular son who had been in continuous association with the tenant for the purpose of carrying on the business of the tenant up to the death of the tenant and continue to carry on such business thereafter. The expression 'any son' in Section 2(8) of the Act will not be taken in 'a foster son'.

(c) In *R. Sudhandhira Devi and others vs. K. Navanithakrishna*, *2005 (4) MLJ 127*, wherein, it has been held by this Court as under in para 20:

"20. ... It is incumbent upon the landlord to plead the minimum requirements, to satisfy the ingredients available under Section 10(3)(a)(iii) of the Act. Section 10(3)(a)(iii) of

> the Act says, "the landlord or the member of the family, if the building is required for the member, must be carrying on business on the date of filing of the application, that he or the member of the family should not own any non-residential building for the purpose of carrying on the said business and that the requirement must be bona fide not aiming at evicting the tenant." Therefore, the landlord must say, whether the member of the family, since in this case the building is sought for the members of the family, is owning any property, of his own, as non-residential building, for the purpose of carrying on business, which is absent here. What is the name of the business, who is the owner of the business, also not specifically pleaded. In the absence of any proof, by producing some documents at a later stage, the landlords want to make out a case, as if the members of the family are carrying on the business. …"

9. On the other hand, Ms. Nalinishree, learned counsel appearing for the respondent/landlady submits that the Courts below, having considered the facts and circumstances of the case as well as the evidence let in by the parties, have dealt with the matter in a proper perspective and rightly ordered eviction against the tenant which requires no interference of this Court. She also submits that the lease agreement which was renewed during the year 1994 was only for three years and after expiry of such lease, the landlady requested the tenant to hand over the vacant possession of the premises for her own occupation and for that she has established by letting in evidence that the requirement of the premises is bona fide. It is submitted that after lapse of two years, the tenant has filed a petition before the Rent Controller for deposit of rent amount and therefore, the tenant has committed willful default. She further submits that the landlady is admittedly running a pawn broker shop and having sufficient means to set up a jewellery shop for her foster son and that it is established in evidence that her foster son is not owning any other premises. The learned counsel further submits that the landlady can seek for eviction of the premises for her foster son for the purpose of setting up a jewellery shop and the tenant has not raised the issue regarding 'foster son' before the Courts below and there is no issue in respect of foster son was framed and no finding was given and therefore, the tenant cannot now raise a different plea for the first time in the revision petitions. She further

submits that it is settled law that even the 'foster son' also can be treated as a member of the family under Section 2(6-A) of the Act and therefore, the landlady has proved her bona fide requirement of the premises for her foster son.

10. With these submissions, the learned counsel sought for dismissal of the revision petitions while confirming the findings of the Courts below. In support of her submissions, the learned counsel for the tenant relied upon the decision of the Hon'ble Supreme Court reported in *K.V. Muthu vs. Angamuthu Ammal, (1997) 2 SCC 53 : AIR 1997 SC 628*, wherein, it has been held in para 32 and 33 as under:

> "32. Analysing the facts of this case in the light of the principles enunciated above, it will be seen that Arunachala Bakthar is the brother's son of the respondent's husband who, therefore, was related to the respondent's husband by blood and was his heir not only under the old Mitakshara Law (as brother's son) but also under the Hindu Succession Act, 1956 as a class II heir. Arunachala Bakthar was brought up by the respondent and her husband and was living all along with them. He apparently acted as a devoted son to the respondent's husband and helped him in all possible ways including the business, which he carried on. Respondent's husband acted also as a devoted father to Arunachala Bakthar in whose favour he also executed a will and after reciting therein that Arunachala Bakthar was brought up by him, he bequeathed his business jointly to him and the respondent specifying further that after the death of the respondent, the business shall be carried on by Arunachala Bakthar. Respondent's husband also, significantly, did not bequeath the residential house absolutely in favour of the respondent but created only a life estate therein for her. The remainder was bequeathed to the children of Arunachala Bakther.
>
> 33. In view of the above facts and circumstances, Arunachala Bakthar was clearly a member of the family of the respondent's husband within the meaning of Section 2(6-A) of the Act and consequently, the respondent could well file an application for eviction of the appellant from the

premises in question not only for her need but also for the need of her 'foster son', Arunachala Bakthar."

11. Heard the learned counsel appearing for either side and gone through the entire materials placed before this Court.

12. It is not in dispute that the petitioner is the tenant of the demised premises under the respondent/landlady. It is also not in dispute that the rental agreement executed on 23.8.1994 came to be expired in the year 1997. After expiry of the lease agreement, the landlady requested the tenant to hand over the vacant possession on the ground of owner's occupation as she requires the premises in order to set up a jewellery shop for her foster son, namely Sekar. It is admitted fact that the rents were paid up to 30.6.1998 and thereafter, according to the tenant, the landlady refused to receive the rent despite sending even by money order and also not furnished the bank details to deposit the rent. It is to be noted that tenant has sent notice, dated 20.11.1998 to the landlady seeking for furnishing the bank accounts for depositing the rent amount and thereafter, the tenant kept silent for two years without paying the rents and later, during the year 2000 only, the tenant has come forward with a petition under Section 8(5) of the Act before the Rent Controller for depositing the rent into the Court. Therefore, from this, it is clear that the tenant has committed default in payment of rent from June 1998 onwards. Therefore, on the ground of willful default, the eviction inflicted against the petitioner/tenant is sustainable.

13. As regards the bona fide requirement of the premises by the landlady, on a perusal of the entire evidence, it is evident that after expiry of the rental agreement, the landlady has requested the tenant to hand over the vacant possession of the premises for the purpose of setting up a jewellery shop for her foster son, who acquired rich experience by working in a jewellery shop. The learned counsel appearing for the petitioner/tenant canvassed before this Court that the landlady cannot seek eviction of the premises for her foster son inasmuch as 'foster son' cannot be treated even as an adopted son in the eye of law and further in Section 2(6-A) of the Act, 'foster son' is not included as 'family member' for whose behalf eviction can be sought for. It is very significant to note that this aspect has not been canvassed before the Courts below and neither an issue was framed nor a finding was rendered by the Courts below. For the first time, the petitioner has raised this issue. Even otherwise also, as

rightly contended by the learned counsel for the respondent, the landlady can seek eviction for the purpose of setting up a jewellery show for her foster son and her requirement is *bona fide*.

14. A contention was raised by the revision petitioner/tenant that the 'foster son' being none other than brother's son of the respondent/lady is not included under Section 2(6) of the Act and the respondent/landlady has stated that her brother's son is her 'foster son' whereas as per Adoption Act, brother's son could not be adopted and he could not be considered as 'foster son'.

15. Analyzing the facts of this case, whether the claim of the revision petitioner/tenant, as the foster son could not be an adopted son and that too in a case of brother's son there cannot be any adoption, can be examined in the light of the pleadings and evidences.

16. In the case, the claim of the respondent/landlady all along on the basis that Mr. Sekar as her 'foster son' for whom she requires the premises to set up a jewellery shop. If we examine this position, as defined in the *Concise Oxford Dictionary*, 'adopt' means, "legally take (another's child) and bring it up as one's own". The meaning of 'foster son' as defined in the *Concise Oxford Dictionary*, is, "one brought up as a son though not a son by birth". The word 'foster', in the same dictionary, is indicated to mean, to supply with food; to nourish, feed, support; to bring up with parental care; to nurse, tend with care, to grow. In such a situation, the son so brought up would be the 'foster son' of that person and since the devotion with which he was brought up, the love and care which he received from that person were like those which that person would have given to his real son, the 'foster son' would certainly be a member of the family as held by the Hon'ble Supreme Court in the above decision. Therefore, the foster son is different from an adopted son or son by an adoption. In the instant case, the claim of the respondent/landlady is only a foster son and therefore, in the absence of any claim as adopted son, this Court cannot give a different meaning invalidating the claim of the respondent/landlady as he is a person come well within the purview of family and be a member of the family.

17. The revision petitioner/tenant has not raised any ground regarding Section 2(6-A) but raised only under Section 2(6) of the Act and when that being so, the real interpretation to be given in a literal meaning with a clear

definition from the dictionary meaning, it could be construed that the claim of the landlady that her brother's son, namely, Sekar could be a foster son and therefore, as held by the Hon'ble Supreme Court, foster son could be a member of the family and accordingly this Court is of the view that the claim of the respondent/landlady for requirement of the premises for his foster son is bona fide and rightly held by the Rent Controller as well as Rent Control Appellate Authority.

18. Therefore, it is well settled that a 'foster son' also can be treated as a member of the family under Section 2(6-A) of the Act and therefore, it can be held that the landlady has proved her bona fide requirement of the premises for her foster son. In this juncture, it is worthwhile to refer a decision of the Hon'ble Supreme Court reported in *K.V. Muthu vs. Angamuthu Ammal, (supra)* wherein, while dealing with similarly situated in respect of term 'foster son', the Hon'ble Supreme Court has categorically held that—

> "... Care, therefore, in rearing up the child need not always be parental. It can be even that of a 'foster father'. In such a situation, the son so brought up would be 'foster son' of that person and since the devotion with which he was brought up, the love and care which he received from that person were like those which that person would have given to his real son, the 'foster son' would certainly be a member of the family."

19. Therefore, on a plain reading of the above, it is clear that a 'foster son' can be treated as a member of the family. When such being the situation, in the present case, the landlady has sought for eviction of the premises for her foster son in order to set up a jewellery shop. Therefore, with this bona fide intention, the landlady has rightly requested the tenant for handing over the vacant possession of the premises and when the tenant failed to do so, she made a petition before the Rent Controller under Sections 10(2)(i) and 10(3)(iii) of the Act on the grounds of willful default and owner's occupation. The landlady has established her case on both these grounds for eviction of the tenant and both the Courts below have rightly ordered the eviction of the tenant.

20. For all the foregoing reasons, it can be held that the foster son of the landlady is clearly a member of the family of the landlady within the meaning of Section 2(6-A) of the Act and consequently, the landlady could

well file an application for eviction of the tenant from the demised premises. Therefore, I do not find any infirmity or irregularity in the orders passed by the Courts below while inflicting eviction order against the tenant.

21. Accordingly, the revision petitions fail and they are dismissed. No costs. Consequently, connected C.M.P. is closed. The revision petitioner is directed to vacate and hand over the vacant possession of the premises within three months from the date of receipt of copy of this order.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 21.7.2010

CORAM

THE HONOURABLE MR.JUSTICE V. RAMASUBRAMANIAN

W. P. No. 13204 of 2010

and

M.P. No.1 of 2010

P. Panjamoorthy ..... Petitioner

Vs.

1. The Registrar of Co-operative Societies,
   Government of Puducherry,
   Office of the R.C.S.,
   V.V.P. Nagar,
   Puducherry-605 009.

2. The Administrator,
   Swadeshi Cotton Mills Employees'
   Co-operative Credit Society,
   Maraimalai Adigal Salai,
   Orlienpet P.O.,
   Puducherry-605 004. ..... Respondents

The Registrar of Co-operative Societies has no power to transfer any employee of a society to another society, since each co-operative society is an independent unit and an employee cannot be transferred from one society to another. Hence the request of the petitioner to transfer him to another society, as the society in which he was working was liquidated cannot be granted.

Regulation 16(1) enables the transfer of an employee within the second respondent-society and not from one society to another. Therefore, the said regulation does not go to the rescue of the petitioner.

Advocates appeared:

For Petitioners	: Mr. M.A. Abdul Wahab
For Respondent - 1	: Mr. D. Srinivasan, Government Pleader, Pondicherry.

Writ petition filed under Article 226 of the Constitution of India, praying for the issue of a writ of mandamus, directing the first respondent to transfer and post the petitioner in the same capacity in some other society following the precedents and also direct the respondents to settle balance of salary due to the petitioner from February 2005 till date with interest @ 12% per annum.

JUDGMENT

The petitioner has come up with the present writ petition, seeking the issue of a writ of mandamus, to direct the first respondent to transfer and post him in some other society.

2. Heard Mr. M.A.Abdul Wahab, learned counsel appearing for the petitioner and Mr. D. Srinivasan, learned Government Pleader (Pondicherry) appearing of the first respondent.

3. The petitioner was employed in the second respondent co-operative mill. Since the mill is in financial crisis, the petitioner claims that his salary had not been paid and that therefore he made a request to the Registrar of Co-operative Societies to transfer him to some other society. The petitioner has also prayed for payment of the arrears of salary.

4. The first respondent has filed a counter affidavit stating that the second respondent has been wound up under Section 126 of the Puducherry Co-operative Societies Act, 1972 and that a Liquidator had been appointed. In paragraph 6 of the counter affidavit, the first respondent has specifically stated that he has no power to transfer any employee of a society to another society, since each co-operative society is an independent unit and an employee cannot be transferred from one society to another.

5. In the light of the stand taken by the first respondent in paragraph 6 of the counter affidavit that he has no power to transfer an employee from one society to another, the relief sought for by the petitioner cannot be granted.

6. However, Mr. M. A. Abdul Wahab, learned counsel for the petitioner relied upon the Employees' Service Regulations of the second respondent –society. Regulation No.16(1) makes every employee liable for transfer from one post to another and from one station to another. Therefore, the learned counsel contended that he can be transferred.

7. But unfortunately, Regulation 16(1) enables the transfer of an employee within the second respondent-society and not from one society to another. Therefore, the said regulation does not go to the rescue of the petitioner.

8. In a rejoinder filed today, the petitioner has claimed that a few other persons have been accommodated in other societies. But from paragraph 4 of the rejoinder, it is clear that they were so accommodated by a resolution passed by the societies concerned. In other words, the other persons were on transferred by the Registrar, but were accommodated by another society on mutual consent.

9. In view of the above, I do not find any justification to issue directions sought for in this writ petition. In so far as the claim of the petitioner for salary is concerned, the petitioner shall approach the Liquidator appointed for the second respondent.

10. With the above observations, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 20.8.2010

CORAM

THE HONOURABLE Mr. JUSTICE T.S. SIVAGNANAM

W. P. No. 9162 of 2003

Aringar Anna Primary Agricultural
Co-operative Bank,
rep. by its President ..... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Karaikal, Pondicherry.

2. T. Arangasamy ..... Respondents

The award passed by the Labour Court was challenged by the petitioner society on the ground that Labour Court has no jurisdiction to entertain the claim made by the second respondent, since the second respondent is not a workman as defined under Section 2(s) of the Industrial Dispute Act as the second respondent was working as a Manager in the petitioner bank and Labour Court without considering this aspect has passed the award. There was an inordinate and unexplained delay of 12 years between the date of retrenchment and the date on which the second respondent initiated conciliation proceedings and on that ground itself, the claim petition ought to have been dismissed. Further the Labour Court ought to have denied the backwages in the entirety and erred in granting the relief of continuity of service.

The second respondent submitted that the issue as to whether the petitioner is a workman or not was never canvassed either before the Labour Officer or before the Labour Court and it is raised for the first time before this Court and therefore such a plea should not be entertained. It is further contended that the petitioner was only a salesman in one of the shops attached to the

petitioner management and mere use of the terminology "Manager" is not a decisive factor. Inasmuch as the second respondent having been illegally thrown out of employment, cannot be denied legal remedy solely on account of passage of time.

Held, the question whether the second respondent is a workman or not is purely a question of fact and cannot be decided purely on the nomenclature of the post held by the second respondent. The Labour Court disbelieved the reason given in the resolution passed by the petitioner for retrenching the service of the second respondent more particularly when immediately after the second respondent was retrenched, they have employed several persons in various positions. Thus, the Labour Court came to a conclusion that the second respondent has to be reinstated in service.

S. 25(f) Industrial Disputes Act - The Labour Court after properly appreciating the evidence available on record came to a conclusion that the order of retrenchment was without any basis and that there has been violation of Section 25(f) of the Industrial Disputes Act and therefore passed the award of reinstatement with backwages, however, denied backwages for the period during which the second respondent was employed. There is no valid reason to re-appreciate the findings arrived at by the Labour Court to come to a different conclusion.

Cases referred:

(I) Birla Corporation Ltd., vs. Rajeshwar Mahato and others, 2001 (1) LLJ 154 (SC);

(ii) S.K. Mani vs. M/s, Carona Sahu Company Ltd., and others, 1994 (2) LLJ 1153 (SC);

(iii) Gujarat Industrial Co-operative Bank Ltd., vs. D.G. Jobanputra, 2004 (3) GLR 2753 – Gujarat High Court;

(iv) Brahmanand Tiwari vs. Presiding Officer, Labour Court and another, 2007(2) LLJ 935, Jharkhand High Court;

(v) C. Channaiah vs. Presiding Officer and another, 1991 (2) LLN 684 – Karnataka High Court.

(vi) U.P. State Brassware Corporation Ltd., and another vs. Udai Narain Pandey, 2006 (1) SCC 479 : AIR 2006 SC 586 : 2006 (108) FLR 201 : JT 2005 (10) SC 344 : (2006) 1 LLJ 496 SC : (2006) 2 SLJ 327 (SC);

(vii) Talwara Co-operative Credit and Service Society Ltd., vs. Susil Kumar,2009 (1) LLJ 326 SC : [2008] INSC 1686;

(viii) Metropolitan Transport Corporation vs. V. Venkatesan, 2009 (11) SCALE 50 : AIR 2010 SC 206 : JT 2009 (11) SC 96 : (2009) 9 SCC 601 : 2009 AIR SCW 5855;

(ix) Uttranchal Forest Development Corporation vs. M.C. Joshi, 2007 (2) LLJ 390 SC : [2007] INSC 206.

(x) C. Gupta vs. Glaxo-Smithkline Pharmaceuticals Ltd., (2007) 7 SCC 117 : [2007] INSC 666 : 2007 (8) SCALE 467 : JT 2007 (8) SC 480.

Advocates appeared :

For Petitioners	:	Mr. S. Saiprased for M/s. Sai Raaj Associates
For Respondents	:	Mr. M. Md. Ibrahim Ali-R2

Prayer: The writ petition filed under Article 226 of the Constitution of India for issue of writ of certiorari call for the records pertaining to the Award passed by the first respondent in I.D. No.8 of 2000 dated 14.6.2002 and quash the same.

JUDGMENT

The prayer in the writ petition is for issuance of a writ of certiorari to quash the award passed by the Labour Court, Karaikal in I.D. No.8 of 2000 dated 14.6.2002.

2. The petitioner is the management of Aringar Anna Primary Agricultural Co-operative Bank and the second respondent was its employee. The second respondent was retrenched from service on 21.2.1987 and was served with a notice in this regard on 23.2.1987. According to the petitioner/management, before the order of retrenchment was passed, the second respondent was offered one month pay in lieu of one month notice period. However, the second respondent returned the amount and remitted the same into the bank. Thereafter, on 18.8.1999, the petitioner submitted a petition before the Labour Officer for conciliation. The Labour Officer submitted a failure report to the Government of Pondicherry and

the Government by an order dated 24.7.2000, referred the dispute for adjudication before the first respondent. The Labour Court adjudicated the claim and passed the impugned award ordering reinstatement with backwages. Aggrieved by such award, the petitioner management is before this Court.

3. The learned counsel for the petitioner would submit that the first respondent/Labour Court has no jurisdiction to entertain the claim made by the second respondent, since the second respondent is not a workman as defined under Section 2(s) of the Industrial Disputes Act as the second respondent was working as a Manager in the petitioner bank and the Labour Court without considering this aspect has passed the award; that the second respondent himself had admitted in several representations that he is the Manager and since this is admitted, the management cannot be called upon to prove the same independently and that during the course of cross examination, the second respondent has stated that there were two other persons working under him which proves that the duties discharged by him were managerial in nature. Therefore, it is submitted that the Labour Court had no jurisdiction to adjudicate the claim of the second respondent. The learned counsel would further submit that there is an inordinate and unexplained delay of 12 years between the date of retrenchment and the date on which the second respondent initiated conciliation proceedings and on that ground itself, the claim petition ought to have been dismissed. That the Labour Court concluded that the second respondent was gainfully employed for a period of three years from 1.7.1989 to 6.6.1991 and such fact having been suppressed in the claim statement, the Labour Court ought to have denied the backwages in the entirety and erred in granting the relief of continuity of service.

4. The learned counsel for the petitioner relied on the following decisions in support of his contention that the 'Manager is not a workman':

(i) *Birla Corporation Ltd., vs. Rajeshwar Mahato and others, 2001 (1) LLJ 154 (SC);*

(ii) S.K. Mani vs. M/s, Carona Sahu Company Ltd., and others, 1994 (2) LLJ 1153 (SC);

(iii) Gujarat Industrial Co-operative Bank Ltd., vs. D.G. Jobanputra, 2004 (3) GLR 2753 – Gujarat High Court;

On the question of delay in raising the dispute, the learned counsel placed reliance on the following decisions:

(i) *Brahmanand Tiwari vs. Presiding Officer, Labour Court and another, 2007(2) LLJ 935, Jharkhand High Court;*

(ii) *C. Channaiah vs. Presiding Officer, Labour Court, Mysore and another, 1991 (2) LLN 684 – Karnataka High Court.*

On the aspect relating to gainful employment and that backwages is not automatic, the learned counsel relied on the following decisions:

(i) *U.P. State Brassware Corporation Ltd., and another vs. Udai Narain Pandey, 2006 (1) SCC 479 : AIR 2006 SC 586 : 2006 (108) FLR 201 : JT 2005 (10) SC 344 : (2006) 1 LLJ 496 SC : (2006) 2 SLJ 327 (SC);*

(ii) *Talwara Co-operative Credit and Service Society Ltd., vs. Susil Kumar,2009 (1) LLJ 326 SC [2008] INSC 1686;*

(iii) *Metropolitan Transport Corporation vs. V. Venkatesan, 2009 (11) SCALE 50 : AIR 2010 SC 206 : JT 2009 (11) SC 96 : (2009) 9 SCC 601 : 2009 AIR SCW 5855;*

(iv) *Uttranchal Forest Development Corporation vs. M.C. Joshi, 2007 (2) LLJ 390 SC : [2007] INSC 206.*

5. Per contra, the learned counsel appearing for the second respondent would submit that the issue as to whether the petitioner is a workman or not was never canvassed either before the Labour Officer or before the Labour Court and it is raised for the first time before this Court and therefore such a plea should not be entertained. It is further contended that this being a question of fact, the same ought to have been raised by the management at the earliest point of time and having failed to do so, they cannot be permitted to raise such a contention before this Court in a writ petition filed against the award of the Labour Court. It is further contended that the petitioner was only a salesman in one of the shops attached to the petitioner management and mere use of the terminology "Manager" is not a decisive factor, as the second respondent was only earning Rs.750 per month and he was engaged in the sale of agricultural products and fertilizers. It is further contended that there is no latches as alleged by the petitioner, since the second respondent had represented as early as on 5.8.1987 and subsequently in 1992, for which a reply was received from the management on 28.8.1992. Thereafter, the second respondent issued

a legal notice during 1999 and subsequently, initiated proceedings for conciliation. Inasmuch as the second respondent having been illegally thrown out of employment, cannot be denied legal remedy solely on account of passage of time.

6. The learned counsel by referring to the bye-laws of the society, would submit that even for the purpose of availing leave, the second respondent has to obtain permission of the President of the society and as per the bye-laws, the second respondent had only power to incur expenses to the extent of Rs.5 and these facts would go to establish that the second respondent was only a workman in the petitioner management.

7. The learned counsel for the second respondent would submit that decisions relied on by the learned counsel for the petitioner has no application to the facts and circumstances of the present case as the case on hand is a case of retrenchment and the case laws relied on by the learned counsel for the petitioner are cases relating to dismissal or termination of service. The Labour Court having arrived at a factual finding that the order of retrenchment was bad in law, this Court should not re-appreciate the factual finding and come to a different conclusion. On the above grounds, the learned counsel prayed for dismissal of the writ petition.

8. I have carefully considered the submissions made by the learned counsel appearing on either side and perused the materials available on record.

9. The first question to be decided is as to whether the second respondent was a workman or was employed in a managerial position?

10. Before going into the factual aspect, it is noteworthy to mention that this aspect of the matter was not raised by the management at any earlier point of time. The failure report submitted by the Labour Court has been filed in the typed set of papers filed by the second respondent. A perusal of the same reveals that though notice was served on the petitioner by the Labour Officer to submit their objections to the claim made by the second respondent, the petitioner/management did not submit any written response. However, the representative of the management appeared for the enquiry on 21.4.1999 before the Labour Officer and reiterated the stand that the order of retrenchment passed against the second respondent was valid.

11. It appears that the conciliation proceedings were adjourned from time to time and ultimately since the conciliation failed, the Labour Officer has submitted his failure report on 23.9.1999. The Government by G.O. (Rt) dated 24.7.2000, referred the dispute for adjudication to the first respondent and the terms of reference are as follows:

> "(i) Whether the act of filling up of the vacancies by the management of M/s. Aringar Anna Primary Agricultural Co-operative Bank, T.R. Pattinam, Karaikal without giving preference to the retrenched employee viz. Thiru T. Arangasamy is justified or not?
>
> (ii) To what relief/ benefits the said workman is entitled to?
>
> (iii) To compute the relief, if any, awarded in terms of money if it can be so computed?

This Government Order was also published in the Pondicherry Government Gazette on 15.8.2000.

12. A perusal of the Government Order as well as the Gazettee Notification reveals that the second respondent was described as workman of the petitioner Management. Thus it appears that the petitioner Management did not raise a contention either before the Government or after the Notification by challenging the order of reference, stating that the second respondent was not a workman.

13. The Hon'ble Supreme Court in *C. Gupta vs. Glaxo-Smithkline Pharmaceuticals Ltd., (2007) 7 SCC 117 : [2007] INSC 666 : 2007 (8) SCALE 467 : JT 2007 (8) SC 480*, laid down the factors to be considered for determination of whether particular employee is a 'workman' as per Section 2(s) of the Industrial Disputes Act and held thus:

> *"18. It is not in dispute that the nomenclature is really not of any consequence. Whether a particular employee comes within the definition of workman has to be decided factually. In fact, it has been found as a matter with reference to various factual aspects that the duties undertaken by the appellant overwhelmingly fell in the managerial cadre...."*

Thus, the question whether the second respondent is a workman or not is purely a question of fact and cannot be decided purely on the nomenclature of the post held by the second respondent.

14. Before the Labour Court, the second respondent filed his claim statement. Apart from various other grounds, the second respondent has raised a contention that the order of retrenchment is in violation of Section 25(f) of the Industrial Disputes Act. The petitioner management filed their counter statement and even in the said counter statement, the petitioner did not raise the question of jurisdiction. Thus, it is clear that the question as to whether the second respondent was a workman or a person employed in managerial capacity is raised for the first time before this Court. A faint plea has been raised by the learned counsel for the petitioner contending that in the written argument before the Labour Court, such contention was raised. As held by their Lordships of the Hon'ble Supreme Court in the case of *C. Gupta* referred supra, the question whether the second respondent was a workman or discharging managerial function is a question of fact. Therefore, it has to be not only specifically pleaded, but also to be proved before the Labour Court. In the absence of any such specific plea and in the absence of any proof to the said effect, such a plea cannot be allowed to be raised at this distance of time. Mere mention in the written argument before the Labour Court will not justify the stand of the management.

15. It is not in dispute that the second respondent was earning only Rs.750 per month and from the bylaws it is clear that the second respondent had only power to spend to the value of Rs.5. Therefore, it is evidently clear that the second respondent was not exercising managerial function. In any event, a mere attempt by the second respondent stating that he was the 'Manager' would not make him a person discharging managerial function. In absence of any evidence to this aspect, I am not able to countenance such a plea raised by the petitioner.

16. On the factual aspect, the Labour Court framed two issues for consideration namely whether the second respondent has to be reinstated with backwages and as to what relief the second respondent is entitled to? The second respondent examined himself as W.W.1 and marked 12 documents. The management examined one Mr. Sivaji as M.W. 1 and marked 11 documents. The Labour Court after considering the oral and documentary evidence held that the management by a resolution dated

21.2.1987, retrenched the service of the second respondent and another employee Govindarasu with effect from 23.2.1987 and before the order of retrenchment was passed, the management did not give any notice or any pay in lieu of notice and deposition of the management witness was to the effect that when the second respondent was in employment, he caused loss to the society and certain complaints were received and based on that the second respondent was retrenched. Thus, it is clear that the order of retrenchment was punitive and if that be the case, the petitioner management ought to have framed charges and conducted an enquiry before dispensing with the services of the second respondent. Therefore, the Labour Court on considering the aspect that no charges were framed on the allegations against the second respondent and no domestic enquiry was conducted, came to the conclusion that the order of retrenchment was not based on any allegation against the second respondent as stated by the management witness. However, the fact was that the order of retrenchment was made pursuant to a resolution dated 21.2.1987 alleging poor financial condition of the petitioner bank and that they were unable to pay the wages to their employees. Therefore, the Labour Court concluded that prior to the order of retrenchment, the management was bound to comply with the provisions of Section 25(f) of the Industrial Disputes Act and on failure to comply with the mandatory provisions, the resolution retrenching the second respondent from service is not sustainable. Further, the Labour Court took note that after the second respondent was retrenched, one Vellupillai was appointed as Manager, Chandra as cashier, one Balaji as salesman and Anbhazagan and Swaminathan as peons and one tractor driver on daily wage basis and even at that point of time, the request made by the second respondent to reinstate him in service was not considered. In fact this was one of the issues referred for adjudication. The Labour Court also appreciated the documents filed by the workman Exs.W4, W8 and W9, which were letters sent by the second respondent requesting the management to reinstate him in service. Therefore, the Labour Court disbelieved the reasons given in the resolution passed by the petitioner for retrenching the service of the second respondent more particularly when immediately after the second respondent was retrenched, they have employed several persons in various positions. Thus, the Labour Court came to a conclusion that the second respondent has to be reinstated in service.

17. On the aspect relating to backwages, the Labour Court held that between the period 1.7.1989 and 6.6.1991, the second respondent was employed in Pondicherry Fishermen Co-operative Society with a monthly wages of Rs.800 as established by Ex. M-9 and therefore denied the backwages for the said period.

18. Thus, in my view, the Labour Court after properly appreciating the evidence available on record came to a conclusion that the order of retrenchment was without any basis and that there has been violation of Section 25(f) of the Industrial Disputes Act and therefore passed the award of reinstatement with backwages, however, denied backwages for the period from 1.7.1989 to 6.6.1991, during which period the second respondent was employed in the Pondicherry Fishermen Co-operative Society. Therefore, I find no valid reason to re-appreciate the findings arrived at by the Labour Court to come to a different conclusion.

19. Coming to the case laws relied on by the learned counsel for the petitioner, it has to be noted that the aspect as to whether the second respondent was a workman or a person discharging managerial functions, is a question of fact which ought to have been raised and proved before the Labour Court. In the case on hand, this contention was never raised either before the Conciliation Officer or at the time when the matter was referred for adjudication by the Government or before the Labour Court. In the absence of any such plea having been raised at any earlier point of time, especially when they have suffered an award which has been rendered after appreciating the facts and findings on record, the case laws on these aspects cannot render any assistance to the case of the petitioner management.

20. Similarly on the aspects relating to the delay in raising the dispute, the Labour Court itself appreciated the scope of the documents marked by the respondents namely Exs. W4, W8 and W9 and came to the conclusion that the second respondent has been continuously requesting for employment. That apart, it is seen that the second respondent has been making series of representations between 1987 to 1992 and ultimately initiated conciliation proceedings in 1999 and thereafter the matter was referred to the Labour Court for adjudication. Therefore, on facts I find no justification to reject the claim of the second respondent on the ground of laches as alleged by the petitioner management.

21. The delay or laches cannot be assessed solely on account of physical running of time. This has to be appreciated considering the facts available on record. To throw out a matter on the question of delay, it should be established that there has been a supine indifference on the part of the persons approaching the Court/Forum or a deliberate inaction. In the case on hand, the second respondent being a low wage earner, cannot be faulted for having repeatedly represented to the petitioner for reinstatement and thereafter invoking the provisions of the Industrial Disputes Act. Hence, I am not able to accept the contentions raised by the petitioner in this regard.

22. It is true that backwages is not automatic. For denying backwages, the Labour Court has to assign reasons. The management has been able to prove that the second respondent was gainfully employed by receiving salary of Rs.800 per month from a co-operative society between 1.7.1989 and 6.6.1991. For this period, the Labour Court has rightly denied wages. Therefore, for all the above reasons no error can be attributed to the award passed by the Labour Court.

23. In the result, the writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Note: This judgment was set aside by the Division Bench in W.A. No.168 of 2011 dated 28.3.2013, vide page No.276.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 5.1.2011

CORAM

THE HONOURABLE MR.JUSTICE VINOD K. SHARMA

W. P. No. 88 of 2011

and M.P. No. 1 of 2011

M. Nirmal ..... Petitioner

Vs.

1. The Managing Director,
   Pondicherry State Co-operative
   Consumer Federation Ltd.,
   Puducherry.

2. The Deputy Registrar of Co-operative Societies,
   Puducherry.

3. The Registrar of Co-operative Societies,
   Puducherry. .....Respondents

Once the right of the petitioner stood rejected by the statutory authority under the Act in exercise of quasi judicial powers, it is not open to the petitioner to seek enforcement of the observations made in the order without challenging the order passed by the statutory authority.

Advocates appeared :

For Petitioner : Mr. V. Manohar

For Respondent No.1 : Mr. K. Raja Shrinivas

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the first respondent to consider the exemption of the qualification criteria to promote to the Junior Assistant in the first respondent's Consumer Federation Ltd, with attended benefits.

JUDGMENT

The petitioner has invoked the writ jurisdiction of this Court with a prayer for issuance of a writ in the nature of mandamus directing the respondents to accept the recommendation made by the second respondent vide order dated 12.3.2009.

2. The operative portion of the recommendation made, reads as follows:

> *"4. However, considering the plight of the petitioner and other similarly placed employees of the CONFED, I direct the respondent to take up cadre review of the employees as expeditiously as possible, in any case, within a period of six months and consider promotion of eligible employees. Such promotion would certainly enhance their morale and working condition. It is open to the petitioner to file a dispute, if he has a legitimate claim after the cadre review is made and the disposal of this dispute will not preclude him from seeking relief."*

3. The case of the petitioner set out in the affidavit is that the petitioner was appointed as Junior Assistant on daily wages in the year 1985. The qualification for the post of Junior Assistant stipulated that the candidate should have passed B.Com or B.A. (Co-operation). The petitioner did not possess the said qualification. In the year 1990, the petitioner was disqualified for appointment for want of qualification with retrospective effect. The petitioner approached the authorities for relaxation of the rule on the ground that he has been performing the duty of Junior Assistant and therefore was entitled to be treated as Junior Assistant, as similarly placed junior employees were in fact absorbed as Junior Assistant. The claim of the petitioner was not accepted. The petitioner preferred an appeal against the said decision. The appeal was also rejected.

4. It would be pertinent to mention here that though the recommendations made in favour of the petitioner was considered under Section 84 of the Puducherry Co-operative Societies Act, 1972, the issue was decided against the petitioner by holding that no relief could be granted to him. A reading of the recommendation referred to above would clearly show that the authorities were only given right to take a decision, if so advised.

5. Learned counsel for the petitioner has not chosen to challenge the statutory order passed under the Puducherry Co-operative Societies Act, 1972. The plea of the learned counsel for the petitioner that in view of the recommendations, the case of the petitioner is to be considered, cannot be accepted.

6. Once the right of the petitioner stood rejected by the statutory authority under the said Act in exercise of quasi judicial powers, it is not open to the petitioner to seek enforcement of the observations made in the order without challenging the order passed by the statutory authority.

7. Consequently, there is no merit in the writ petition and is dismissed. No costs. Consequently, M.P.No.1 of 2011 is also dismissed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 7.4.2011

CORAM

THE HONOURABLE Mr. JUSTICE N. PAUL VASANTHAKUMAR

Writ Petition No. 8836 of 2011

P. Kannan ... Petitioner

Vs.

1. The Registrar of Co-operative Societies,
   Co-operative Department,
   Puducherry – 605 009.

2. The Administrator,
   The Puducherry Fair Price Shop
   Employees Co-operative Society Ltd.,
   Ilango Nagar, Puducherry – 605 011. ... Respondents

The appeal/revision was filed by the petitioner against the order passed reducing the petitioner from his rank. Since a revision is maintainable under Section 141 of the Pondicherry Co-operative Societies Act, 1972 and a limited prayer is made to consider the same on merits within a time frame, learned counsel for the respondents was directed to take notice, who in turn submits that three months' time may be granted to the first respondent to consider and pass necessary orders on the appeal/revision of the petitioner.

Advocates appeared :

For Petitioner	...	Mr. K.M. Ramesh
For Respondents	...	Mr. R. Syed Musthafa

PRAYER : Petition filed under Article 226 of the Constitution of India for the issuance of writ of mandamus directing the first respondent herein to consider and dispose of the petitioner's appeal dated 20.4.2009 treating the same as a revision filed under Section 141 of the Pondicherry Co-operative Societies Act, 1972 within a time frame.

JUDGMENT

The prayer in the writ petition is to issue a writ of mandamus directing the first respondent herein to consider and dispose of the petitioner's appeal dated 20.4.2009 treating the same as a revision filed under Section 141 of the Pondicherry Co-operative Societies Act, 1972 within a time frame.

2. The said appeal/revision was filed by the petitioner against the order passed reducing the petitioner from his rank. Since a revision is maintainable under Section 141 of the Pondicherry Co-operative Societies Act, 1972 and as limited prayer is made to consider the same on merits within a time frame, Mr. R. Syed Musthafa, learned counsel for the respondents was directed to take notice, who in turn submits that three months' time may be granted to the first respondent to consider and pass necessary orders on the appeal/revision of the petitioner.

3. Recording the said submission, this writ petition is disposed of which a direction to the first respondent to pass orders on the appeal/revision of the petitioner on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs.

Note : The writ appeal against the order was dismissed, vide page No.263.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 22.7.2011

CORAM

THE HONOURABLE Mr. JUSTICE T. RAJA

W. P. No. 27699 of 2004

B. Navaneetha Kannan ... Petitioner

Vs.

1. The Administrator/Managing Director,
   The Pondicherry Co-operative Milk Producers
   Union Ltd. No. P. 1,
   Vazhudavoor Road, Kurumampet
   Pondicherry - 605 009.

2. The Registrar of Co-operative Societies,
   Government of Pondicherry,
   Thattanchavady,
   Pondicherry - 605 009. ... Respondents

The order of dismissal of the petitioner from service, as passed by the Managing Director of the Pondicherry Co-operative Milk Producers' Union, as confirmed by the Administrator of the said union was under challenge in this writ petition.

When the enquiry officer has finally found the petitioner was not guilty in respect of charges, the de-novo enquiry proceedings asking the petitioner to appear for enquiry again has to be looked into with all seriousness. No doubt, it is true that the disciplinary authority is entitled to differ from the findings of the enquiry officer, if the disciplinary authority is not satisfied with the findings of the enquiry officer. But the law imposes an obligation upon the disciplinary authority to follow certain mandatory procedures.

As per the ratio in B. Karunakar's case, the first stage of enquiry is not completed till the disciplinary authority has recorded his findings. Because, the first stage ends where the disciplinary authority arrives at its conclusions on the basis of the evidence, the enquiry officer's report and the

delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. Therefore, at this stage, the principles of natural justice would demand that the authority who proposes to decide against the delinquent officer must give a hearing.

Even though the findings of the enquiry officer also explicitly established the innocence of the petitioner, the disciplinary authority, despite the submission of the report by the enquiry officer holding the petitioner not guilty, chose to issue the order to conduct de novo enquiry which is clearly proved to be a motivated one.

The Court is of the considered view that the principles laid down by the Apex Court in Punjab National Bank case that on submission of the favourable report by the enquiry officer, the disciplinary authority, before even going for a de-novo enquiry disagreeing with the finding of the enquiry officer should issue with a show cause notice to the petitioner and call him to explain as to why the findings of the Enquiry Officer should not be deviated, have been flagrantly violated.

Allowing the writ petition, the findings of the Court can be summed up thus:

(I) The initiation of contempt proceedings against the respondent virtually snowballed into the appointment of an Administrator for the respondent society by keeping the Registrar away from the society till the Managing Director to the society was selected. For the reason, the petitioner was subjected to disciplinary proceedings on totally vague and flimsy charges.

(ii) It is writ large on the 2nd enquiry officer's report that, ignoring the fact that even the charge that were already dropped by the Chairman, the petitioner was unjustly held guilty for those two charges which is totally illegal.

(iii) Even during the pendency of the matter before the Court, when there is no direction to pass final orders, the petitioner was hastily dismissed from service.

(iv) When the enquiry officer has submitted a report in favour of the delinquent officer, before the disciplinary authority differing with the same so as to proceed with a de-novo enquiry, due show cause

notice should be issued to the petitioner enabling him to explain as to why the findings of the enquiry officer should not be deviated, have been given a convenient go-bye.

For the foregoing reasons, the Court quashed the impugned proceedings, with a direction to the respondents to pay all the consequential/ cumulative monetary benefits.

Case laws referred :

(i) *Managing Director, ECIL, Hyderabad vs. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704 : (1994) I LLJ 162 SC;*

(ii) *Punjab National Bank and others vs. Kunj Behari Mishra, 1998 VI AD (SC) 220 : AIR 1998 SC 2713 : 1998 (2) CTC 742; JT 1998 (5) SC 548 : 1998 Lab IC 3012 : (1998) II LLJ 809 SC : 1998 (4) SCALE 608 : (1998) 7 SCC 84 : [1998] Supp 1 SCR 22 : 1999 (1) SLJ 271 (SC).*

Advocates appeared:

For Petitioner	...	Mr. V. Prakash, Senior counsel For Mr. T. Kalaimani
For Respondents	...	Mr. L. Swaminathan, for R-1
		Ms. N. Mala, Additional Government Pleader, Pondicherry, for R-2.

Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records in pursuant to the impugned dismissal order passed by the 1st respondent in Ref. Ponlait / Estt / P. A. No. 4/2004 dated 25.8.2004 and the subsequent Appeal Rejection order passed by the same 1st respondent in Ref. Ponlait / Estt/P.A.No.4/2004 dated 30th June 2010 and quash the same consequently directing the respondents to pay all the cumulative monetary benefits arising there from.

Prayer amended as per order dated 17.8.2010 by KBKVJ in WPMP No. 399/2010 in W.P. No. 27699/2004.

JUDGMENT

The petitioner B. Navaneetha Kannan has filed the present writ petition initially against the dismissal order passed by the first respondent in Ref. Ponlait/Estt/P. A. No. 4/2004 dated 25.8.2004 and quash the same and for a consequential direction to the respondents to reinstate the petitioner in service with all attendant benefits. At the very outset, it is relevant to mention that during the pendency of the writ petition, the petitioner has amended the prayer to quash the order dated 25.8.2004 and the subsequent Appeal Rejection Order passed by the first respondent in Ref. Ponlait/Estt/P. A. No. 4/2004 dated 30th June 2010 and quash the same, consequently directing the respondents to pay all the cumulative monetary benefits arising therefrom.

2. (i) The petitioner joined the services of the Pondicherry Co-operative Milk Producers Union Ltd., as Dairy Assistant in the year 1971 and he was promoted to the post of Assistant General Manager in the said union. While he was serving, he was also holding the additional charge of the post of Managing Director, Pondicherry Co-operative Milk Producers' Union during the period from May 1995 to January 2001. For about 5 ½ years, the petitioner was functioning as Managing Director. While so, he was placed under suspension by proceedings dated 30.6.2002. Aggrieved by the suspension order, the petitioner filed W. P. No. 25595/2002 on the file of this Court under Article 226 of the Constitution of India. At the time of admission of W. P. No. 25595/2002 itself, the writ petition was withdrawn and the petitioner was reinstated into service on 15.2.2003.

(ii) In the meanwhile, the second respondent has issued a direction to the first respondent to constitute an Expert Panel as per the bye-laws to select the Managing Director and accordingly, when an advertisement was given in a daily newspaper for the post of Managing Director on 29.10.1999, four applications were received. Out of the same, three were found ineligible as per the terms mentioned in the advertisement and bye-laws and the petitioner was the only eligible candidate. At that point of time, the second respondent issued a direction to the first respondent not to consider the petitioner's application for the post. On that basis, the Expert Panel adjourned the proceedings sine die without appointing the petitioner. Therefore, the petitioner preferred W. P. No. 18210/1999 against the direction issued by the second respondent not to consider the petitioner's application. Subsequently, the first respondent also filed another Writ

Petition in W. P. No. 4785/1999 against the direction. Both writ petitions were taken up together and, by a common order dated 5.5.2000 in W. P. No. 18210/1999, the impugned direction challenged by the petitioner dated 9.11.1999 was quashed as prayed by the petitioner and finally, a direction was issued to the Expert Panel to consider the petitioner and the other Writ Petition W. P. No. 4785/1999 was dismissed.

(iii) Thereafter, when the order of the Court was not properly implemented, the petitioner preferred Contempt Petition Nos. 497 and 631 of 2000 and WMP Nos. 23143, 23144, 23318 and 18717 of 2000. This Court, by taking up both the Contempt Petitions together passed an order on 22.1.2001, appointing one Mr. Uddipt Ray, I. A. S., Joint Secretary, Government of Pondicherry, as the Special Officer to exercise all powers of the Chairman, board of directors and Managing Director of the Union and also to take all necessary steps to select and appoint the Managing Director within four months. As a result, the Chairman and the board of directors were restrained from acting in their capacity until further orders. In the meanwhile, the petitioner was directed to go on special leave with payment of full salary until further orders. Subsequently, the appointment of the Special Officer was stayed and the board was permitted to proceed with the selection of Managing Director. Again, interview for the post of Managing Director was conducted on 11.6.2001 and one Rajeswaran was selected to the post of Managing Director. But the petitioner's name was at the second place in the selection list, thereby, the position was, in case Rajeswaran did not report, the petitioner would be appointed. However, Rajeswaran was appointed as Managing Director on 11.7.2001. Subsequently, the respondent management filed W. A. No. 315/2001. By order dated 8.2.2002 the First Bench of this Court passed an order to take back the petitioner's services. Accordingly, the petitioner joined services on 1.3.2002 as Assistant General Manager. In view of the aforementioned circumstances by which the petitioner was placed for appointment to the post of Managing Director, Mr. Rajeswaran started giving trouble from the date of appointment and finally the said Rajeswaran as Managing Director placed the petitioner under suspension without giving any specific reason on 1.7.2002 which continued till 14.2.2003. Subsequently, the said Rajeswaran who had grudge against the petitioner has given a newspaper publication in three Tamil dailies asking the public not to have touch with him. In these circumstances the petitioner was issued with a charge memo containing 9 charges on 12.8.2002 for allegations that he along with the

Chairman took a circuitous route for the Agri. Tech. 99 Exhibition at Israel from 2.9.2000 to 10.9.2000 instead of resorting to the direct route.

(iv) In the meanwhile, the said Rajeswaran, Managing Director was also placed under suspension by the Deputy Registrar of Co-operative Societies. Subsequently, the said Deputy Registrar was appointed as Special Officer. Immediately, on receipt of the above said charges, the petitioner submitted his explanation. The disciplinary authority not being satisfied with the said explanation dated 3.2.2003 ordered for appointment of the enquiry officer to go into the charges framed against the petitioner. The enquiry officer also commenced the enquiry on 27.9.2003. On completion of the enquiry, the enquiry officer submitted his report on 28.11.2003.

(v) After the enquiry officer accepting the explanation offered by the petitioner, the Chairman, by proceedings dated 19.11.2002, had dropped charges 7 and 8 relating to the price of ghee per kilo gram. Further, the enquiry officer not only held that the management has not proved charge Nos. 1 and 2 but also, by accepting the evidence of Mr. Gunasekaran, exonerated the petitioner from charge No. 5. In respect of charge No. 6, the enquiry officer, acting upon the evidence of Sakthivel, Deputy Manager, came to the conclusion that the loss was not due to the charged officer. Accordingly, charge No. 6 was also not proved. In respect of charge No. 5 that he acted against the interest of the union by placing orders for the purchase of disposable cups without calling for quotations, the enquiry officer exonerated the petitioner. Regarding charges 3 and 4 alleging inaction of the petitioner against the Junior Assistant G. Arumugam, by accepting the evidence of Mr. G. Arumugam, the enquiry officer held that the management has failed to prove the said charges as well. As regards charge No. 9 pertaining to the allegations that the petitioner, during his suspension went to Chennai leaving the head quarters, it was specifically held that he went to Lawspet in Pondicherry to consult his lawyer and he did not leave Pondicherry. Accordingly, charge No. 9 was also dismissed.

(vi) Finally, the enquiry officer after thorough enquiry, has come to the conclusion that no charges have been made out and so, concluding exonerated the petitioner based on the evidence and documents produced by both sides. After submission of the report by the enquiry officer, the respondent ordered for a de novo enquiry for a purported reason that the

enquiry officer has forwarded the report to the disciplinary authority through the presenting officer of the Department. Besides, the disciplinary authority, after receipt of the enquiry report, while differing from the report of the enquiry officer, without issuing a show cause notice, calling upon the petitioner to show cause as to why the disciplinary authority should not ignore such report, hastily proceeded to hold a de novo enquiry. When the disciplinary authority issued on order for holding a de novo enquiry on 21.1.2004, the petitioner, by filing W. P. No. 2394/2004 challenged, the said order on the ground that the disciplinary authority failed to give an opportunity of representation to the charged employee before differing with the findings, which is against the ruling of the Hon'ble Apex Court in the decision rendered in *Managing Director, ECIL, Hyderabad vs. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704 : (1994) I LLJ 162 SC.* This Court, by an interim order, dated 9.2.2004 passed in WPMP No. 2702/2004 in W. P. No. 2394/2004 directed that the enquiry may go on, however, to withhold the result till further orders. Subsequently, the enquiry proceedings were conducted and thereafter, when the petitioner wanted to choose one Dr. T. Velayutham, a retired Government employee as a defence assistant the said request of the petitioner was not considered. Nonetheless, a writ appeal came to be filed in W. A. No. 2642/2004.

(vii) Mr. V. Prakash, learned senior counsel further contended that the de novo enquiry proceedings, dated 21.1.2004, shall be held as void ab-initio for the reason that the first enquiry officer conducted a detailed exhaustive enquiry dealing with all charges from 1 to 9. Except charge Nos. 7 and 8 which were already dropped by the Government, the enquiry officer categorically found the petitioner 'not guilty' of any of the charges. Accordingly, the enquiry officer submitted his report on completion of the enquiry. After completion of the first enquiry, the decision to initiate de novo enquiry dated 21.1.2004, once again subjecting the petitioner to second enquiry, is in total violation of the principles of natural justice and also against the dictum laid down in *Managing Director, ECIL, Hyderabad vs. B. Karunakar* [supra].

(viii) As per the judgment of the Constitution Bench when the first enquiry officer's findings recorded in favour of the delinquent officer are proposed to be overturned by the disciplinary authority, the principles of natural justice requires that the employee should have a fair opportunity

to meet, explain and to controvert before he is condemned. In other words, it was contended by the learned senior counsel that when the findings in favour of the delinquent officer are proposed to be overturned by the disciplinary authority, a fair opportunity should be granted to the delinquent officer before the disciplinary authority proceeds to differ with such conclusion, as otherwise, he would be condemned unheard.

(ix) In the present case, curiously, in respect of charges 1 to 6 and charge No.9, a de novo enquiry was ordered and the second enquiry officer once again proceeded against the petitioner also to deal with charge Nos. 7 and 8 which were already dropped by the Chairman, and it was found that the petitioner was guilty of charge Nos. 7 and 8 as well. This approach of the second enquiry officer holding the petitioner guilty of even charge Nos. 7 and 8 which were already dropped by the Chairman itself, goes without saying that not only the enquiry officer conducted the de novo enquiry without application of mind, but also, the disciplinary authority, while passing the dismissal order against the petitioner by accepting the findings of the second enquiry officer, repeated the same irregularities and mistake of non-application of mind in accepting the findings of the second enquiry officer even though charge Nos. 7 and 8 which were already dropped by the Government.

(x) Adding his submission, the learned senior counsel submitted that the learned single Judge passed an order dated 20.6.2004, in W. P. No. 2394/2004, directing the respondents to conduct an enquiry on day–to– day basis and complete the same on or before 15.7.2004. Having aggrieved by the said order the petitioner preferred W. A. No. 2642/2004. The First Bench of this Court, by order dated 12.7.2004, directed the matter to be posted on 19.7.2004 and in the meanwhile, the enquiry may be completed and even the findings can be recorded by the enquiry officer and the same may be placed before the Court in a sealed cover. According to the learned senior counsel appearing for the petitioner, in spite of such clear and specific direction by the Division Bench of this Court to record only the findings of the enquiry officer, the respondent once again, defying the order passed by this Court, straight away passed the final order, dismissing the petitioner from service. This shows the second motivated action against the petitioner.

(xi) Further when W. A. No. 2642/2004 was taken up on 20.7.2004, on being apprised of the dismissal order, the Division Bench, after noting that

the petitioner was dismissed from service as against which he had also filed W. P. No. 27699/2004, dismissed the writ appeal as having become infructuous, however, with liberty to raise the grounds which have been raised in W. A. No.2642/2004 in the pending W.P. No. 27699/2004, wherein, the order of dismissal was under challenge. Therefore, the learned senior counsel has submitted that when the Division Bench has given him liberty to raise all the grounds which have been raised in the W. A. No. 2642/2004, in W. P. No. 27699/2004 challenging the order of dismissal, the petitioner is entitled to raise all the issues including the validity of the direction to hold a de novo enquiry against the petitioner. On that basis, the learned senior counsel has further argued that the entire exercise of the respondent from holding of the de novo enquiry up to the passing of the dismissal order against the petitioner, is not only unlawful and unjustified, but also a deliberated and motivated move totally contrary to the dictum laid down by the judgment of the Constitution Bench in *B.Karunakar* case, followed by another judgment of the Apex Court in *Punjab National Bank and others vs. Kunj Behari Mishra, 1998 VI AD (SC) 220 : AIR 1998 SC 2713 : 1998 (2) CTC 742; JT 1998 (5) SC 548 : 1998 Lab IC 3012 : (1998) II LLJ 809 SC : 1998 (4) SCALE 608 : (1998) 7 SCC 84 : [1998] Supp 1 SCR 22 : 1999 (1) SLJ 271 (SC).* Since the respondents have failed to follow the principles of natural justice by adhering to the proper procedure as mandated by the Supreme Court in *B. Karunakar* case in the matter of holding de novo enquiry, the entire disciplinary proceedings resulting from the de novo enquiry shall be declared to be void on the ground of gross violation of principles of natural justice. On this basis, the learned senior counsel prayed for allowing the present Writ Petition.

3. (i) Per contra, Mr. L. Swaminathan, the learned counsel appearing for the first respondent submitted that when the petitioner suffered departmental proceedings, an enquiry officer by name Mr. P. Elangovan, Advocate, was appointed and one Mr. K. Rajamanickam was appointed as presenting officer. Thereafter, the enquiry officer after completing the enquiry submitted his enquiry report to the presenting officer without directly addressing the disciplinary authority. The enquiry officer by his letter dated 26.12.2003, informed the disciplinary authority marking a copy that he has also submitted an enquiry report to the presenting officer. In view of the enquiry officer submitting his report to the presenting officer, instead of the disciplinary authority, the disciplinary authority ordered for a de novo enquiry on 21.1.2004. Aggrieved by the decision taken to initiate de-novo enquiry, the petitioner filed W. P. No. 2394/2004.

(ii) This Court, by an interim order dated 9.2.2004, directed that the enquiry may go on having suspending the result of the same till further orders. Thereafter, a second charge memo was issued to the petitioner on 18.5.2004. After that, the petitioner wrote the letter to the disciplinary authority informing his request to engage a defence assistant. Since there was no provision for engaging a defence assistant, the enquiry as ordered by this Court was further proceeded and subsequently, when this Court, by its order dated 28.6.2004, directed the petitioner to appear for the enquiry again, the petitioner failed to appear. As against that, when the petitioner filed W. A. No. 2642/2004, by order dated 12.7.2004, the Division Bench of this Court also directed to complete the enquiry and place the findings in a sealed cover. Only on the basis of the said direction the respondent completed the said enquiry and thereafter the sealed cover was also placed before this Court. Again this Court by order dated 3.8.2004 after noting that except charge No. 9, other charges were held to have been proved, directed the respondent to issue a second show cause notice and, on receipt of the same, the writ petitioner was also directed to submit his explanation. When this matter was posted after two weeks the respondent subsequently, on completion of the formalities, passed the dismissal order. Thereafter, when the matter was listed on 27.6.2004, this Court, by taking note of the fact that the petitioner was dismissed from service and the dismissal order also has been challenged by the petitioner in W. P. No. 27699/2004, by giving liberty to the petitioner to raise all the grounds raised in W. A. No. 2642/2004 in the pending W. P. No. 27699/2004, dismissed W. A. No. 2642/2004. Therefore, the petitioner is not entitled to re-open the previous enquiry proceedings, which were concluded on 28.11.2003.

(iii) The learned counsel for the respondent further contended that the petitioner, having caused heavy loss to the respondent, has deliberately abstained himself from participating in the second de novo enquiry proceedings. Only after completion of the de novo enquiry, the second enquiry officer found him guilty of all the charges except charge No.9 and held that the petitioner has deliberately misused the union funds. Therefore, the dismissal order cannot be found fault with. On that basis, the learned counsel for the first respondent prayed for dismissal of the writ petition as devoid of merits.

4. (i) Supporting the stand of the first respondent, Ms. N. Mala, Additional Government Pleader appearing for respondent No. 2, adopted the arguments of the learned counsel appearing for the respondent No. 1 and reiterated that the present writ petition has no merit for consideration.

(ii) In support of her submission the learned counsel further pleaded that it is an admitted case that the petitioner was directed to appear for the de novo enquiry. But, unfortunately, the petitioner did not appear for such enquiry and therefore, the enquiry officer, after giving all particulars, completed the enquiry, finding him guilty of all the charges except charge No. 9 and thereafter, when an order of dismissal was passed, the petitioner kept quiet without challenging the said dismissal order for about four years. But when he challenged the dismissal order by preferring appeal before the Administrator of PONLAIT, the appellate authority, on 30.6.2010 dismissed the said appeal dated 28.10.2008. Therefore, the rejection of the appeal preferred by the petitioner is justified.

5. Considered the rival submissions as advanced on either side.

6. The petitioner was originally appointed as Dairy Assistant. After putting in 25 years of service, he was promoted to the post of Assistant General Manager. The second respondent issued a direction to the first respondent to constitute an Expert Panel as per the bye-law to select the Managing Director. Accordingly, an advertisement was given in a newspaper for the post of Managing Director on 29.10.1999. When four applications were received by the respondent including the petitioner's one, 3 out of the 4 were found ineligible in terms of the advertisement and the bye-laws. Therefore, the petitioner was the only eligible candidate. But the second respondent issued a direction to the first respondent not to consider the petitioner's application for the said post. Accepting the said recommendation, the Expert Panel adjourned the proceedings sine-die which compelled the petitioner to prefer W. P. No. 18210 of 1999 against the direction issued by the said respondent. The first respondent also preferred another W. P. No. 4785/1999 challenging the said direction. This Court, by clubbing both Writ Petitions together passed a common order on 5.5.2000. While W. P. No. 18210/1999 filed by the petitioner was partly allowed with a direction to fill up the post of the Managing Director without any further delay, the other one viz., W. P. No. 4785/1999 was dismissed. Since this Court, in the above order dated 5.5.2000, has given three months' time-limit to fill up the post of Managing Director by

constituting Expert Panel to select and appoint the Managing Director according to the bye-laws read with the provisions of the Act and when the respondent failed to implement the order, the petitioner filed contempt petitions in Contempt Application Nos. 497 and 631 of 2000. In the said Contempt Application, this Court, by taking note of the fact that the order, dated 5.5.2000, passed in W. P. No. 18210/1999 was not complied with by constituting an Expert Committee, appointed one Uddipt Ray, Joint Secretary, Government of Pondicherry, as Special Officer to exercise all the powers of the Chairman, board of directors and Managing Director and to arrange to select and appoint the Managing Director within another four months' time. The Chairman and the board of directors were restrained from acting in their capacity until further orders. The order passed by this Court in the said Contempt Petitions being the root cause for these proceedings, is extracted hereunder:

(i) The petitioner, Managing Director in-charge shall keep himself away from the activities of the Pondicherry Co-operative Milk Producers' Union in any capacity by proceeding on leave until further orders and shall not in any manner interfere whatsoever with the affairs of the union or the management of the union by the Administrator appointed by this Court. However, full salary alone shall be paid to him in the substantive post until further orders without any other benefit or facility.

(ii) The Chairman of the Pondicherry Co-operative Milk Producers' Union and the newly elected Chairman or board of directors if any, shall also not act in their respective capacity until further orders of this Court and the Administrator appointed by this court shall act in the place of the board or committee or committees as well as the Managing Director to manage the affairs of the society and exercise full control, supervision over the affairs of the Pondicherry Co-operative Milk Producers' Union until further orders and the Administrator take all such actions as may be required in the interest of the society.

(iii) The Chief Secretary to the Government of Union territory of Pondicherry is suo muto impleaded as party to the present writ proceedings.

(iv) Mr. Uddipt Ray, I. A. S. Joint Secretary (Revenue) in the services of the Union territory of Pondicherry is appointed as the Administrator to manage and administer, control and supervise every affair of the Union and also exercise all the powers of the Chairman, board of directors and Managing Director of the said union or committee or committees of the Co-operative Union and shall be the sole repository exercising powers until further orders.

(v) The Administrator shall initiate immediate action to fill up the post of Managing Director by inviting fresh applications in terms and as per the bye-laws that existed as on 5.5.2000.

(vi) On the communication received from the said Administrator appointed by this Court, the National Dairy Development Board, the Government of Pondicherry shall in the level as prescribed in the byelaws nominate their representatives respectively to be the committee members and select the Managing Director of the Pondicherry Co-operative Milk Producers' Union without delay and take all steps to fill up the said post.

(vii) The Administrator shall be one of the selection committee members as representing the said Co-operative Milk Producers' Union as its Chairman or committee and the Administrator shall be the coordinator and the representative of the National Dairy Development Corporation shall be the Chairman of the selection committee. The majority decision of the selection committee shall be final and on the majority decision the candidate selected shall be appointed as Managing Director by the Administrator and the said appointment shall be deemed to have been made as per bye-laws and the same will be treated as per statutory provisions of the Pondicherry Co-operative Societies Act, 1972 and thereafter the Administrator shall hand over charge to the new incumbent within the outer limit of four months.

(vii) The Registrar of Co-operative Societies, Union territory of Pondicherry shall not in any manner interfere with the functions of the Administrator or in the selection process and the Chief Secretary to Government of Pondicherry shall render all assistance to the Administrator.

Since the abovementioned order was passed on 22.1.2001 in the contempt petitions filed by the petitioner, directing the Registrar of Co-operative Societies not to interfere with the functions of the Administrator or in the selection process and another direction to the Chief Secretary to Government of Pondicherry to render all assistance to the Administrator, the said order had naturally caused strained relationship between the petitioner and the respondents. This can be seen from the order of suspension passed, placing the petitioner under suspension without any satisfactory reason. In view of the above, the relationship between the petitioner and the respondents got strained beyond repatriation. The said suspension order was also published in a newspaper, in three Tamil dailies, though there is no reason or need for advertising someone's suspension order as it is purely a departmental issue.

7. Thereafter, the petitioner was issued with a charge memo dated 12.8.2002 for the alleged incident took place in the year 2000 containing nine charges which are as follows:

The first charge is that he has undertaken a circuitous route instead of selecting short route to attend Agri. Tech. Exhibition at Israel. Thus he has acted against the interest of the union and failed to maintain absolute integrity and breached the confidence reposed on him by the board of the union in authorizing him to make arrangements.

The second charge is that he has not presented TA adjustment bill to adjust the correct claim, instead submitted an expenditure statement by misusing his position as Managing Director in-charge thereby claiming excessively to the tune of Rs. 63,056.25.

The third charge is that the charged officer initiated proceedings against one G. Arumugam, Junior Assistant which he was in-charge of receiving and recording receipt of milk in the diary, for his misappropriation of union's fund to the tune of Rs.78,110 by fraudulent entries and allowed him to pay only Rs. 9,110 even after his own admission of guilt and dropped further action.

The fourth charge is that he deliberately avoided furnishing the details of action taken against Mr. Arumugam despite several reminders from the statutory authorities and thus failed to keep absolute integrity.

The fifth charge is that while holding the additional charge of Managing Director during the period from December, 1998 to August 1999 without following the established and conventional purchase procedures, he acted against the interest of the union by arbitrarily placing orders for the purchase of disposable cups, without calling for quotations/tenders from competitive suppliers and place orders with M/s. Gothi Packaging Industries, to the tune of Rs. 97,200 to help the said suppliers to exploit and monopolise the rates in the said supply.

The sixth charge is that while holding additional charge of Managing Director, during the period from April 1997 to December 1997, on various occasions allowed loss caused to the union by not recovering the cost of soured/curdled milk due to late arrival of milk collection vehicle and favoured the transport contractors by ordering not to collect the cost ignoring the certification by the Deputy Manager (P & O) even though a specific condition in the agreement for such recovery. Thus he has deliberately caused loss to the union by not recovering the costs due to late arrival. Thus he had lacked absolute integrity by acting against the interest of the union.

The seventh charge is that while functioning as Manager (Operations) during September, 1994 without authority or authorization and by violating accepted norms, conventions and procedures sold 4,015 kgs. of ghee to private party at a lesser price of Rs.90 per kg while the prevailing market rate was ranging from Rs. 130 to 160 and deliberately caused a loss of Rs.1,60,000 to the union and thereby failed to safeguard the interest of union.

The eighth charge is that in the said transaction besides failing to follow the established procedures of collecting the sale price in advance by Cash/DD, he received cheques from the purchasers and acted outside the scope of his duties misusing the power as a superior officer, caused the said cheques presented for collection belatedly six days after the bill date. Thus he deliberately, wantonly and fraudulently acted hands in glove with the purchasers to help them to make arrangements for fund and thereby acted prejudicial to the interest of the union and lacked absolute integrity.

The ninth charge is that the charged officer while under suspension deliberately and knowingly flouted the orders of the superior and without obtaining prior permission left the headquarters to go over to Chennai on 9.7.2002 in absolute disobedience and insubordination.

After the receipt of this charge memo, the petitioner submitted his explanation on 3.2.2003. On 15.2.2003, the petitioner was reinstated into service by Mr. P. Bhujanga Rao, Dairy Development Officer. Immediately, the petitioner also joined duty as Assistant General Manager on 15.12.2003. Thereafter, the said P. Bhujanga Rao also passed an order directing the petitioner to take charge as Managing Director. Only, thereafter, an enquiry officer was appointed on 7.8.2003. The petitioner took part in the enquiry till the completion of the entire proceedings. Finally, on completion of the enquiry, the enquiry officer submitted his report on 28.11.2003. After receipt of the report of the enquiry officer dated 28.11.2003, the petitioner was issued with an order dated 21.1.2004 about a de novo enquiry process against him.

8. It is relevant to keep in mind on vital fact that since the Chairman of the elected board Government though dropped charges 7 and 8, by his proceedings dated 19.11.2002, the enquiry officer has proceeded with the charges.

The allegation as charge No. 1 is that the petitioner, while holding additional charge of the post of Managing Director, undertook a visit to Agri. Tech. 1999 Exhibition at Israel from 2.9.1999 to 10.9.1999 by selecting a circuitous route instead of availing the direct route and caused additional expenditure to the department to the tune of Rs. 44,037.50.

The second charge is that, while holding additional charges of the post of Managing Director, after performing the tour along with the Chairman, the petitioner has not presented his T. A. adjustment bill to adjust the correct claim. Instead, he submitted an expenditure statement and claimed in excess of the admissible allowance and defrauded the union by claiming the excessive claim to the tune of Rs. 63,056.25.

After enquiry, the enquiry officer held that the petitioner had proceeded on tour along with the Chairman only as per the resolution of the board of PCMPU. Further, the entire expenditure was approved by the then Chairman vide Ex. A. 3. Moreover, the extracts from the relevant files also disclosed that the expenditure has been approved by the Chairman in the pre-audit session. Based on the same, the enquiry officer finally held that the management is not able to show anything else to substantiate the allegations as contained in the charges. Because, when the petitioner was able to establish that charge Nos. 1 and 2 cannot be made against him by

placing copies of the resolution passed by the board which supported the explanation of the petitioner, the enquiry officer held that the management has not proved charge Nos. 1 and 2.

As per charge No.3, the charged officer, while holding additional charges as M. D. initiated proceedings against one Sri. G. Arumugam, Junior Assistant, while he was in charge of receiving and recording receipt of milk in the dairy for his misappropriation of union's fund to the tune of Rs. 78,110 by making fraudulent entries as to the procurement of milk during the period from 17.10.1993 to 15.4.1995. In spite of the individual's guilt proved through an independent enquiry besides his own admission of guilt, he was spared to pay only Rs. 9,110 without any steps for recovery of the amount due to the union to the tune of Rs. 69,000 and thereby, further action was deliberately dropped, thus by his actions the charged officer knowingly caused loss to the union and favoured the individual.

The fourth charge states that while holding the post of the Managing Director, he deliberately avoided furnishing particulars to the Registrar of Co-operative Societies in spite of several reminders regarding misappropriation of funds by Sri. G. Arumugam, Junior Assistant, in-charge of receiving and recording receipt of milk in the daily during the period from 17.10.1993 to 15.4.1995.

The enquiry officer in his report came to the conclusion that the petitioner had taken all necessary steps to ascertain who were the miscreants responsible for the remaining sum of money, by marking Ex. B. 2. A copy of the letter from Sorapet Co-operative Milk Producers Society refers to the letter from the respondent management requiring recovery of Rs. 78,109.87 from the employees of Sorapet society. In this regard, the further explanation offered by the petitioner pointing out the extra-ordinary circumstances which prevented him from pursuing the matter on account of the demise of one T. R. Venkatesan with whom further investigation was handed over, was not even challenged by the management. Therefore, the enquiry officer has held that charge Nos. 3 and 4 were not proved.

The fifth charge relates to purchase of disposable cups without calling for quotations to the tune of Rs. 97,200 to help one private supplier to exploit and monopolize the rates. In his finding, the enquiry officer has held that

the petitioner has established to the satisfaction of the enquiry officer that he has consulted his subordinate officers about the purchase. Reference was made to the deposition made by one witness P. Gunasegeran, who admitted to be in control of the purchase section, to the effect that the petitioner discussed with him the purchase of disposable cups based on the offer of M/s. Gothi Polypack Industries. The further evidence produced also indicated that M/s. Gothi Poly Package Industries is a dependable large concern situated in front of PCMPU. Their supply used to be of good quality and the rate was also considered to be reasonable. On the basis of the above evidence, the enquiry officer also came to the conclusion that the 5th charge also stand disproved.

The sixth charge deals with the deliberate loss caused to the respondent by not recovering the cost of the soured/curdled milk due to the late arrival of milk collection vehicles and favoured the transport contractors by ordering not to collect the cost of sour/curdled milk ignoring the certification of late arrival by the Deputy Manager (P&O) even though there is a specific condition in the agreement for such recovery.

The enquiry officer finally has come to the conclusion that the charge itself is vague as it does not specify the extent of loss allegedly sustained by the respondent department and also the quantity of milk soured/curdled and the exact date on which it happened and who were all its transport contractors and who involved in the transportation of milk. When the Management failed to establish charge No. 6 by pointing out what was the loss and who were the transport contractors involved in the transportation of milk, and what was the quantity of milk which got spoiled, the enquiry officer has rightly come to the conclusion that the charge was vague and without any substance.

The 7th and 8th charges were dropped by the Chairman of the elected board vide proceedings dated 19.11.2002. Yet, the enquiry officer proceeded to consider those charges. Even this is not the case of the respondents that the proceedings dated 19.11.2002 passed by the Chairman dropping two of the charges were recalled or set aside by any higher authority.

The ninth charge deals with the allegation, that while under suspension, without obtaining the prior permission, the petitioner left the headquarters to go over to Chennai on 9.7.2002. To disprove the allegation, he has given his explanation on 9.7.2002 informing that he has gone only to the residence of his counsel Mr. M. Ajaykumar at Lawspet,

Pondicherry for signing papers for filing at High Court, but he has not left Pondicherry, for which, the management neither produced any document nor adduced any evidence to prove the above said charge that he has left the headquarters. Therefore, the enquiry officer concluded that charge No. 9 has also not been proved.

Therefore, an overall view of the charges and the findings given by the enquiry officer would show that the entire exercise has been carried out with well planned design, motivated against the petitioner only to find fault with him for the simple reason that the petitioner has initiated contempt proceedings against the Registrar of Co-operative Societies and the other respondent and finally, this Court in its order dated 5.5.2000, passed in Contempt Applications Nos. 497 and 631 of 2000, appointed an Administrator and directed the Registrar of Co-operative Societies not to interfere with the findings of the Administrator in any manner or in the selection process and the Chief Secretary to Government further was directed to give all assistance to the Administrator. Since the petitioner has approached this Court by filing Contempt Applications Nos. 497 and 631 of 2000 and this Court on seeing that its earlier order was ignored, finally appointed an Administrator replacing the Registrar of Co-operative Societies. This event has motivated the Registrar to go against the petitioner subjecting him to a de novo enquiry even though the previous enquiry findings were in his favour. Therefore, on this ground alone the entire proceedings are liable to be set aside.

9. As per the earlier enquiry report dated 28.11.2003 submitted by the enquiry officer, the petitioner was found 'not guilty' in respect of charges 1 to 6 and 9. So far as the charges 7 and 8 are concerned, the Chairman himself had dropped these two charges. Therefore, the action of the disciplinary authority again directing the petitioner to go for de-novo enquiry proceedings for all charges from 1 to 9 including charges 7 and 8 shows that the respondent has not applied his mind in launching the de novo enquiry proceedings dated 21.1.2004. More over when this is an admitted case that the Chairman had dropped charge Nos. 7 and 8, it is not known on what basis the de novo enquiry was initiated repeating the dropped charges 7 and 8, particularly, when the first enquiry officer, on completion of his report submitted his report holding that the petitioner was not guilty of any charges.

10. When the enquiry officer has finally found the petitioner was not guilty in respect of charges 1 to 6 and 9, the de-novo enquiry proceedings dated 21.1.2004 asking the petitioner to appear for enquiry again has to be looked into with all seriousness. No doubt, it is true that the disciplinary authority is entitled to differ from the findings of the enquiry officer, if the disciplinary authority is not satisfied with the findings of the enquiry officer. But the law imposes an obligation upon the disciplinary authority to follow certain mandatory procedures. In this context it is pertinent to recollect the ratio laid down by the Constitution Bench of the Supreme Court in *B. Karunakar* case squarely applies here. As per the ratio in *B.Karunakar's* case, the first stage of enquiry is not completed till the disciplinary authority has recorded his findings. Because, the first stage ends where the disciplinary authority arrives at its conclusions on the basis of the evidence, the enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. Therefore, at this stage, the principles of natural justice would demand that the authority who proposes to decide against the delinquent officer must give a hearing. The reason being when the enquiry officer holds that the charges are proved, then that report has to be given to the delinquent who can make a representation to the disciplinary authority before he takes further action which may be prejudicial to the delinquent officer. In the present case, the enquiry report is in favour of the delinquent but the disciplinary authority proposes to differ with such a conclusion and proposes to go for a de-novo enquiry. Then, that authority, which is deciding against the delinquent officer, must give an opportunity of hearing, otherwise, the delinquent would be condemned unheard. When admittedly, the enquiry officer by its report dated 28.11.2003 held that the charges leveled against the petitioner were not proved by the management, then the disciplinary authority before going for a de-novo enquiry should have issued a show cause notice to the petitioner to show cause as to why the disciplinary authority should not differ with the findings of the enquiry officer and go for a de-novo enquiry. As the said procedure has not been followed, the entire proceedings initiated after the initiation of a de novo enquiry cannot be legally sustained.

11. The petitioner, after having faced the de novo enquiry has filed W. P. No. 2394/2004. This Court, by order dated 28.6.2004, has directed the petitioner to co-operate with the enquiry officer and further directed the respondent management to proceed with the enquiry and complete the same on or before 15.7.2004. Aggrieved by the said order, directing the respondent management to complete the enquiry on or before 15.7.2004, the petitioner filed W. A. No. 2642/2004. The Division Bench of this Court also by its order dated 12.7.2004 clarified that the enquiry may be completed and the findings of the enquiry officer may be placed before this Court in a sealed cover. Subsequently, the respondent having placed the sealed cover proceedings before this Court should not have passed the final order dismissing the petitioner from the service of the respondent. Such a hasty action yet again proves that the impugned order is clearly motivated one. Therefore, when W. A. No. 2642/2004 was listed on 27.6.2004 the petitioner reported to this Court stating that the respondent has passed the order of dismissal on 25.8.2004 and the said order of dismissal has been challenged in W. P. No. 27699/2004. In view of the subsequent developments, since the petitioner was dismissed and the said dismissal order having been challenged by the petitioner, this Court holding the W. A. No. 2642/2004 as having become infructuous, has given liberty to the petitioner to raise all the grounds that were canvassed in the writ appeal and the said order is extracted hereunder:

> "2. Though the appellant challenged the proceedings directing the enquiry officer to conduct de-novo enquiry again, now the learned counsel appearing for the appellant submitted that though the above writ appeal is pending, the respondents have passed an order dismissing the appellant from service. The appellant has also filed a writ petition challenging the order of dismissal in W. P. No. 27699 of 2004. Since such proceedings are pending, the above writ appeal has become infructuous. But the writ petitioner is given liberty to raise the grounds, which have been raised in this writ appeal, in the writ petition viz., W. P. No. 27699/2004 challenging the order of dismissal.

3. With the above observation, the writ appeal is dismissed. No costs. Consequently, connected W. A. M. P. is dismissed."

A mere reading of the above order passed by the Division Bench of this Court shows that the validity of the order passed by the respondent, initiating de- novo enquiry by its order dated 21.1.2004, was never decided by this Court. Though the de novo proceedings were the subject matter of Writ Appeal No. 2642/2004, the respondents have passed the order of dismissal without following the rulings of the Apex Court in *Karunakar* case followed by the decision rendered in *Punjab National Bank and others vs. Kunj Behari Mishra* [cited supra].

12. It is relevant to see what was the issue raised in *Punjab National Bank and others vs. Kunj Behari Mishra*. The only contention raised before the Supreme Court was, when the Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977 did not require an opportunity of being heard to be given to the delinquent officers when the disciplinary authority disagreed with the findings of the enquiring authority, whether the delinquent should be given one more hearing before holding the second enquiry or not. In other words, where the disciplinary authority disagrees with the findings of the enquiring authority and acts under Regulation 7(2), the said sub-regulation does not specifically state, when the disciplinary authority disagrees with the findings of the enquiring authority, he is required to record his own reasons for such disagreement and also to record his own findings on such charge. But he is required to give a hearing to the delinquent officer. A contention was made relying on the decision of the Supreme Court in *S. S. Koshal* case to the effect that where the disciplinary authority disagrees with the findings of the enquiry officer which was favourable to the delinquent, a fresh opportunity was not required. But, a subsequent Full Bench of the Supreme Court has held in *Punjab National Bank* case that the principles of natural justice require that an employee should have a fair opportunity to meet, explain and controvert it before he is condemned and the relevant text is extracted as under:

> *"If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice requires that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned."*

13. Even though the findings of the enquiry officer also explicitly established the innocence of the petitioner, the disciplinary authority, despite the submission of the report by the enquiry officer holding the petitioner not guilty, chose to issue the order to conduct de novo enquiry which is clearly proved to be a motivated one. When the petitioner along with his Chairman undertook tour programme to attend the techno exhibition at Israel, under what circumstances he has taken longer route than the shorter route has to be judged only on the basis of the availability of flight services. It is not the case of the management that, when there were frequent flight services through shorter route to Israel, the petitioner along with the Chairman has availed circuitous route. Accordingly, the charges leveled against him appears to be vague and motivated. Therefore, I am of the considered view that the principles laid down by the Apex Court in *Punjab National Bank* case that on submission of the favourable report by the enquiry officer, the disciplinary authority, before even going for a de-novo enquiry disagreeing with the finding of the enquiry officer should issue with a show cause notice to the petitioner and call him to explain as to why the findings of the Enquiry Officer should not be deviated, have been flagrantly violated. The dictum in the ruling of *Punjab National Bank* is clearly applicable to the facts of this case. Therefore, I hold that it will not stand to reason that when the findings in favour of the delinquent officer are proposed to be overturned by the disciplinary authority then no opportunity should be granted. In these circumstances the de-novo enquiry proceedings are vitiated.

14. To sum up, the initiation of contempt proceedings against the respondent in Contempt Application Nos. 497 and 631 of 2000, virtually snowballed into the appointment of an Administrator for the respondent society by keeping the Registrar away from the society till the Managing Director to the society was selected. For the reason that the Managing Director and the Registrar of Co-operative Societies have been kept out of the reach of the society, the petitioner was subjected to disciplinary proceedings on totally vague and flimsy charges. Secondly, it is writ large on the 2nd enquiry officer's report that, ignoring the fact that charge Nos. 7 and 8 were already dropped by the Chairman, the petitioner was unjustly held guilty for those two charges which is totally illegal. The action of the authority concerned strongly suggests that it was always their endeavour to somehow find fault with the petitioner. Thirdly, even during the pendency of the matter before this Court, when there is no direction to

pass final orders, the petitioner was hastily dismissed from service. Moreover, the principles laid down by the Apex Court in *Punjab National Bank,* cited supra, to the effect that when the enquiry officer has submitted a report in favour of the delinquent officer, before the disciplinary authority differing with the same so as to proceed with a de-novo enquiry, due show cause notice should be issued to the petitioner enabling him to explain as to why the findings of the enquiry officer should not be deviated, have been given a convenient go-bye.

15. For the foregoing reasons, this Court has no other option but to quash the impugned proceedings. Consequently, the writ petition is allowed, with a direction to the respondents to pay all the consequential/cumulative monetary benefits. No costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.10.2011

CORAM

THE HONOURABLE Mr. JUSTICE S. RAJESWARAN

WRIT PETITION No. 23956 of 2006

D. Balasundaram ..... Petitioner

Vs.

1. The Union Territory of Pondicherry
   rep. by its Registrar of Co-operative
   Societies, Pondicherry.

2. The Pondicherry Co-operative Sugar
   Mills Ltd., Lingareddipalayam,
   rep. by its Managing Director,
   Pondicherry.

3. The Administrative Officer,
   Pondicherry Co-operative Sugar
   Mills Ltd., Lingareddipalayam,
   Pondicherry. ..... Respondents

The case of petitioner herein could not be considered as his age was 36 years on 1.1.1986, whereas for direct recruitment, the age limit was 35 as per the recruitment rules. Further, it was found by the Labour Court on evidence that he was only a NMR at that time and could not be promoted. Therefore, the Labour Court found that there was no irregularity or favoritism shown to anyone in the above appointment of Cane Assistant.

It is a trite law that the award of Labour Court cannot be easily interfered with by the Court while exercising its power under Article 226 of the Constitution of India unless there is illegality or perversity in the award. The Labour Court has correctly analysed the evidence and dealt with the issue, which cannot be called as illegal. Hence, this writ petition is dismissed.

Advocates appeared:

For Petitioners : Mr. R. B. Annadurai

For Respondents : Mr. M. Govindaraj
Additional Government Pleader,
Pondicherry.

This writ petition is filed for a writ of certiorarified mandamus to call for the records of the order made in I.D.No.3/2000 on the file of the Labour Court, Pondicherry and to quash the same herein and to direct them to place the petitioner in the post of Asst. Cane Officer considering the petitioner's promotion chances till date since 5.7.1985 of the petitioners appointment and to pay arrears for the petitioners promotion period since the petitioner's appointment on 5.7.1985 and also direct to pay damages of Rs.15 lakhs.

JUDGMENT

This writ petition has been filed for issuance of writ of certiorarified mandamus, to call for the records of the order made in I.D. No.3/2000 dated 3.1.2003 on the file of the Labour Court, Pondicherry and to quash the same herein and to direct them to place the petitioner in the post of Asst. Cane Officer considering the petitioners promotion chances till date since 5.7.1985 of the petitioners appointment and to pay arrears for the petitioners promotion period since the petitioners appointment on 5.7.1985 and also direct to pay damages or Rs. 15 lakhs.

2. The case of the petitioner as given in the affidavit filed in support of the writ petition is as follows:

The petitioner was working with the second respondent mill from 5.7.1985 as Afforestation Maistry. At the time of joining he has passed P.U.C as science as one of his main subjects and he had also completed one year Agricultural Training on Rural Youth for Self Employment by the Small Farmers Development Agency, Pondicherry. He had also undergone training is various aspects of gardening under the above scheme. Initially he was paid Rs.8 per day and subsequently he was paid Rs.325 per month on consolidated basis which was increased to Rs.600 per month later. On 5.2.1986, the second respondent had advertised in papers calling for the

post of Cane Assistant. The necessary qualification for the post of Cane Assistant is S.S.L.C with agriculture as main subject and a pass in Technical Examination and as well as a training in Agriculture Department Farm in Pondicherry. Since the petitioner had possessed all the qualifications above mentioned, he had applied for the post of Cane Assistant in response to the advertisement. But he was not selected, whereas persons who did not possess the required qualifications were selected and appointed. The representations given by the petitioner were not considered. Finally on 19.9.1992 he was appointed as Cane Assistant by the second respondent mill. A co-worker by name G. Natarajan, who did not possess the qualification for the post of Cane Assistant was appointed on 20.8.1986. Till he was appointed as Cane Assistant his basic pay was not properly fixed by the second respondent. The petitioner reporting about his non-promotion and the pay anomaly referred his grievance to the Labour Conciliation Cell on 30.2.1994 and it ended in failure. Thereafter the matter was referred to the Government and an industrial dispute was raised in I.D. No.3 of 2000. The Labour Court at Pondicherry in and by order dated 3.1.2003 dismissed the said I.D. Challenging the same, the above writ petition has been filed for the aforesaid prayer.

3. The learned Additional Government Pleader (Pondicherry) appearing for the respondents while referring to the counter filed by them before the Labour Court in the above I.D. No.3 of 2000 would submit that in the I.D. filed by the Secretary, Puduvai Kootturavu Sarkarai Alai Thozhilalar Munnetra Sangam, the petitioner was No.3 and he had passed typewriting lower in second class in the year 1971 and he was appointed as Maistry (Afforestation) in the mill. The respondent published an advertisement in *Daily Thanthi* and *Malai Malar* on 5.2.1986 and on 6.2.1986 respectively inviting applications to fill up 4 Nos. of Cane Assistant post directly. In response to the advertisement, 199 applications were received and out of them 46 eligible candidates were called for interview, but only 40 candidates attended the interview. Out of that, 4 candidates were selected for the post based on their qualification and performance and of them two candidates were posted as Cane Assistant and the remaining two as trainee for the said post. The educational qualification of the petitioner is P.U.C and he was born on 30.10.1949 and he was 36 years old as on 1.1.1986. In the advertisement made in the prayer for direct recruitment, the age limit was prescribed at 35 for the post of Cane Assistant. But the petitioner had exceed the age limit prescribed for direct recruitment at that

time and therefore his candidature was not considered for filling up the post of Cane Assistant. Further he was then working only as NMR from 1985 and therefore he could not be considered for promotion either. With regard to one G. Natarajan referred to by the petitioner in the petition, he was PUC qualified and he was born on 10.4.1960 and his age as on 1.1.1986, at the time of direct recruitment for Cane Assistant was 25 years. Therefore the said G. Natarajan was selected to the post of Cane Assistant, which was well within the prescribed qualification and eligibility. During 1991, the Recruitment Rules of the mill were framed and since this petitioner satisfied the qualification and age as per the rules, he was promoted as Cane Assistant during September 1992. Therefore as and when the petitioner became eligible to be appointed as Cane Assistant he was appointed in the year 1992. Hence his contention that he should have been considered when the direct recruitment was made in the year 1986 cannot be accepted and the same is liable to be rejected as he did not have the requisite qualification nor the age limit at that time. Further he points out that the Labour Court correctly evaluated the evidence and found his ineligibility for direct recruitment and rightly dismissed his claim. Hence he prayed for dismissal of the writ petition.

4. I have the learned counsel appearing for the petitioner and the learned Additional Government Pleader (Pondicherry) appearing for the respondents. I have also gone through the documents available on record.

5. The petitioner herein filed his claim petition with the help of the above Sangam, praying for fixation of his basic pay and also for arrears of salary with effect from 6.7.1985. His case was that he was appointed as Cane Farm Maistry with effect from 6.7.1985. His further case was that though he was having all the qualifications both educational and technical to occupy the post of Cane Assistant, he was not appointed as Cane Assistant, whereas others/juniors who did not have the requisite qualification were given such post. Because of such denial, he had filed the above claim petition before the Labour Court through the Sangam. The Labour Court after having gone through the claim petition filed by the petitioner herein and the counter filed by the management and after independently evaluating the evidence found that the petitioner was initially appointed as Maistry with effect from 1.5.1987 with a consolidated wage of Rs. 325 per month which was enhanced twice with effect from 1.10.1989 and his basic pay was fixed at Rs.900. On 5.2.1986 and

6.2.1986, the management called for direct recruitment of Cane Assistant through advertisement. The case of Balasundaram, the petitioner herein could not be considered as his age was 36 years on 1.1.1986, whereas for direct recruitment, the age limit was 35 as per the recruitment rules. Further, it was found by the Labour Court on evidence that he was only a NMR at that time and he could not also be promoted. Therefore, the Labour Court found that there was no irregularity nor favoritism shown to anyone in the above appointment of Cane Assistant. During 1991, when the recruitment rules were framed by the management and as the petitioner herein has satisfied all the requirements of recruitment, he was promoted as Cane Assistant during December 1992. The allegation against Natarajan by the petitioner was found untenable by the Labour Court as Natarajan was appointed as Cane Farm Maistry on 13.3.1985 and appointed as Cane Assistant with effect from 20.8.1986 as he had possessed the requisite qualification. Therefore, the Labour Court found that the management was right in not giving the petitioner the regular appointment during 1986 as Cane Assistant. Thus, after analyzing the documents made available before the Labour Court, the Labour Court has found that the respondent has acted as per the Rules and there has not been any favoritism nor victimization as complained of by the petitioner.

6. In the light of the above factual finding by the Labour Court which is borne by record, I am of the view that the same cannot be questioned by the petitioner in this writ petition. Before this Court also, the learned counsel is not able to show how the award is vitiated. It is a trite law that the award of Labour Court cannot be easily interfered with by this Court while exercising its power under Article 226 of the Constitution of India unless there is illegality or perversity in the award. As already observed by me, the Labour Court has correctly analysed the evidence and dealt with the issue which cannot be called as illegal. Hence this writ petition is dismissed as devoid of merits and the impugned award passed by the Labour Court on 3.1.2003 in I.D. No.3 of 2000 does not suffer from any infirmity nor illegality and the same is upheld.

In the result, the writ petition is dismissed. No cost.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 4.11.2011

CORAM

THE HONOURABLE Mr. JUSTICE M. M. SUNDRESH

W. P. No. 19712 of 2010

and M.P. No. 1 of 2010

Pondicherry Co-operative Urban Bank
Employees Welfare Union
rep. by its General Secretary
S. Balasoupramanian,
S/o. R. Sokkalingam,
197, Jawaharlal Nehru Street,
Puducherry. ... Petitioner

Vs.

1. The Registrar,
Co-operative Department,
Government of Pondicherry,
Pondicherry.

2. The Administrator,
Pondicherry Co-operative
Urban Bank Ltd.,
197, Jawaharlal Nehru Street,
Puducherry. ... Respondents

Pondicherry Co-operative Societies Act, 1972 – Ss. 33(2) & 81(1) – Rule 35 of the subsidiary regulations governing the service conditions of the employees of the Pondicherry Co-operative Urban Bank Limited - A resolution was passed by the second respondent on 17.8.2010 enhancing the age limit from 58 to 60 years. After passing of the resolution, the same was sent to the first respondent for approval. The first respondent, in turn, approved the

same. The petitioner filed a writ petition seeking a writ of mandamus, forbearing the respondents from altering the service conditions of the employees of the second respondent society.

According to the petitioner altering the age of retirement by increasing two years is a major policy decision, which can be taken only by the board of directors. There is no basis for increasing the age and the second respondent being the Administrator cannot take the role of the elected board of directors. The objections of the petitioner have not been considered before passing the resolution.

On behalf of the respondents, it was contended that inasmuch as there is no elected board of directors, the power has been exercised by the second respondent under Section 33 (2) of the Act. The said power has been exercised in pursuant to the directions given by the first respondent under Section 81(1) of the Act.

Under Section 33(2) of the Act, the Administrator subject to the control of the Registrar has power to exercise all or any of the functions of the committee. Therefore, it cannot be said that administrator, namely, the second respondent does not have the power or authority to pass the resolution. A conjoint reading of Section 33(1) read with the definition of 'board' under the regulation and regulation 46 which speaks about the power to amend as well as the bye-law No. 47 would clearly establish the fact that the second respondent being the Administrator is having absolute competency to pass a resolution by way of amending the regulation. There is no rule of regulation, which prescribes that before passing a resolution the approval of the general body will have to be obtained.

There is no necessity in law that the members of the petitioner Union will have to be heard before enhancing the age. As the respondents have the power and authority in enhancing the age, the petitioner cannot question the same.

Writ petition was dismissed.

Cases referred:

(i) *Raghavan Nair vs. Joint Registrar of Co-operative Societies, 1998 (2) KLT 1068;*

(ii) *Joint Registrar of Co-operative Societies, Kerala vs. T.A. Kuttappan and others, (2000) 6 SCC 127 : AIR 2000 SC 2378 : JT 2000 (6) SC 458 : 2000 (2) KLT 480 : 2000 (4) SCALE 686;*

(iii) *Udayakaran vs. Ahammedkannu, 2004 (2) KLT 969;*

(iv) *K. Nithiyanantham vs. State of Tamil Nadu, 2006 (1) CTC 1 : 2006-1-L.W. 363;*

(v) *The Ad-hoc Committee, Al Jamiul Azhar Jumma Mosque Kayalpatnam vs. K.S. Mohamed Nazar, 2009 (4) CTC 129.*

Advocates appeared:

For Petitioner : Mr. V. Raghavachari

For Respondents : Mrs. N. Mala
for Government Pleader,
Pondicherry.

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, calling for the records in his proceedings 5/1/1/1/RCS/Credit/C3/2005 and dated 25.8.2010 on the file of the first respondent and quash the same as illegal, incompetent and without jurisdiction and for. (Prayer amended as per order dated 08.10.2010 in M.P.No.2 of 2011 in W.P.No.19712 of 2010).

JUDGMENT

The petitioner who is the Union representing some of the employees of the second respondent has come forward to file this writ petition, challenging the decision made by the respondents to enhance the age of retirement of the employees from 58 to 60 years.

Facts in brief

2. The first respondent being the Registrar of Co-operative Societies by taking into consideration of the decision of the Central Government issued a direction on 11.6.1999 exercising his power under Section 81(1) of the Pondicherry Co-operative Societies Act, 1972 (hereinafter referred as 'the Act') stating that all the co-operative societies in the Union territory of Pondicherry are required to enhance the retirement age of the employees

from 58 to 60 years. The various co-operative societies were asked to pass separate resolutions and send proposals to amend their subsidiary regulation governing the service conditions of the employees.

3. One of the trade unions of the Pondicherry Co-operative Urban Bank raised a demand for increasing the age of retirement. A resolution was passed by the second respondent on 17.8.2010 enhancing the age limit from 58 to 60 years. After passing of the resolution, the same was sent to the first respondent for approval. From the year 1995 onwards, the society is under the control of the second respondent. It is to be seen that the earlier existing subsidiary regulation governing the service conditions of the employees were framed by the second respondent in the year 1998.

4. Rule 35 of the service regulation governs the employees retirement age. As per the said rule, an employee shall retire at the age of 58, except the last grade employees for whom the age of retirement is 60. After passing of the resolution, which was sent to the first respondent for approval, the first respondent, in turn, approved the same on 25.8.2010. The petitioner filed a writ petition on 26.8.2010 seeking a writ of mandamus, forbearing the respondents from altering the service conditions of the employees of the second respondent society. Thereafter, an application was filed for amendment in M.P. No.2 of 2010 on 29.9.2010, which was ordered by this Court on 8.10.2010.

Submissions of the petitioner

5. Mr. V. Raghavachari, learned senior counsel appearing for the petitioner strenuously contended that, after knowing the filing of the writ petition, the approval has been given by the first respondent and the entire records have been tampered with. According to the learned senior counsel, altering the age of retirement by increasing 2 years is a major policy decision, which can be taken only by the board of directors. There is no basis for increasing the age and the second respondent being the Administrator cannot take the role of the elected board of directors. The objections of the petitioner have not been considered before passing the resolution. Having taken as a stand in the earlier proceedings to the effect that the enhancement retirement age is not required, it is not open to the respondents to enhance the same. As per the subsidiary regulations, the second respondent does not have the power or authority to modify the service conditions. The decision made by the second respondent as

approved by the first respondent is liable to be set aside for not getting the approval of the general body. The approval given by the first respondent is one without jurisdiction, as he has got no power to do so.

6. The fact that a letter was issued by the second respondent in memorandum dated 31.8.2010 in favour of one N. Purushothaman intimating his retirement on 30.9.2010 would show that the records have been tampered as the approval given by the first respondent dated 25.8.2010 has not been taken note of. In support of his contentions, the learned senior counsel has made reliance upon the following judgments:

(i) Raghavan Nair vs. Joint Registrar of Co-operative Societies, 1998 (2) KLT 1068;

(ii) Joint Registrar of Co-operative Societies, Kerala vs. T.A.Kuttappan and others, (2000) 6 SCC 127 : AIR 2000 SC 2378 : JT 2000 (6) SC 458 : 2000 (2) KLT 480 : 2000 (4) SCALE 686;

(iii) Udayakaran vs. Ahammedkannu, 2004 (2) KLT 969;

(iv) K. Nithiyanantham vs. State of Tamil Nadu, 2006 (1) CTC 1 : 2006-1-L.W. 363;

(v) The Ad-hoc Committee, Al Jamiul Azhar Jumma Mosque Kayalpatnam vs. K.S. Mohamed Nazar, 2009 (4) CTC 129.

Submission of the respondents

7. Per contra, Ms. N. Mala, learned Additional Government Pleader (Pondicherry) appearing for the respondents submitted that, inasmuch as there is no elected board of directors, the power has been exercised by the second respondent under Section 33 (2) of the Act. The said power has been exercised in pursuant to the directions given by the first respondent under Section 81(1) of the Act. The writ petition is misconceived as 41 of the 88 members of the petitioners belong to the last grade. The writ petition has been filed out of apprehension and misconception that the promotional avenue of the last grade employees would be affected by the extension. The order passed by the first respondent has been given effect to. The petitioner does not have the locus standi to challenge the decision made by the respondents. Therefore, the learned counsel submitted that the writ petitions will have to be dismissed.

Discussion

8. This is rather a very strange writ petition, in which, the Union has come forward to challenge the order passed by the appropriate authority extending the age of retirement from 58 to 60 years. As seen from the affidavit filed by the petitioner, from the year 1995 onwards there was no election and therefore, the society has been under the administration of the second respondent. The existing subsidiary regulations, by which, the service conditions of the employees have been formulated has been given effect to, by following the very procedure which is under challenge from this Court in the year 1998. In other words, in pursuant to the resolution passed by the second respondent, the approval was given by the first respondent. Therefore, being the beneficiary of the existing system, it is not open to the petitioner to contend that the subsequent procedure adopted on the same line is not genuine and proper. The records produced by the learned counsel for the second respondent would disclose that the objections of the petitioner are to the effect that by the enhancement of age the promotional avenue of the employees in the last grade would be affected. This Court is afraid that such a grievance cannot be a basis for challenging the proceedings of the respondents. It is also to be seen that out of 88 employees, 41 are peons and attenders, whose retirement age is 60 as per the existing subsidiary regulations. Therefore, when their retirement age is fixed as 60, they have got no locus standi to challenge the extension of retirement made for others. There is no prejudice or apparent injury to the members of the petitioner by the enhancement of age of retirement. A writ of certiorari is an extraordinary relief which shall not be treated like a civil suit for declaration. Above all, the writ petition is also not maintainable without impleading the proposed employees who will be affected and who are working in pursuant to the impugned order which has been given effect to.

9. In order to implement the policy of the Central Government as well as the Government of Pondicherry, the first respondent in exercise of the power under Section 81 (1) of the Act, provides for power to the first respondent to give direction in the public interest. The said provision is extracted hereunder for better appreciation:

> *" 81(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 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. Therefore by taking into consideration of the request made by some of the employees and with a view to follow a uniform standard between two groups of employees, and also by taking into consideration of the stand taken by the Central Government as well as the Government of Pondicherry, the first respondent has sought for appropriate action at the hands of the second respondent. The second respondent has passed the resolution in exercise of the power under Section 33(2) of the Act and the same is extracted hereunder:

"33(2) The committee or administrator or administrators appointed under sub-section (1) shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have power to exercise all or any of the functions of the committee or any officer of the society and take all such actions as may be required in the interest of the society."

11. A perusal of the said provision would show that under Section 33(2) of the Act, the Administrator subject to the control of the Registrar has power to exercise all or any of the functions of the committee. Therefore, it cannot be said that administrator, namely, the second respondent does not have the power or authority to pass the resolution. The reliance made by the learned counsel for the petitioner on the definition of 'Board' stipulated under the subsidiary regulation cannot be accepted. The definition of 'Board' as mentioned in subsidiary regulation is extracted hereunder:

"BOARD" means the board of directors constituted as per the provisions of the bye-laws of the bank."

12. The said definition speaks only about the constitution of the 'board'. It does not say that the powers of the 'board' cannot be exercised by the Administrator. If such a contention is accepted then the second respondent will not have any power even to take any action. In this connection, it is useful to refer bye-law 47, which speaks about the over-riding effect of the Act and Rules. The said bye-law is extracted hereunder:

"47 Over-riding effect of the Act and Rules: In all matters touching the constitution or business of the Bank, the provisions of the Pondicherry Co-operative Societies Act, 1972 and the rules framed there under shall prevail over the bye-laws of the bank."

13. A conjoint reading of Section 33(1) read with the definition of 'board' under the regulation and regulation 46 which speaks about the power to amend as well as the bye-law 47 would clearly establish the fact that the second respondent being the Administrator is having absolute competency to pass a resolution by way of amending the regulation. Further, the bye-law 47 itself is very specific that in all matters touching the constitution or business of the bank, the provisions of the Act and Rules shall prevail over the bye-law. Therefore, inasmuch as the regulation having been framed under the bye-laws that too by the second respondent, there is absolutely no basis for holding that the second respondent does not have the power or authority to pass the resolution as approved by the first respondent.

14. The judgments relied upon the learned senior counsel for the petitioner are not applicable to the facts on hand, as it is a basic principle of law that a ratio of a judgment will have to be applied to the facts on hand. In the judgments reported in *K. Nithiyanantham vs. State of Tamil Nadu, 2006 (1) CTC 1* and *Joint Registrar of Co-operative Societies, Kerala vs. T.A. Kuttappan and others, (2000) 6 SCC 127*, the issue was inclusion of membership. The Honourable Bench of this Court was dealing with the power of the Special Officer to enroll and admit new members by introduction of a new provision in the Act. The same was rightly held by this Court as unconstitutional because such a power which can be exercised only by way of following the democratic process. In fact in the

said judgment, the Bench of this Court was pleased to observe that the Special Officer cannot do what has been rejected by the board of directors. Therefore, this Court is of the view that the said judgments are not applicable to the facts on hand.

15. The learned counsel has made reliance upon the judgment of the Kerala High Court in *Udayakaran vs. Ahammedkannu, 2004 (2) KLT 969*. The said case also deals with the reservation of constituency for woman or scheduled caste/scheduled tribe member. Therefore, this Court is of the view that even on merits, the petitioner cannot contend that the respondents do not have the power or authority to increase the age.

16. The other contention of the learned senior counsel for the petitioner regarding the power of general body also cannot be countenanced. There is no rule or regulation which prescribes that before passing a resolution the approval of the general body will have to be obtained. It is also to be seen that this writ petition has not been filed by any of the members of the second respondent society but by the employees alone.

17. In so far as the arguments made by the learned senior counsel for the petitioner that the approval has been given by tampering the records by the first respondent, the same cannot be countenanced. There is nothing on record to suggest that the approval was made in order to make the writ petition infructuous. In view of the discussions made above, inasmuch as the respondents have the power and authority to increase the age, the said contention is also irrelevant. Moreover, the records produced by the second respondent would show that the order passed by the second respondent dated 31.8.2010 was cancelled by the subsequent order dated 30.9.2010 as at the time of passing the earlier order the approval given by the first respondent has not been received by the second respondent. There is no necessity in law that the members of the petitioner Union will have to be heard before enhancing the age. As the respondents have the power and authority in enhancing the age, the same cannot be questioned by the petitioner. Merely because a stand was taken by the earlier proceedings against few of the employees, the same would not non suit the second respondent to take a decision for enhancing the retirement age in accordance with law which cannot be questioned by the petitioner.

18. In fine, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.6.2012

CORAM

THE HONOURABLE Mr. M.Y. EQBAL, CHIEF JUSTICE
and
THE HONOURABLE Mr. JUSTICE T.S. SIVAGNANAM

W.A. No. 1175 of 2012
and
M.P. No. 1 of 2012

The Registrar of Co-operative Societies,
Co-operative Department,
Puducherry - 605 009. ... Appellant

Vs.

1. P. Kannan

2. The Administrator,
The Puducherry Fair Price Shop
Employees Co-operative Society Ltd.,
Ilango Nagar, Puducherry – 605 011. ... Respondents

The learned counsel appearing for the appellant, who is the first respondent in the writ petition, agreed for the disposal of the appeal/revision petition filed by the writ petitioner. This writ appeal is dismissed. However, liberty is given to the appellant to raise all the points including the maintainability of the revision petition before the authority concerned.

Advocates appeared:

For Appellant	...	Mr. R. Syed Musthafa
For Respondent	...	Mr. K.M. Ramesh, for R-1

PRAYER : Appeal filed under clause 15 of the Letters Patent against the order dated 7.4.2011 passed by the learned single Judge in W.P. No. 8836 of 2011 (*page 223 ibid*). Presented to this Court under Article 226 of the Constitution of India to issue a writ of mandamus directing the first respondent herein to consider and dispose of the petitioner's appeal dated 20.4.2009 treating the same as a revision filed under Section 141 of the Pondicherry Co-operative Societies Act, 1972 within a time frame.

JUDGMENT

[The Judgment of the Court was delivered by
Hon'ble The Chief Justice and T.S. Sivagnanam, J.]

Heard the learned counsel appearing for the parties. This writ appeal is directed against the order dated 7.4.2011 passed by the learned single Judge in W.P. No. 8836 of 2011 (*page 223 ibid*). The said order reads as under:

> "The prayer in the writ petition is to issue a writ of mandamus directing the first respondent herein to consider and dispose of the petitioner's appeal dated 20.4.2009 treating the same as a revision filed under Section 141 of the Pondicherry Co-operative Societies Act, 1972 within a time frame.
>
> 2. The said appeal/revision was filed by the petitioner against the order passed reducing the petitioner from his rank. Since a revision is maintainable under Section 141 of the Pondicherry Co-operative Societies Act, 1972 and a limited prayer is made to consider the same on merits within a time frame, Mr. R. Syed Musthafa, learned counsel for the respondents was directed to take notice, who in turn submits that three months' time may be granted to the first respondent to consider and pass necessary orders on the appeal/revision of the petitioner.
>
> 3. Recording the said submission, this writ appeal is disposed of with a direction to the first respondent to pass orders on the appeal/revision of the petitioner on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs."

2. After hearing the learned counsel appearing for both the parties, we do not find any reason to interfere with the impugned order, since the learned counsel appearing for the appellant, who is the first respondent in the writ petition, agreed for the disposal of the appeal/revision petition filed by the writ petitioner.

3. This writ appeal is, therefore, dismissed. However, liberty is given to the appellant to raise all the points including the maintainability of the revision petition before the authority concerned. Consequently, the connected miscellaneous petition is also dismissed. However, there will be no order as to costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 22.8.2012

CORAM

THE HONOURABLE Mr. JUSTICE ELIPE DHARMA RAO

AND

THE HONOURABLE Mr. JUSTICE M. VENUGOPAL

W. P. No. 25757 of 2010

and

M. P. No. 1 of 2010

1. Union of India
   Rep. by Union Territory of Puducherry
   through the Secretary to Government
   (Co-operation),
   Chief Secretariat,
   Government of Puducherry,
   Puducherry.

2. The Under Secretary to Government
   (Co-operation),
   Chief Secretariat,
   Government of Puducherry,
   Puducherry.

3. The Registrar of Co-operative Societies,
   Co-operative Department,
   VVP Nagar, Thattanchavadi,
   Puducherry. ..... Petitioners

Vs.

1. The Registrar,
   Central Administrative Tribunal,
   Madras Bench,
   Chennai 600 104.

2. B. Vasanthakumar ..... Respondents

Whether the official deputed to a post in the society is entitled to draw the scale of pay attached to the post or the scale of pay mentioned in the order of deputation was the question considered by the Court in this case.

A perusal of the posting order would indicate that the second respondent was posted as Managing Director, PONLAIT on ad-hoc basis. It is also clearly mentioned that he will draw pay in the scale of pay of Rs. 6500-200-10500 plus usual allowances as admissible under Rules. The terms and conditions of deputation were also issued to him. Further, with regard to the attitude of the second respondent, it is to be noted that he, as an officer of the Department, who has been serving for a considerable length of tenure, should be aware that when a matter is under consideration of the department, he ought to have waited for a response from the department for his representation seeking for higher pay scale. Instead, taking advantage of the position he held, he caused to issue proceedings for his own benefit. When the benefit of huge sum was drawn by the second respondent, he ought to have verified whether he was legally entitled to such benefit and the action of the second respondent is unbecoming of an officer of the Government.

Normally, the Tribunal has a jurisdiction to interfere with an administrative domain only when an unjust order is passed against a Government servant. In this case, the question with regard to the entitlement of scale of pay of the second respondent, who is on deputation, is an administrative function.

The second respondent, having accepted the terms and conditions of deputation with pay scale mentioned in the order of deputation, cannot now turn around and say that he is entitled to the scale of pay attached to the post of Managing Director. Therefore, one cannot find fault with the authorities for not granting the scale of pay attached to the post of Managing Director as he had accepted the terms and conditions.

The order of Tribunal was set aside and the writ petition was allowed.

Advocate appeared :

For Petitioners	:	Mr. Mani Sundaram Gopal Government Pleader, Puducherry.
For Respondent	:	No appearance

Writ petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari to call for the records relating to the impugned order dated 20.7.2010 in O.A. No. 363 of 2009 passed by the Central Administrative Tribunal and quash the same.

JUDGMENT

Union territory of Puducherry represented by Secretary to Government of Puducherry and the Registrar of Co-operative Societies, have filed this writ petition challenging the order dated 20.7.2010 passed by the Central Administrative Tribunal in O.A. No. 363 of 2009.

2. Though notice was served on the second respondent B. Vasanthakumar on 30.11.2010, he has not chosen to appear either in person or through counsel which shows that he has no interest in prosecuting the matter. As the matter is listed for final disposal, we heard the learned Government Pleader (Puducherry) representing the Union territory of Puducherry.

3. It is the case of the second respondent / applicant that he joined duty as Senior Inspector of Co-operative Societies on 26.8.1981 and after working at various posts, finally, got promoted as Deputy Registrar of Co-operative Societies. The Under Secretary to Government vide order dated 27.2.2006 posted him as Managing Director of Pondicherry Co-operative Milk Producers' Union limited (for short, 'PONLAIT') in the pay scale of Rs. 6500 – 10500. It is the further case of the applicant that the Chairman of PONLAIT by order dated 11.7.2001, appointed one Dr. S. Rajeshwaran as Managing Director of PONLAIT in the pay scale of Rs. 14300 – 18300. While so, the Under Secretary to Government orally directed the applicant to draw the pay scale of Rs. 6500 – 10500 attached to the post of Deputy Registrar. The grievance of the applicant before the Tribunal was that in the order dated 19.3.2007 passed by the Under Secretary to Government, it is clearly mentioned that the Government servants while on deputation will have the option either to draw the pay of deputation post or the pay of the post held by him in his parent department plus deputation allowance.

Hence, he filed the Original Application seeking for a direction to the authorities to permit the applicant to draw the scale of pay Rs. 14300 – 400 – 18300 applicable to the post of Managing Director of Pondicherry Co-operative Milk Producers' Union Limited till the period of deputation.

4. Union territory of Puducherry resisted the contention of the applicant by filing a reply contending that while the representation of the applicant dated 24.9.2007 seeking to draw the pay scale of Rs. 14300 – 18300 attached to the post of Managing Director of PONLAIT was under consideration, the applicant himself issued a proceedings dated 28.10.2008 stating that the option exercised by him to draw the pay scale of Managing Director was considered and necessary resolution was passed to that effect. Subsequently, he was advised to draw the pay scale attached to the post of Deputy Registrar and accordingly, he switched back to the said pay scale.

5. The Tribunal, relying on a OM dated 5.1.1994, by order dated 20.7.2010, directed the authorities to permit the applicant to draw the pay scale of Rs. 14300 – 18300 from the date of his deputation till the deputation period comes to an end and accordingly, allowed the O.A., Aggrieved by the said order, the present writ petition has been filed by the Government of Puducherry.

6. Heard the learned Government Pleader (Puducherry) representing the Union territory of Puducherry and perused the records.

7. The learned Government Pleader representing the writ petitioners would contend that the second respondent, after switching back to the scale of pay of Rs. 6500 – 200 – 10500, has not repaid the arrears drawn to PONLAIT. He further submitted that the second respondent after submitting his representation for revised scale of pay, in his capacity as Administrator of PONLAIT, issued a proceedings permitting himself to draw the scale of pay attached to the post of Managing Director, to which he is not entitled. It is his further submission that the qualification for the post is specified in the bye-laws itself and as per the conditions in G.O. Ms. No. 21 dated 18.3.1994 read with Government of India O.M. No. 2/29/91-Estt (Pay-II) dated 5.1.1984, if the Officer does not fulfill the eligibility conditions laid down in the Recruitment Rules of the ex-cadre post, if so opted, shall be subject to the restrictions under FR 35 whereas the second

respondent possessed only a degree in Commerce. The grievance of the learned counsel is that the Tribunal completely ignored the qualification and other facts placed on record and came to a wrong conclusion.

8. A perusal of the posting order dated 27.2.2006 would indicate that the second respondent was posted as Managing Director, PONLAIT on ad-hoc basis. It is also clearly mentioned that he will draw pay in the scale of pay of Rs. 6500-200-10500 plus usual allowances as admissible under Rules. The terms and conditions of deputation was also issued to him by order dated 12.10.2006.

9. Further, with regard to the attitude of the second respondent, it is to be noted that he, as an officer of the Department, who has been serving for a considerable length of tenure, should be aware that when a matter is under consideration of the department, he ought to have waited for a response from the department for his representation seeking for higher pay scale. Instead, taking advantage of the position he held, he caused to issue proceedings for his own benefit. When the benefit of huge sum was drawn by the second respondent, he ought to have verified whether he was legally entitled to such benefit and the action of the second respondent is unbecoming of an officer of the Government.

10. It is pertinent to note that the second respondent by his letter dated 30.1.2009 addressed to the Registrar has stated that the salary eligible for Managing Director of PONLAIT drawn by him has been revised to the Deputy Registrar scale with deputation allowance as directed by the Registrar of Co-operative Societies. This fact has not been brought to the notice of the Tribunal which would show that the second respondent has indirectly tried to achieve what he could not achieve directly.

11. Normally, the Tribunal has a jurisdiction to interfere with an administrative domain only when an unjust order is passed against a Government servant. In this case, the question with regard to the entitlement of scale of pay of the second respondent, who is on deputation, is an administrative function.

12. Admittedly, the second respondent, having accepted the terms and conditions of deputation with pay scale mentioned in the order of deputation, cannot now turn around and say that he is entitled to the scale

of pay attached to the post of Managing Director. Therefore, one cannot find fault with the authorities for not granting the scale of pay attached to the post of Managing Director as he had accepted the terms and conditions. The Tribunal, relying on the OM, without considering the eligibility and qualification for the post of Managing Director, has passed an order allowing the Original Application, which cannot be sustained in law. The second respondent is entitled to draw the pay scale as mentioned in the order of deputation and cannot claim more than that.

13. In view of the foregoing discussions and for the reasons assigned, the order of the Tribunal is liable to be set aside and it is accordingly, set aside. The writ petition is allowed. However, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.9.2012

CORAM

THE HONOURABLE Mr. JUSTICE K.K. SASIDHARAN

Writ Petition No. 2982 of 2011
and M.P. No. 1 of 2011

Christopher Amal ... Petitioner

Vs.

1. The Managing Director,
   Co-operative Urban Bank Limited,
   Puducherry.

2. The Government of Puducherry
   Rep.by its Secretary,
   Co-operative Department
   Puducherry. ... Respondents

The petitioner seeks a positive direction to the first respondent to appoint him as Junior Assistant. The question of issuing any such positive direction does not arise. The first respondent is a co-operative bank. In case there are vacancies, necessarily the first respondent should advertise in newspapers. In case such notification is issued, it is open to the petitioner to submit an application and necessarily such application should also be considered along with others in accordance with the relevant recruitment rules.

The writ petition is disposed of with direction.

Advocates appeared :

For Petitioner	...	Mr. V. Raghavachari
For Respondents	...	Mr. D. Sreenivasan, for R-1 Mr. A.S. Bharathi, Government Advocate, for R-2

Petition filed under Article 226 of the Constitution of India for the issuance of writ of mandamus to direct the respondents to appoint the petitioner as Junior Assistant in the office of the 1st respondent.

JUDGMENT

The petitioner seeks a writ of mandamus directing the first respondent to appoint him as Junior Assistant.

2. According to the petitioner, his name was registered before the employment exchange on 10.6.1977. Though the Government has sanctioned several posts, the management of the Puducherry Co-operative Urban Bank has not taken any action to fill up the vacancies by issuing notification. According to the petitioner, posts are now available in the bank. Therefore, he made a representation before the first respondent on 10.1.2011. Since there was no reply to the said representation, the petitioner is before this Court.

3. I have heard the learned counsel for the petitioner and the learned counsel for the first respondent and the learned Government Advocate for the second respondent.

4. The petitioner seeks a positive direction to the first respondent to appoint him as Junior Assistant. The question of issuing any such positive direction does not arise. The first respondent is a co-operative bank. In case there are vacancies, necessarily the first respondent should advertise in newspapers. In case, any such notification is issued, it is open to the petitioner to submit an application and necessarily such application should also be considered along with others in accordance with the relevant recruitment rules.

5. The writ petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Note: This order is clarified at page 273.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 8.2.2013

CORAM

THE HONOURABLE Mr. JUSTICE K.K. SASIDHARAN

M.P. No. 1 of 2013 in
Writ Petition No. 2982 of 2011

The Government of Puducherry
Rep. by its Secretary,
Co-operative Department,
Puducherry. ... Petitioner/2nd Respondent

Vs.

1. The Managing Director,
   Co-operative Urban Bank Limited,
   Puducherry. ... Respondent/1st Respondent

2. Christopher Amal,
   S/o. Gabriel ... 2nd respondent/Petitioner

According to the petitioner, the observation with regard to the publication of vacancies in newspaper was taken as a directive to all the co-operative societies and banks by the Registrar of Co-operative Societies resulting in the issuance of a circular, which is in the nature of a directive.

The Court can decide only the case before it. While deciding a particular matter, the Court was not expected to comment about other matters not before it. The co-operative societies are functioning on the basis of respective bye-laws. The bye-laws of other societies need not be in tune with the bye-laws of Puducherry Co-operative Urban Bank. The observation made in relation to Urban Bank would not be applicable to other societies and banks covered by different set of bye-laws.

Advocates appeared :

For Petitioner ... Mr. R. Sreedhar, Government Advocate

For Respondent ... Mr. D. Sreenivasan, for R-1

Petition praying that in the circumstance stated therein and in the affidavit filed therewith the High Court will be pleased to order modification of the order dated 18.9.2012 passed in the above writ petition by directing that the said order is in relation to services of the Co-operative Urban Bank Ltd., Puducherry, the first respondent in the above writ petition and confirmed to its operations alone.

Petition filed under Article 226 of the Constitution of India for the issuance of writ of mandamus to direct the respondents to appoint the petitioner as Junior Assistant in the office of the first respondent.

JUDGMENT

This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and the order of this Court dated 18.9.2012 in W.P. No. 2982/2011(*page 271 ibid*) and upon hearing the arguments of Mr. R. Sreedhar, Government Advocate for the petitioner and Mr. D. Sreenivasan, Advocate for the first respondent and the second respondent not appearing in person or by Advocate and this Court made the following order:-

This application is at the instance of the Co-operative Department, Government of Puducherry and the prayer is to modify my order dated 18th September 2012 in W.P. No. 2982 of 2011.

2. The writ petition in W.P. No. 2982 of 2011 was filed by an unemployed post-graduate and his request was to appoint him as Junior Assistant in Puducherry Co-operative Urban Bank. While disposing of the writ petition, I have held that it was not possible to issue a positive order to appoint the petitioner as Junior Assistant. Since it was submitted that there are vacancies to be filled up in the bank, I have observed in my order that the bank should advertise the vacancies in newspapers and in which case, it is open to the second respondent herein (petitioner in W.P. No. 2982 of 2011) to submit an application and the same will be considered by the bank along with other application in accordance with the relevant recruitment rules.

3. According to the petitioner, the observation with regard to the publication of vacancies in newspaper was taken as a directive to all the co-operative societies and banks by the Registrar of Co-operative Societies resulting in the issuance of a circular, which is in the nature of a directive.

4. The circular stated to have been issued by the Registrar is not a subject matter before me and as such, I am not inclined to express any opinion on the issue.

5. While passing orders in W.P. No. 2982 of 2011, the issue before me was only related to the Urban Bank. I have neither considered the bye-laws of the bank nor the actual vacancy position. It was a pure and simple direction in the facts and circumstances of the said case. I have not intended the said direction to be made applicable to all the societies and banks, as none of the other societies and banks were before me.

6. The Court can decide only the case before it. While deciding a particular matter, the Court was not expected to comment about other matters not before it. Similarly, the Court cannot issue directions, which would affect the interest of third parties.

7. The co-operative societies are functioning on the basis of respective bye-laws. The bye-laws of other societies need not be in tune with the bye-laws of Puducherry Co-operative Urban Bank. The observation made in relation to Urban Bank would not be applicable to other societies and banks covered by different set of bye-laws.

8. The miscellaneous application is disposed of with the above observation.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.3.2013

CORAM

THE HON'BLE Mr. JUSTICE ELIPE DHARMA RAO

AND

THE HON'BLE Mr. JUSTICE M.VENUGOPAL

W.A. No.168 of 2011

Aringar Anna Primary Agricultural Co-operative Bank,
T.R. Pattinam, Karaikal,
Union Territory of Pondicherry,
Rep. by its President ... Appellant/Petitioner

Vs.

1. The Presiding Officer, Labour Tribunal,
   Karaikal, Pondicherry.

2. T.Arangasamy ... Respondents

Assailing the correctness of the dismissal of the writ petition filed by the appellant/management, it was contended by the appellant bank that the 2nd respondent/ employee after his retrenchment was employed in Pondicherry Fishermen Co-operative Federation between 1.7.1989 and 6.6.1991 and it was only as an afterthought he had raised the Industrial Dispute after a lapse of 12 years against the appellant.

The appellant/bank submitted that when the 2nd respondent/employee admitted that he was only working as a Manager of the appellant/bank and as such, whether he was a workman or not within the purview of Section 2(s) of the Industrial Disputes Act was only a point of law and therefore, the learned single Judge was not right in observing in the order of the writ petition that the appellant/bank had not raised an issue in this regard at the earliest point of time. It was contended further that 1st respondent/Labour Court exceeded its jurisdiction in adjudicating the claim as if the present

case was a case of non-employment of the 2nd respondent and this issue goes to the very route of the jurisdiction of the 1st respondent/ Labour Court, which aspect the learned single Judge while dismissing the writ petition failed to consider the same. The appellant/ bank took a plea that the 2nd respondent/ employee was working in the bank at the time of his retrenchment as 'Manager' and therefore, he could not be called as 'workman' as per Section 2(s) of the Industrial Disputes Act and therefore, the very dispute itself is not per se maintainable before the 1st respondent/ Labour Court.

Considering the rival submissions, the Court observed that there is no two opinion of the fact that the status of 'workman' is to be determined with reference to the nature of duties and functions performed by an individual. Admittedly, neither the designation nor salary is the factor to determine whether an employee is a workman or not. The essential condition of an individual to be a workman within the definition of Section 2(s) of the Industrial Disputes Act is that there should be a relationship between the employer and himself as that of employer-employee or between master and servant. As a matter of fact, it is to be initially found out as to whether a person is employed to do manual or clerical work, be it skilled and unskilled, technical or non-technical job. If the manual or clerical work is only a small portion of the duties of an individual concerned and incidental to his main work, which is not manual or clerical, then such a person would not come within the purview of 'workman'. The power of distribution of work and allocating specific duties is one of the other factors that will have to be taken into account while deciding whether a certain workman is employed to discharge supervisory work.

Reversing the findings of the learned single Judge, it was observed that appellant/ bank has in crystal clear terms pleaded that the 2nd Respondent was working as Manager in the bank. Therefore, the contrary view taken by the learned single Judge that 'the question as to whether the 2nd respondent or a person employed in managerial capacity is raised for the first time before this Court' is not a correct one. Both the 1st respondent/ Labour Court, while passing the Award as well as the learned single Judge, while dismissing the writ petition have not gone into the aspect viz., whether the 2nd respondent was a workman as per Section 2(s) of the Industrial Disputes Act and have not decided this point/ issue at the first instance.

If really, the appellant/ bank has offered one month salary in lieu of notice at the time of 2nd respondent/ employee's retrenchment as compensation, then, in law, it may not be open to the 2nd respondent/ employee to take a plea that there has been a violation of Section 25(f) of the Industrial Disputes Act.

The Courts below have not dealt with the issue as to whether the 2nd respondent/ employee was a workman or not under Section 2(s) of the Industrial Disputes Act, 1947. Also that both the 1st respondent as well as the learned single Judge both in the Award in I.D. and in the order of the writ petition have not dealt with the aspect in regard to the fact that one month salary was paid by the appellant/ bank to the 2nd respondent/ employee in lieu of one month notice about his retrenchment and therefore, Section 25(f) of the Industrial Disputes Act was not violated.

In the backdrop of facts and circumstances the Court came to a conclusion that an opportunity is to be provided in I.D. No. 8 of 2000 on the file of the 1st respondent/ Labour Court to the appellant/ bank to put forth his stand point of view in regard to these documents mentioned supra, by letting in oral and documentary evidence so as to enable the 1st respondent/ Labour Court to come to a fair and just conclusion in the subject matter in issue.

In the result, the writ appeal is allowed. The Award passed by the 1st respondent/ Labour Court and the order passed by the learned single Judge in are set aside. The 1st respondent/ Labour Court shall provide adequate/ enough opportunities to both parties to produce the best evidence in regard to the fresh disposal of the main I.D.

The writ appeal is allowed and the dispute is remitted back to Labour Court for fresh disposal.

Case laws referred :

(i) *Aloysius Nunes vs. Thomas Cook India, Limited, 2000 (3) LLN 160;*

(ii) *Leena Patade vs. Union of India, Ministry of Labour and others, 2002-II-LLJ-314;*

(iii) *C. Channaiah vs. Labour Court, Mysore and another, 1991-2-LLN-684;*

(iv) *Ahmed N.Makada vs. Government of India and others, 2000-3-LLJ (Suppl.) 469;*

(v) *Hussan Mithu Mhasvadkar vs. Bombay Iron and Steel Labour Board and another, AIR 2001 SC 3290;*

(vi) *C.Narayan Reddy vs. Management of Ajantha Theatre, [1996 (69) Indian Factories and Labour Reports, at page 998 & 999;*

(vii) *Hussan Mithu Mhasvadkar vs. Bombay Iron and Steel Labour Board and another, AIR 2001 SC 3290;*

(viii) *Laxman Ramchandra Mai vs. Executive Engineer, Irrigation Department, Sangli, 2000 (4) LLN 769;*

(ix) *Jaswinder Singh Passi vs. Registrar of Co-operative Societies [(1992) 2 LLJat page 177 & 179 (Punjab & Haryana)];*

(x) *(1961) 2 LLJ 1190;*

(xi) *Regional Manager, S.B.I. vs. Rakesh Kumar Tewari, AIR 2006 SC 839.*

Advocates appeared :

For Appellant : Mr. Sai Raj for M/s. Sai Raaji Associates

For 2nd Respondent : Mr. Md.Ibrahim Ali
for Mr. A.S.Mujibur Rahman

Prayer: Writ Appeal filed under clause 15 of the Letters Patent against the order dated 20.8.2010 in W.P.No.9162 of 2003 passed by the learned single Judge.

JUDGMENT

M. VENUGOPAL, J.

The appellant/co-operative bank has filed the present writ appeal as against the order dated 20.8.2010 passed by the learned single Judge in W.P.No.9162 of 2003 (*page 209 ibid*).

2. The learned single Judge, while passing orders in the writ petition filed by the appellant/petitioner, has, among other things, observed that

'... However, the fact was that the order of retrenchment was made pursuant to a resolution dated 2.12.1987 alleging poor financial condition of the petitioner bank and that they were unable to pay the wages to their employees. Therefore, the Labour Court concluded that prior to the order of retrenchment, the management was bound to comply with the provisions of Section 25(f) of the Industrial Disputes Act and on failure to comply with the mandatory provisions, the resolution retrenching the second respondent from service is not sustainable' etc. Further, the learned single Judge opined that the Labour Court disbelieved the reasons given in the resolution passed by the petitioner for retrenching the service of the 2nd respondent more particularly when immediately after the 2nd respondent was retrenched, they have employed several persons in various positions and that the Labour Court came to a conclusion that the 2nd respondent has to be reinstated in service. In short, the learned single Judge found no valid reason to re-appreciate the findings arrived at by the Labour Court to come to a different conclusion and held that no error could be attributed to the Award passed by the Labour Court and consequently, dismissed the writ petition.

3. Assailing the correctness of the dismissal of the writ petition filed by the appellant/management, the learned Counsel for the appellant/management (co-operative bank) submits that the order of the learned single Judge dated 20.8.2010 in dismissing W.P. No. 9162 of 2003 is opposed to facts and law of the present case.

4. The learned Counsel for the appellant/bank urges before this Court that the dispute was raised by the 2nd respondent/employee after a lapse of more than 12 years and that itself is a fatal one.

5. According to the learned Counsel for the appellant/bank, the learned single Judge should have seen that the 2nd respondent/ employee after his retrenchment was employed in Pondicherry Fishermen Co-operative Society between 1.7.1989 and 6.6.1991 and it was only as an afterthought that after a lapse of 12 years had raised the Industrial Dispute against the appellant. As such, the learned single Judge ought to have interfered with the Award of the Labour Court which directed reinstatement with full backwages.

6. It is the submission of the learned Counsel for the appellant/ bank that merely because the appellant/bank had sent 3 communications during

the period of 12 years, it could not be construed that the appellant/bank was actively pursuing the dispute. Per contra, it is the contention of the learned Counsel for the appellant /bank that the communications were sent after a lapse of 5 years and thereafter, a lapse of 12 years clearly points out that the 2nd respondent was never interested in pursuing the present dispute and therefore, delay and latches on the part of the 2nd respondent/ employee should have been taken into account by the learned single Judge.

7. The learned Counsel for the appellant/bank projects a legal plea that the appellant/bank at no point of time claimed that though the 2nd respondent/employee was designated as Manager, he was performing duties and responsibilities as that of workmen defined under Section 2(s) of the Industrial Disputes Act, 1947.

8. Even in the petition for vacating the stay before the learned single Judge, the 2nd respondent/employee reiterated that he was working as Manager and no averment or claim was made that he was performing the duties of workmen as defined under Section 2(s) of the Industrial Disputes Act.

9. The learned Counsel for the appellant/bank submits that when the 2nd respondent/employee admitted that he was only working as a Manager of the appellant/bank and as such, whether he was a workman or not within the purview of Section 2(s) of the Industrial Disputes Act was only a point of law and therefore, the learned single Judge was not right in observing in the order of the writ petition that the appellant/bank had not raised an issue in this regard at the earliest point of time.

10. Yet another stand taken on behalf of the appellant/bank is that even as per the terms of reference of the Industrial Dispute in G.O. Rt. No.92/2000/Labour. All., Labour Department of the Government of Pondicherry, dated 24.7.2000, the dispute under Section 10(1) of the Industrial Disputes Act which was referred for adjudication was 'whether the act of filling up of the vacancies by the management of M/s. Arignar Anna Primary Agricultural Cooperative Bank, T.R. Pattinam, Karaikal without giving preference to the retrenched employee viz., Thiru T. Arangasami is justified or not' etc. and indeed, the 1st respondent/Labour Court, Karaikal exceeded its jurisdiction in adjudicating the claim as if the present case was a case of non-employment of the 2nd respondent and this issue goes to the very route of the

jurisdiction of the 1st respondent/Labour Court, which aspect the learned single Judge while dismissing the writ petition failed to consider the same.

11. Expatiating his contention, the learned Counsel for the appellant/bank contends that the learned single Judge should have seen that the 2nd respondent/employee had categorically admitted during cross examination that he was working as a Manager and supervising the work of persons under him.

12. The learned Counsel for the appellant/bank takes a plea that the appellant/bank was incurring losses ought to have seen that the numerous reasons furnished by the appellant/bank before the Labour Court in their counter statement and the learned single Judge had committed error in coming to the conclusion that the order of retrenchment passed against the 2nd respondent/employee was punitive in nature.

13. Lastly, it is the submission of the learned Counsel for the appellant/bank that even assuming that the 2nd Respondent was discharging the functions of the workman in the light of the fact that the appellant/bank had never employed any manner until 1996 and even during 1996, an existing clerk was promoted as a Manager, the action of the appellant/bank could not be found fault in any manner and therefore, the ingredients of Section 25H or the relevant rules would not be attracted in the instant case on hand.

14. Conversely, it is the submission of the learned Counsel for the 2nd respondent/employee that the learned single Judge as well as the 1st respondent/Labour Court had appreciated the available material facts on records and merits and has rejected the contentions put forward by the appellant/bank [petitioner in writ petition] and ultimately, the writ petition filed by the appellant came to be dismissed which need not be interfered with by this Court at this distance point of time.

15. At this stage, a cursory perusal of the contents of claim statement filed by the 2nd respondent/employee in I.D. No.8 of 2000 [on the file of the 1st respondent/Labour Court] shows that he was employed as Manager of the appellant/bank and initially appointed as Special Officer of the bank through an order undated from 1.3.1978 and subsequently, worked as Manager of the bank. Further, as per the resolution passed by the

appellant/bank dated 21.2.1987, it was mentioned that there was deficit funds and decided to stop the business and employment of people employed then were decided to be retrenched. As per the order of retrenchment given on 23.2.1987, he was retrenched along with another salesman V. Govindarasu and that the very retrenchment itself is not legally valid on more than one ground under Section 25(f) of the Industrial Disputes Act, 1947.

16. The stand taken by the 2nd respondent/employee, in the claim statement, was that one month notice mentioning the reasons for retrenchment was not furnished by the appellant/bank and also that in lieu of retrenchment notice wages for the said period was not paid to him and also that notice was not served in the prescribed manner on the appropriate Government besides no notification or in the official gazette.

17. In effect, the contention of the 2nd respondent/employee was that the ingredients of Section 25(f)(c) of the Industrial Disputes Act were not complied with by the appellant/bank. Without payment of compensation, his retrenchment is involved in law. Therefore, he claims that he is entitled for reinstatement with full backwages.

18. That apart, in the claim statement in paragraph 4, the 2nd respondent had stated that he and another salesman viz., Govindarasu were retrenched from service by the appellant/bank based on the reason of deficit of funds and business. Later, the financial and business positions of the appellant/bank became commendable and presently about 6 persons were employed and the society was enhanced to the status of the co-operative bank and the clerk previously employed in the bank is the present Manager. The persons employed in the bank are as follows:

Sl.No.	Name and designation
1.	G. Velupillai, Manager
2.	Chandra, Senior Clerk-cum-Cashier
3.	Balaji, Salesman
4.	Anbazhagan, Peon
5.	Saminathan, Tractor Driver
6.	Ganga on daily wage basis

19. The 2nd respondent/employee took a stand before the 1st respondent/Labour Court that as per Section 25(h) of the Industrial Disputes Act, if an employer proposes to take into his employment, any person he wish in such manner, as may be prescribed must give an opportunity to the retrenched workman to offer themselves for re-employment and they shall have the first preference over the others. In spite of repeated applications of the 2nd respondent/employee to employ him, the appellant/bank ignored his rightful claim and employed new persons.

20. Even the order of dismissal and a resolution passed as the basis for his dismissal had not mentioned about the alleged deficit handling of the business of the appellant/bank. As such, his non-employment is not legally proper. Therefore, he made a claim for reinstatement into the appellant/bank's service with the reservation for seniority with backwages and all perquisites with increment, bonus, and salary as per the revised and applicable pay to him.

21. It transpires from the counter statement filed by the appellant/bank [before the 1st respondent/Labour Court in Industrial Dispute] that the appellant/bank had taken a categorical stand that the 2nd respondent's conduct was not good while he was working as a Manager in the bank and further, he committed so many irregularities in the business of paddy procurement and caused deficiency to the society's funds, amounting to Rs.31,145.51 paise and till date, he has not paid the deficiency dues to the bank in spite of reminder letters sent to him. Also that while he was working as a Manager in the appellant/bank, he was also in charge of fair price shop under the control of the appellant/bank and because of his inability under mis-management, he was charged by the food cell police and a case was registered against him before the Court of Law and he was convicted and paid the fine amount.

22. Continuing further, right from the beginning, the activities of the 2nd respondent was totally against the improvement of the appellant/bank and he also committed lot of unwanted things against the bank. Furthermore, he was working in the Pondicherry Fishermen Federation Limited for more than two years, after his retrenchment from service in the appellant/bank and therefore, he cannot again claim for reinstatement from his earlier employer. He was retrenched from service legally and one month salary was given to him by the appellant/bank in lieu of one month

notice to him about his retrenchment. However, he returned the amount to the appellant/ bank and informed to adjust the amount for his dues with the bank.

23. Earlier, the 1st respondent/Labour Court on 14.6.2002 passed an Award with costs in I.D. No. 8 of 2000 [filed by the 2nd respondent/claimant], inter alia, observing that prior to termination of the 2nd respondent/employee, he was not given one month notice or wages as required under Section 25(f) of the Industrial Disputes Act and further, it ordered for his reinstatement with continuity of service and backwages [after deducting the wages received by him in the Pondicherry Fisheries Co-operative Federation for the period from 1.7.1989 to 6.6.1991].

24. We deem it appropriate to point out that the appellant/bank takes a plea that the 2nd respondent/employee was working in the bank at the time of his retrenchment on 21.2.1987 as 'Manager' and therefore, he could not be called as 'workman' as per Section 2(s) of the Industrial Disputes Act and therefore, the very dispute itself is not per se maintainable before the 1st respondent/Labour Court.

25. At this juncture, a perusal of the claim statement filed by the 2nd respondent/employee in I.D. No. 8 of 2000 on the file of the 1st respondent/Labour Court shows that he was employed as the Manager of the appellant/bank and initially he was appointed as the Special Officer of the bank through an order undated from 1.3.1978 and subsequently, worked as the Manager of the bank. Also, the counter filed by the appellant/bank proceeds to mention that the 2nd respondent working as Manager in the appellant/bank at the time of his retrenchment and he was also in charge of the fair price shop and which was under the control of the bank. Furthermore, the termination order dated 23.2.1987 issued under the proceedings of the appellant/ bank signed by its President also speaks of the 2nd respondent as Manager whose services the appellant/bank decided to terminate along with Govindarasu since the services were no longer required and they were ordered to be relieved from the services with effect from 23.2.1987 by giving them a month's notice. Even in W.P. M.P. 21305 of 2003 wherein the 2nd respondent had sought for issuance of direction of this Court to pay him the last drawn wages by the appellant/bank as per Section 17(B) of the Industrial Disputes Act. The 2nd respondent had, in paragraph 1, inter alia, stated that he was working as Manager on 21.2.1987 and he was removed from service on 23.2.1987

by way of retrenchment.

26. We worth recall the decision in *Aloysius Nunes vs. Thomas Cook India, Limited, [2000 (3) LLN 160]* wherein, it is observed as follows:

> *"From the evidence as considered it cannot be said that the petitioner herein was engaged mainly in a managerial or administrative capacity. All that is seen is that he was assigned the work to look after tourists arriving by airways and their lodging. He was not exercising any managerial or administrative function as normally understood. He was not in-charge of the section. He had no authority to appoint any worker. All that he was doing was to receive the tourists, make out their bills, verify the bills as received. All these would be checking work of clerk and not that of a manager or administrative officer."*

Also, in the aforesaid decision, at page 161, it is held as follows:

> *"One of the tests to find out whether the person employed is in a managerial or administrative capacity was to ascertain if he was entrusted with the duty/ responsibility of distribution of work. Another test that could be considered is whether in the discharge of his managerial or administrative duties, did he perform any supervisory work. It is clear that for a person to be an officer (managerial/ administrative) another test would be does he occupy a position, to command or decide and is he authorised to act in certain matters within the limits of the authority given to him without the sanction of Manager or other supervisor? Another test would be: Is he in command of a territory or department over which he exercises his managerial function? The next is: What is the designation in the official record of the person and in the attendance register."*

27. We relevantly point out the decision in *Leena Patade vs. Union of India, Ministry of Labour and others, [2002-II-LLJ-314 at page 317]* whereby and where under, in paragraph 6, it is observed as follows:

> *"6. It is apparent from the above observations that where a detailed investigation is necessary to determine whether the person raising the industrial dispute is workman as defined under Section 2(s) of the Act, then the Government will make a*

reference under Section 10 of the said Act. The reasons given by the Government would show that the Government came to the conclusion that there is no convincing evidence that the petitioner is a 'workman' within the meaning of Section 2(s). It would further appear that the Government was satisfied that the petitioner was getting all the benefits available to an officer of the bank. All these relevant and vital aspects have to be examined by the Industrial Tribunal while adjudicating upon the reference made to it."

28. In the interest of justice, we cite the following decisions:

(a) In the decision *C. Channaiah vs. Labour Court, Mysore and another, [1991-2-LLN-684]*, it is observed that

'The petitioner admitted that he was drawing salary of Rs.500 per month, and was designated, appointed and working as manager of the company and he contended that the nature of his work was clerical which included conduct of business, maintenance of accounts and ledgers and several other clerical duties and consequently held that he is not a workman and further, it has been stated that 'salary drawn by a person is not the sole criterion to decide whether he is a workman or not'.

(b) In the decision *Ahmed N.Makada vs. Government of India and others, [2000-3-LLJ (Suppl.) 469 at page 471]*, in paragraphs 6 & 7, it is observed and held as follows:

"6. Rejoinder was also filed by the petitioner before the Conciliation Officer in which it was mentioned that he had no power and control over the employees of Surat Branch and that he was working merely as Senior Officer under the control of higher authority of the bank. The failure report Annexure-E also shows that the management's contention was that the petitioner is not a workman under the law and that the contention of the petitioner was that he was workman under the provisions of the Industrial Disputes Act. It was because of this dispute that the conciliation proceeding failed and failure report was submitted.

7. It was therefore clear from the material on record that

there was disputed question whether the petitioner is a workman or was Branch Manager on the relevant date within the meaning of Sec.2(s)(iv) of the Industrial Disputes Act and this dispute could not be adjudicated upon by the appropriate Government through Annexure-F. As such the impugned order contained in Annexure-F cannot be sustained. It has therefore to be quashed."

(c) In the decision of the Hon'ble Supreme Court in *Hussan Mithu Mhasvadkar vs. Bombay Iron and Steel Labour Board and another, AIR 2001 SC 3290]*, it is held as follows:

"In a case where the Labour Court as well as the High Court entertains doubts about the status of the appellant as a workman within the meaning of S.2(s) of the I.D. Act, instead of embarking upon an adjudication in the first instance as to whether the undertaking in which the appellant works is an industry or not, so as to attract the provisions of the Industrial Disputes Act, it should take up the question about the status of the appellant for adjudication at the threshold and if only the finding recorded is against the appellant refrain from adjudicating on the larger issue affecting the various kinds of other employees, as to the character of the undertaking, as an industry or not. The larger issue should be entertained for consideration only in case where it is absolutely necessary and not when the claim before it could have been disposed of otherwise without going into the nature and character of the undertaking itself."

(d) In the decision *C.Narayan Reddy vs. Management of Ajantha Theatre, [1996 (69) Indian Factories and Labour Reports, at page 998 & 999]*, it is held that 'person is mainly employed in the managerial or administrative capacity would not be a 'workman' and the salary drawn by him would be of no consequence for the purpose of determining whether he is a 'workman' or not'.

29. There is no two opinion of the fact that the status of 'workman' is to be determined with reference to the nature of duties and functions performed by an individual. Admittedly, neither the designation nor salary is the factor to determine whether an employee is a workman or not.

30. On going through the Award dated 14.6.2002 in I.D. No. 8 of 2000 passed by the 1st respondent/Labour Court, we are of the considered view that the 1st respondent/Labour Court has not framed an issue whether the 2nd respondent was a workman as per Section 2(s) of the Industrial Disputes Act or Manager of the appellant/bank and also not rendered its finding/decision in this regard. In case, the 2nd respondent was working as Manager in bank at the time of his retrenchment on 21.2.1987, then, the 1st respondent/Labour Court should have rendered a finding whether the Industrial Dispute referred to by the Government of Pondicherry as per G.O. Rt. No.92/2000/ Labour. All., Labour Department, dated 24.7.2000 is per se maintainable in law.

31. To put it shortly, the essential condition of an individual to be a workman within the definition of Section 2(s) of the Industrial Disputes Act is that there should be a relationship between the employer and himself as that of employer-employee or between master and servant. As a matter of fact, it is to be initially found out as to whether a person is employed to do manual or clerical work, be it skilled and unskilled, technical or non-technical job. If the manual or clerical work is only a small portion of the duties of an individual concerned and incidental to his main work, which is not manual or clerical, then such a person would not come within the purview of 'workman', in our considered view.

32. The power of distribution of work and allocating specific duties is one of the other factors that will have to be taken into account while deciding whether a certain workman is employed to discharge supervisory work. Managerial or administrative functions of a person signifies that he is to control the work of others. To put it succinctly, only if a person is to come within the purview of the definition of Section 2(s), then, he should fulfill the following requisite factors:

(a) he ought to be an individual employed in an industry for hire or reward;

(b) he should be engaged in skilled or unskilled manual, supervisory, technical or clerical work; and

(c) he ought not to be a person falling under any of the four clauses viz., (i) to (iv) specified in the definition of Section 2(s) of the Industrial Disputes Act.

Also, the definition visualizes that a workman employed in an industry to do any skilled or unskilled manual, supervisory, technical or clerical work

for hire reward includes within its ambit any such individual who has been dismissed, discharged or retrenched in connection with, or as a consequence of an Industrial Dispute, or whose dismissal, discharge or retrenchment has led to that dispute.

33. If an employee has the power of distribution of work to others and assigns duties to them, then, his position is that of a supervisor performing the act of supervision. After all, the term 'supervisor' is one who has authority/control over others. It also means someone who directs others. A supervisory work may be differentiated from the position of Manager/Administrator. The primordial duty of a supervisor is to see that work is performed by other employees/workers are under his control in accordance with the norms prescribed by the employer/management.

34. Even the learned single Judge, while dismissing W.P. No.9162 of 2003 [filed by the appellant/bank], in paragraphs 14 and 15, has categorically observed as follows:

> "14. Before the Labour Court, the second respondent filed his claim statement. Apart from various other grounds, the second respondent has raised a contention that the order of retrenchment is in violation of Section 25(f) of the Industrial Disputes Act. The petitioner management filed their counter statement and even in the said counter statement, the petitioner did not raise the question of jurisdiction. Thus, it is clear that the question as to whether the second respondent was a workman or a person employed in managerial capacity is raised for the first time before this Court. A faint plea has been raised by the learned counsel for the petitioner contending that in the written argument before the Labour Court, such contention was raised. As held by their Lordships of the Hon'ble Supreme Court in the case of *C.Gupta,* referred supra, the question whether the second respondent was a workman or discharging managerial function is a question of fact. Therefore, it has to be not only specifically pleaded, but also to be proved before the Labour Court. In the absence of any such specific plea and in the absence of any proof to the said effect, such a plea cannot be allowed to be raised at this distance of time. Mere mention in the written argument before the Labour Court will not justify the stand of the management.

> 15. It is not in dispute that the second respondent was earning only Rs.750 per month and from the bylaws it is clear that the second respondent had only power to spend to the value of Rs.5. Therefore, it is evidently clear said that the second respondent was not exercising managerial function. In any event, a mere attempt by the second respondent stating that he was the 'Manager' would not make him a person discharging managerial functions. In absence of any evidence to this aspect, I am not able to countenance such a plea raised by the petitioner."

35. It is the evidence of P.W.1 [2nd respondent in the writ petition) (before the 1st respondent/Labour Court] that he was appointed as Special Officer in the appellant/bank and continuously worked as Manager. He further deposed that he could not assign reason as to why he had not informed as to his employment at Puducherry, during his course of enquiry before the Labour Officer. Also, he deposed (in cross-examination) that after he was relieved from his post of Manager, he worked in the Puducherry Fishermen Co-operative Federation from 1.7.1989 till 6.6.1991 on a consolidated monthly salary of Rs.800.

36. The evidence of R.W.1 (present President of the appellant/ bank) is that 2nd respondent/employee was relieved from service as Manager of the appellant/bank in February, 1987.

37. A perusal of Ex.A.3 - relieving order in respect of 2nd respondent/employee shows that he was relieved from duty from the forenoon of 23rd March 1987 as per board resolution dated 21.2.1987 etc. Likewise, in Ex.A.7 - resolution of the appellant/bank was mentioned as Manager working from 1.3.1978 and that during his service period, the society had functioned properly in a progressive manner.

38. On going through the contents of Ex.B.3 - reply of the appellant/bank dated 2.11.1992 addressed to the 2nd respondent/ employee, it is evident that the 2nd respondent was stated to have served as Manager approximately for three years etc. Even in the subject portion of Ex. B.3 - letter of the bank, the bank had clearly stated that it could not appoint him in the post of Manager.

39. Really speaking, in paragraph 2 of the counter statement in I.D. No. 8 of 2000, the appellant/bank [as respondent] has in crystal clear terms

mentioned that the 2nd respondent (petitioner/claimant in I.D. No. 8/2000) while he was working as Manager in the appellant/ bank was also in charge of fair price shop under the control of the Bank.

40. As such, we hold without any hesitation that the appellant/ bank has in crystal clear terms pleaded that the 2nd Respondent was working as Manager in the bank. Therefore, the contra view taken by the learned single Judge in the order in W.P.No.9162 of 2003 dated 20.8.2010 that 'the question as to whether the 2nd respondent or a person employed in managerial capacity is raised for the first time before this Court' is not a correct one. In fact, whether a person is a workman under Section 2(s) of the Industrial Disputes Act is not a pure question of fact, but it is a mixed question of fact and law, in the considered opinion of this Court.

41. Besides the above, the learned single Judge, while passing the order in the writ petition, in paragraph 15, has stated that 'It is not in dispute that the 2nd respondent was earning only Rs.750 per month and from the bye-laws, it is clear that he had only power to spend to the value of Rs.5 and therefore, he was not exercising any managerial function and in any event, a mere attempt by him stating that he was the 'Manager' would not make him a person discharging managerial functions and further, in the absence of any evidence to this aspect, he was not able to countenance such a plea raised by the bank.

42. At this stage, we significantly make a pertinent mention that neither the designation nor salary of a person is a factor to determine whether a person/employee is a workman or not. Whether an employee is a workman or not, should be decided at the threshold as per the decision of the Hon'ble Supreme Court in *Hussan Mithu Mhasvadkar vs. Bombay Iron and Steel Labour Board and another, [AIR 2001 SC 3290]*.

43. Viewed in that perspective, we come to an inevitable conclusion that both the 1st respondent/Labour Court, while passing the Award in I.D. No. 8 of 2000 dated 14.6.2002 as well as the learned single Judge, while dismissing W.P.No.9162 of 2003, by order dated 20.8.2010, have not gone into the aspect viz., whether the 2nd respondent was a workman as per Section 2(s) of the Industrial Disputes Act and have not decided this point/issue at the first instance.

44. It cannot be gainsaid that while adjudicating an industrial dispute, the Labour Court has to confine its Award to the pleadings set out by the parties.

45. Coming to the plea taken on behalf of the 2nd respondent/ employee that his very retrenchment, as per order of retrenchment given to him on 23.2.1987 is illegal, in the eye of law [especially when the same is not legally valid as per Section 25(f) of the Industrial Disputes Act] for non payment of compensation as the case may be, it is to be pointed out that the appellant/bank, in its counter to the I.D. No. 8 of 2000 [before the 1st respondent/Labour Court], in paragraph 4, has specifically pleaded that the 2nd respondent/ employee was retrenched from service legally and one month salary was given to him by the appellant/bank in lieu of one month's notice to him, about his retrenchment. But, he returned the amount to the bank, by informing them to adjust the amount for his dues with the bank.

46. In this connection, it is not out of place for this Court to pertinently point out the decision in *Laxman Ramchandra Mai vs. Executive Engineer, Irrigation Department, Sangli, [2000 (4) LLN 769]* wherein it is held that 'where an employer had offered retrenchment compensation there was compliance with provisions of Section 25 (f) of the Industrial Disputes Act, 1947' and therefore, the order of termination is not illegal or improper.

47. On going through the order of the learned single Judge in W.P. No. 9162 of 2003 dated 20.8.2010, in paragraph 16, it is quite evident that '... The Labour Court after considering the oral and documentary evidence held that the management by a resolution dated 21.2.1987, retrenched the service of the 2nd respondent and another employee Govindarasu with effect from 23.2.1987 and before the order of retrenchment was passed, the management did not give any notice or any pay in lieu of notice and deposition of the management witness was to the effect that when the 2nd respondent was in employment, he caused loss to the society and certain complaints were received and based on that the 2nd respondent was retrenched etc'. As a matter of fact, both the 1st respondent/Labour Court, in its Award in I.D. No. 8 of 2000 dated 14.6.2002 as well as the learned single Judge in the order passed in W.P. No. 9162 of 2003 dated 20.8.2010, have not dealt with the aspect of appellant/bank's averment in para 4 of the counter that when the 2nd respondent/ employee was retrenched from service whether he was given one month salary by the appellant/bank in lieu of one month's notice to him about his retrenchment and further, whether it is true that the 2nd respondent/employee returned the amount to the appellant/bank and informed them to adjust the amount to the dues to be paid by him. If really,

the appellant/bank has offered one month salary in lieu of notice at the time of 2nd respondent/employee's retrenchment as compensation, then, in law, it may not be open to the 2nd respondent/ employee to take a plea that there has been a violation of Section 25 (f) of the Industrial Disputes Act.

48. Adverting to the contention of the appellant/bank that even assuming that the 2nd respondent was discharging the function of a 'workman', the fact remains that the appellant/bank had never employed any Manager until 1996 and during the year 1996, an existing clerk was promoted as Manager and as such, Section 25H of the Industrial Disputes Act is not attracted, it is to be pointed out that Section 25H of the Industrial Disputes Act makes an obligation on the employer to give an opportunity to the retrenched workman to offer himself for re-employment when it intends to fill up the vacancy. If the retrenched workman offers himself for re-employment, ordinarily, an employer has accorded preference to him over other persons. It is remembered that Section 25H of the Act gives the right to a retrenched employee to be 're-employed' in the event a vacancy arises in establishment. In case of such re-employment, the question of backwages would not arise as per the decision in *Jaswinder Singh Passi vs. Registrar of Co-operative Societies [(1992) 2 LLJ at page 177 & 179 (Punjab & Haryana)]*.

49. Reemployment within the meaning of Section 25H of the Act means taking back a retrenched employee/workman in the same category to which he belonged as per the decision of the Hon'ble Supreme Court in *[(1961) 2 LLJ 1190]*. If the service of a workman has been terminated for any other reason than retrenchment, then, he will not be entitled to seek reemployment as per the ingredients of Section 25H of the Industrial Disputes Act.

50. One cannot brush aside an important fact that reemployment to a retrenched employee will not accrue, when there is no evidence of any fresh appointment.

51. It is not out of place for this Court to make a relevant mention that the Hon'ble Supreme Court, in the decision in *Regional Manager, S.B.I. vs. Rakesh Kumar Tewari, [AIR 2006 SC 839 at page 845]* in paragraph 26, has observed as follows:

"26. In directing reinstatement, neither the High Court nor the Tribunal had considered that the order might affect the interest of those others who were employed after the respondent. As was said in Central Bank of India vs. S.Satyam (supra): "The other persons employed in the industry during the intervening period of several years have arisen during the interregnum. These third parties are also workmen employed in the industry during the intervening period of several years. Grant of relief to the writ petitioners (respondent herein) may result in displacement of those other workmen who have not been in these proceedings, if the respondents have any claim for re-employment". Also, in the decision at page 845 in paragraphs 27 & 28, it is observed and held thus:

"27. Besides in the second appeal admittedly several persons had been appointed prior to the respondent on a temporary basis. They would have prior rights to reemployment over the respondent on the basis of the principles contained in Sections 25G or 25H.

28. In the circumstances, the Award of the Tribunal and the decision of the High Court holding that the respondent's services were wrongfully terminated were both incorrect. They are accordingly set aside. There is as such no question of payment of any back wages. Additionally the only other reason given by the High Court for directing reinstatement of the respondent in the second appeal was based on an equitable consideration of the respondent having allegedly been reinstated. The factual basis for this conclusion was erroneous. Both appeals are accordingly allowed. However the appellant has paid sums to the respondents in both the cases which sums shall not be recoverable from the respondents by reason of the allowing of these appeals. There will be no order as to costs."

52. At this stage, the learned Counsel for the appellant/bank submits that on 8.7.1995 a resolution has been passed by the President of the appellant/bank seeking permission from the Pondicherry State Co-operative Registrar for payment of salary to G. Velupillai in the post of

Manager, Grade-I. Also, in resolution No.1, it is mentioned that the said Velupillai has been working in the appellant/ bank from the year 1972 in the post of Clerk and Manager in a satisfactory manner and from 1.7.1987 he has been receiving the salary of Junior Assistant, but doing the work of Manager (In-charge). The salary for the said Velupillai in the post of Manager Grade-I was mentioned as Rs.1350 – 35 – 1650 – 40 – 2050 - 50 - 2800.

53. Added further, on 22.7.1995, the appellant/bank has passed a resolution No.12 mentioning that Ms. N. Chandra has been working in the bank from the year 1991 continuously in a satisfactory manner. However, she is employed on temporary basis on daily wages and since she holds the necessary educational qualification for a clerk and also she is sincere and efficient in her work, it has been resolved by the bank to request the Registrar of Co-operative Societies, Pondicherry through Pondicherry State Co-operative Bank to grant permission for granting her the permanent post of clerk from 1.1.1993 and also provide wages equivalent to the Junior Clerk with effect from 1.1.1993. Also, her salary is assessed as Rs. 800 – 20 – 1000 – 25 – 1250 – 30 – 1700.

54. The Managing Director of the Pondicherry State Co-operative Bank, in his letter dated 18.12.1995 addressed to the Registrar of Co-operative Societies, Pondicherry, has, inter alia, stated as follows: "The board of directors in their board meeting held on 8.7.1995 have resolved to request the Registrar to promote Thiru G. Velupillai as Manager Grade I with effect from 1.1.1991 and also to fix the scale of pay as applicable to the post of Manager Grade I. In this connection, it is stated that Thiru G. Velupillai is working in the society which was converted into bank on 9.2.1993, the bank has entrusted the work of Manager but allowed to draw the scale of pay of Junior Clerk. The Primary Agricultural Co-operative Bank should have a Manager to control the sub-ordinate staff and also to manage the affairs of the bank properly. Since Thiru G. Velupillai is working in the society for a long period and he is also officiating as Manager, we may consider the request of the society for promoting the said employee as Manager. We therefore recommend that Thiru G. Velupillai, Junior Clerk may be promoted as Manager Grade II with effect from 1.4.1995 and the scale of pay applicable to that post may be paid to the employee. The board of directors have also requested the Registrar to regularise the services of

Tmt. N. Chandra, who is working as Junior Clerk temporarily with effect from 1.1.1991. She is qualified for the post of Junior Clerk. If Thiru G. Velupillai is promoted as Manager Grade II the resultant vacancy may be filled by this Junior Clerk Tmt. N. Chandra by regularizing her services. We also recommend that she may be regularised with effect from 1.1.1996. We enclose herewith the copies of the board resolution, the financial particulars of the society as on 31.3.1995 for kind perusal of the Registrar."

55. The Deputy Registrar, Government of Pondicherry, Co-operative Department, in his letter dated 11.1.1996 addressed to the President of the appellant/bank, while according approval in regard to the proposal for regularisation of staff, has stated the following:

> "The proposal of Aringar Anna Thirumalai Rayan Pattinam Primary Agricultural Co-operative Bank on the subject mentioned above and the recommendation of the Managing Director, Pondicherry State Co-operative Bank have been examined. In view of the justification enumerated therein, the Registrar of Co-operative Societies is pleased to permit the Aringar Anna T.R. Pattinam Primary Agricultural Co-operative Bank to promote Thiru G. Velupillai, Junior Clerk as Manager Gr. II with effect from 1.4.1995 and to regularise the service of Tmt. Chandira, in the post of Junior Clerk with effect from 1.1.1996 and to fit them in the following scale of pay applicable to the respective post with usual allowances in vogue."

56. On behalf of the appellant/bank, a service certificate in respect of G. Velupillai has been produced before this Court in the form of typed set of papers, where from it is seen that the individual has been working in the Appellant/Bank since 1972 in the following various positions:

From 15-7-1972 to 15-8-1974	...	Clerk
From 16-8-1974 to 10-6-1975	...	Clerk (Manager Acting)
From 11-6-1975 to 14-9-1976	...	Clerk
From 15-9-1976 to 25-7-1977	...	Clerk (Manager Acting)
From 26-7-1977 to 30-6-1987	...	Clerk
From 1-7-1987 to as on date	...	Manager

57. Admittedly, a copy of the resolutions dated 8.7.1995, 22.7.1995 of the appellant/bank, copy of the letter from the Pondicherry State Co-operative Bank addressed to the Registrar of Co-operative Societies dated 18.12.1995, copy of the letter dated 11.1.1996 issued by the Government of Pondicherry to the appellant granting permission to Mr. Velupillai and Chandra and lastly, copy of the service certificate issued to G. Velupillai dated 18.2.2003 have not been produced before the 1st respondent/Labour Court and marked as exhibits on behalf of the appellant/bank in I.D. No. 8 of 2000 on the file of the 1st respondent/Labour Court.

58. Therefore, we are of the considered view that an opportunity is to be provided in I.D. No. 8 of 2000 on the file of the 1st respondent/ Labour Court to the appellant/bank to put forth his stand point of view in regard to these documents mentioned supra, by letting in oral and documentary evidence so as to enable the 1st respondent/Labour Court to come to a fair and just conclusion in the subject matter in issue.

59. As regards the stand taken on behalf of the appellant/bank that the term of reference made by the Government in G.O. Rt. No.92/ 2000/Labour. All., Labour Department, dated 24.7.2000 is bad, it is to be pointed out that in law, the term of reference can be amended or modified only by the Government, but it cannot be rescinded or withdrawn. Also that an appropriate Government cannot decide that an employee is not a workman as per Section 2(s) of the Industrial Disputes Act.

60. The last drawn wages directed to be paid to the 2nd respondent/employee as per Order dated 20.8.2003 in W.P.M.P. No. 21305 of 2003 in W.P.No.9162 of 2003, if paid shall not be recovered by the appellant/bank nor the same be refunded by the 2nd respondent/employee to the appellant/bank, since the said 17(B) wages, in law, if paid, is neither recoverable nor refundable.

61. On a careful consideration of respective contentions and in view of the fact that both the 1st respondent/Labour Court as well as the learned single Judge in the Award dated 14.6.2002 in I.D. No. 8 of 2000 and in the order of the Writ Petition No.9162 of 2003 dated 20.8.2010 have not dealt with the issue as to whether the 2nd respondent/employee was a workman or not under Section 2(s) of the Industrial Disputes Act, 1947. Also that both the 1st respondent as well as the learned single Judge both

in the Award in I.D. and in the order of the writ petition have not dealt with the aspect in regard to the fact that one month salary was paid by the appellant/bank to the 2nd respondent/employee in lieu of one month notice about his retrenchment and therefore, Section 25(f) of the Industrial Disputes Act was not violated. Moreover, when the 2nd respondent/employee discharged the functions of workman in the appellant/bank, the bank never employed any Manager till the year 1996 and also that during the year 1996 an existing Clerk was permitted as Manager and therefore, the invoking of Section 25H of the Industrial Disputes Act would not arise was also not gone into by the 1st respondent/Labour Court as well as the learned single Judge at the time of passing of the Award in I.D. No. 8 of 2000 dated 14.6.2002 and also passing the orders in W.P. No. 9162 of 2003 dated 20.8.2010 and more importantly, when the resolutions of the appellant/bank dated 8.7.1995 and 22.5.1995, copy of the letter from the Pondicherry State Co-operative Bank dated 18.12.1995, copy of the letter dated 11.1.1996 issued by the Government of Pondicherry [Appellant granting permission to Mr. Velupillai and Chandra in regard to the proposal for regularisation of staff] and the service certificate issued to G. Velupillai dated 18.2.2003, admittedly were not produced before the 1st respondent/Labour Court in I.D. No.8 of 2000, this Court, without expressing any opinion on the merits of the matter in the present case, to secure the ends of justice and with a view to provide an opportunity to the appellant/bank to project/substantiate their version projected in its counter in the main case in I.D. No. 8 of 2000, permits the appellant/bank to exhibit the resolutions, copy of the letter from the Pondicherry State Co-operative Bank, copy of the letter issued by the Government of Pondicherry to the appellant/bank granting permission to G. Velupillai and Chandra and the service certificate issued to G. Velupillai etc., referred to supra and also to let in oral and documentary evidence in this regard and also to examine additional witnesses and to mark additional documents, this Court, in the interest of justice, equity, fair play, good conscience and even as a matter of prudence, sets aside both the Award dated 14.6.2002 in I.D. No. 8 of 2000 on the file of the 1st respondent/Labour Court and the order dated 20.8.2010 in W.P. No. 9162 of 2003 passed by the learned single Judge, in furtherance of substantial cause of justice and as a logical corollary remits back the I.D. No. 8 of 2000 on the file of the 1st respondent/Labour Court for fresh disposal in accordance with law. Consequently, the writ appeal is allowed.

62. In the result, the writ appeal is allowed. The Award passed by the 1st respondent/Labour Court dated 14.6.2002 in I.D. No. 8 of 2000 and the order passed by the learned single Judge in W.P.No.9162 of 2003 are set aside by this Court for the reasons assigned by this Court in this writ appeal. Liberty is granted to both parties to raise all factual and legal pleas before the 1st respondent/ Labour Court in I.D. No. 8 of 2000. Equally, it is open to the 2nd respondent/employee to let in additional oral and documentary evidence and in the event of the appellant/bank examining additional witnesses and marking documents, then, the 2nd respondent/employee is permitted to cross-examine the said witnesses and to take all defences available in the manner known to law. The 1st respondent/ Labour Court shall provide adequate/enough opportunities to both parties to produce the best evidence in regard to the fresh disposal of the main I.D. and in any event, the 1st respondent/Labour Court is directed to dispose of the main I.D. No.8 of 2000 pending on its file in a dispassionate manner [untrammeled by any of the observations made by this Court in this writ appeal] within a period of five months from the date of receipt of copy of this judgment.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.4.2013

CORAM

THE HONOURABLE Mr. JUSTICE V. RAMASUBRAMANIAN

Writ Petition No. 10806 of 2013

J. Radhakrishnan ... Petitioner

Vs.

1. The Union of India,
   Represented by the Secretary to Government,
   Co-operative Department,
   Government of Union Territory of Puducherry,
   Puducherry.

2. The Registrar of Co-operative Societies,
   Co-operative Department,
   Government of Union Territory of Puducherry,
   Puducherry.

3. The Deputy Registrar of Co-operative Societies (Legal),
   Co-operative Department,
   Government of Union Territory of Puducherry,
   Puducherry.

4. The Managing Director,
   Pondicherry Co-operative Sugar Mills Ltd.,
   Lingareddypalayam,
   Government of Union Territory of Puducherry,
   Puducherry. ... Respondents

Section 141 – Revision - The impugned order does not dispute the fact that the person who passed the same was a subordinate to the Registrar of Co-operative Societies. Section 141 of the Act is in pari materia with Section

153 of the Tamil Nadu Act. It empowers the Registrar to call for and examine the record of any officer subordinate to him. Therefore, the power to entertain the revision cannot be said to be excluded in such cases.

As an employee of the co-operative society, the petitioner has very limited options. If revision is also shut out, the petitioner will be left with no remedy.

The writ petition is allowed, the matter is remitted back to the Registrar of Co-operative Societies.

Case law referred :

K.Marappan vs. Deputy Registrar of Co-operative Societies, Namakkal and another (2006) 4 MLJ 641 : 2006(4) CTC 689 :2006-4 L.W.495.

Advocates appeared :

For Petitioner	...	Mr. Sai Bharath
For Respondents	...	Mr. A. Tamilvanan, Government Advocate.

Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a writ of certiorarified mandamus, calling for the records relating to the impugned order of the second respondent dated 4.4.2013 bearing No. RCS/CLC/R.P.No.1/2013/66 and the impugned order of the fourth respondent dated 27.2.2013 bearing No. PCSM/ESTT/5-455/2013/515 and quash the same and consequently direct the fourth respondent to reinstate the petitioner into service till 31.3.2013 and pay all the back wages, service, monetary and other benefits during the service and all retiral benefits to the petitioner.

JUDGMENT

As against the punishment of discharge imposed upon him by the Managing Director of Puducherry Co-operative Sugar Mills Ltd., the petitioner filed a revision before the Registrar under Section 141 of the Puducherry Co-operative Societies Act. But the revision was rejected by the Registrar, on the sole ground that it was not maintainable. Therefore, the petitioner is before this Court.

2. Heard Mr. Sai Bharath, learned counsel for the petitioner and Mr. A. Tamilvanan, learned Government Advocate for the respondents.

3. The impugned order does not dispute the fact that the person who passed the same was a subordinate to the Registrar of Co-operative Societies. Section 141 of the Act is in pari materia with Section 153 of the Tamil Nadu Act. It empowers the Registrar to call for and examine the record of any officer subordinate to him. Therefore, the power to entertain the revision cannot be said to be excluded in such cases. As an employee of the co-operative society, the petitioner has very limited options.

4. In view of the decision of the Full Bench in *K. Marappan vs. Deputy Registrar of Co-operative Societies, Namakkal Circle, Namakkal and another, (2006)4 MLJ 641 : 2006(4) CTC 689 : 2006-4 L.W.495*, the petitioner cannot straight away come to this Court. The petitioner has no remedy of appeal to the Tribunal under Section 140 of the Act. Therefore, if revision is also shut out, the petitioner will be left with no remedy.

5. Hence, the writ petition is allowed, the impugned order is set aside and the matter is remitted back to the Registrar of Co-operative Societies viz., the second respondent. The second respondent shall reopen the revision, issue notices of hearing to both the petitioner and the society and decide the same in accordance with law on merits, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 7.8.2013

CORAM

THE HONOURABLE Mr. JUSTICE D. HARIPARANTHAMAN

W. P. No. 21970 of 2013

R. Tamizhkumaran ... Petitioner

Vs.

1. The Registrar of Co-operative Societies,
   Puducherry.

2. The Administrator,
   Kothapurinatham Primary Agricultural
   Co-operative Credit Society,
   Kothapurinatham,
   Puducherry-102. ... Respondents

Section 141 – Revision - The Revisional Authority can revise any action of the second respondent invoking Section 141 of the Puducherry Co-operative Societies Act, 1972. The revisional jurisdiction of the 1st respondent is not merely confined only to any order passed by a subordinate. The revisional jurisdiction is for correcting all errors of jurisdiction and for setting right any illegality, infirmity or irregularity. Such illegalities may arise either out of acts of commission or acts of omission. In respect of the acts of omission, there could be no orders. Therefore, the 1st respondent is obliged to entertain a revision petition, even if it does not arise out of any particular order of the subordinate officer.

Writ petition is disposed.

Case law referred :

M. Jeevanandam vs. The Joint Registrar of Co-operative Societies, Villupuram District and others, W. P. No. 14774 of 2011 dated 24.1.2012.

Advocates appeared :

For Petitioner	...	Mr. C. Prakasam
For Respondents	...	Mr. R. Sreedhar, Government Advocate, Puducherry.

Writ petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the first respondent to dispose the petitioner's revision petition filed on 22.6.2013 filed under Section 141 of Puducherry Co-operative Societies Act, 1972.

JUDGMENT

The petitioner is a junior clerk in Kothapurinatham Primary Agricultural Co-operative Credit Society. The petitioner filed revision petition under Section 141 of the Puducherry Co-operative Societies Act, 1972 on 22.6.2013 seeking to regularize him in the post of Junior Clerk and provide him alternative employment, in case the society is wound-up.

2. The Revisional Authority issued a notice dated 8.7.2013 directing the petitioner to show cause as to how the revision petition is maintainable under Section 141 of the Puducherry Co-operative Societies Act, 1972 since the revision is not filed against any order.

3. The petitioner has now filed this writ petition seeking a direction to the first respondent to dispose of the revision petition dated 22.6.2013 filed under Section 141 of the Puducherry Co-operative Societies Act, 1972 in the light of the judgment of this Court in *M. Jeevanandam vs. The Joint Registrar of Co-operative Societies, Villupuram District and others, W. P. No. 14774 of 2011* dated *24.1.2012*.

4. Heard both sides.

5. The first respondent Revisional Authority has erroneously proceeded as if the revision could be entertained only against an order. The Revisional Authority can revise any action of the second respondent invoking Section 141 of the Puducherry Co-operative Societies Act, 1972. Section 141 of the Act is in pari materia with Section 153 of Tamil Nadu Co-operative

Societies Act and this Court has considered Section 153 of Tamil Nadu Co-operative Societies Act in the order dated *24.1.2012 in W. P. No. 14774 of 2011* [cited supra], wherein this Court has held as follows:

> *"1. .....*
>
> *2. .....*
>
> *3. The petitioner filed a revision under Section 153 of the Act on 10.1.2011 to the 1st respondent praying for the grant of promotion to the post of Senior Clerk. Obviously, the petitioner did not challenge any order of promotion of anyone else. But misconstruing the provision of Section 153 as though the revisional jurisdiction of the 1st respondent is confined only to specific orders passed by the subordinates, the 1st respondent returned the revision petition, by a communication dated 21.4.2011 asking the petitioner to indicate the details of the order against which the revision was filed. Instead of re-presenting the revision, clarifying the legal position to the 1st respondent, the petitioner has come up with the above writ petition.*
>
> *4. In normal circumstances, whenever the papers are returned by quasi judicial authorities or administrative authorities, the papers should be re-presented and an order invited, before a writ is filed. It is not proper to come up against return of the papers without an adverse order.*
>
> *5. However, the 1st respondent appears to have proceeded on a misconception about the scope of Section 153. The revisional jurisdiction of the 1st respondent is not merely confined only to any order passed by a subordinate. The revisional jurisdiction is for correcting all errors of jurisdiction and for setting right any illegality, infirmity or irregularity. Such illegalities may arise either out of acts of commission or acts of omission. In respect of the acts of omission, there could be no orders. Therefore, the 1st respondent is obliged to entertain a revision petition, even if it does not arise out of any particular order of the subordinate officer.*

6. It is stated across the bar that after the revision petition filed by the petitioner was returned by the memo impugned in the writ petition, the 3rd respondent was promoted. But the promotion order was issued after the filing of the writ petition. Therefore, there is no impediment for the 1st respondent to consider the revision petition of petitioner.

7. In view of the above, the writ petition is disposed of directing the petitioner to re-present the papers in the revision, within two weeks of receipt of a copy of this order. The 1st respondent shall entertain the revision petition, as one which is filed for a prayer for promotion, without insisting upon the petitioner to challenge any particular order. The 1st respondent shall give an opportunity of hearing to the petitioner, to the society as well as to any person who may be aggrieved by any order and dispose of the revision in accordance with law within a period of eight weeks from the date of representation. There shall be no orders as to the costs."

6. In view of the aforesaid judgment, the writ petition is disposed of with a direction to the first respondent to pass orders in the revision petition, on merits and in accordance with law, as expeditiously as possible within a period of eight weeks from the date of receipt of a copy of this order. No costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.10.2013

CORAM

THE HONOURABLE Mr. JUSTICE M.VIJAYARAGHAVAN

SECOND APPEAL No.650 of 2006 and
C.M.P.No.9133 of 2005

1. The Pondicherry Co-operative Wholesale
   Stores Ltd. P.44,
   Pondicherry, rep by its Managing Director
   having its office at No.288,
   Mahatma Gandhi Road,
   Pondicherry

2. Committee of Management of
   The Pondicherry Co-operative Wholesale
   Stores Ltd.P.44, Pondicherry, rep by its
   Managing Director having its office at
   No.288, Mahatma Gandhi Road,
   Pondicherry. ... Appellants/
   Respondents/ Defendants

Vs.

A. Subramaniam ... Respondent/Appellant/
Plaintiff

Pondicherry Co-operative Societies Act, 1972 – Section 144 – Jurisdiction of Civil Court – The appellant society has passed an order of reversion and demoted the respondent. Order of punishment was challenged before the Civil Court. By impugned order the First Appellate Court interfered with the order of punishment and ordered reinstatement.

The questions that came up for consideration before the High Court are whether the Civil Court has jurisdiction to try a matter exclusively which

comes under the jurisdiction of the Registrar of Co-operative Societies; whether Civil Court can interfere with respect of proportionality when the same is within discretion of appointing authority and whether the Lower Appellate Court was correct in granting back wages.

There are no lapses on the part of the society in conducting the enquiry in a fair manner and after following the principles of natural justice. After considering the length of service as well as family circumstances of the respondent, punishment was awarded and hence the punishment shall not be construed as shockingly proportionate and hence the modification of punishment awarded by the Civil Court with back wages in not in accordance with law. Impugned order was set aside and the appeal was allowed.

Case laws referred:

(i) P. Eswaramoorthy and 15 others vs. R.J.B. Leoraj and 10 others, 2008 (6) CTC 770 ; LNIND 2008 Mad 1400 : 2008-IIII-LLJ-694 : (2008) 5 MLJ 1400;

(ii) Madurai District Co-operative Supply and Marketing Society Limited A.No.1437 by its Special officer vs. S.Sankara Narayanan and others, (1982) 1 MLJ 140 : LINND 1980 Mad 208;

(iii) The Musiri Co-operative Land Development Bank Ltd., by the Special Officer vs. Ranganathan and others reported in (1985) 1 MLJ 67 : LNIND 1984 Mad 352,

(iv) The Central Co-operative Bank Limited Kumbakonam, represented by (Board of Management) Special Officer Kumbakonam vs. M.Parthasarathy, (1988) 1 MLJ 210;

(v) Om Kumar and others vs. Union of India, AIR 2000 SC 3689 : (2001) 2 SCC 356 : LNIND 2000 SC 1585.

Advocates appeared :

For Appellants	:	Mr. Sharath Chandran for Mr.V. Raghavachari
For Respondent	:	Mr. G.R. Swaminathan.

Appeal filed under 100 of the Civil Procedure Code against the judgment and decree made in A.S.No.47/2003 on the file of II Additional District Judge at Pondicherry and dated 27.12.2004 in setting aside the judgment and decree in O.S.No.270/2001 on the file of Principal District Munsif, Pondicherry dated 19.9.2003.

JUDGMENT

This appeal is arising out of the judgment and decree passed by the First Appellate Court in A.S.No.47 of 2003 dated 27.12.2004 in allowing the same after setting aside the Judgment and decree passed in O.S.No.270 of 2001 dated 19.9.2003.

2. For the better appreciation of this appeal, the brief averments of the plaint as well as the written statement are reproduced hereunder:

3. *The brief averments of the plaint are as follows:* The defendant's society is the society registered under the Pondicherry Co-operative Societies Act. The plaintiff joined service in the first defendant society as a Junior clerk Grade-II and subsequently promoted as Deputy Manager in the year 1998. The entire functioning of the society was maintained by the Administrator appointed by the Registrar of Co-operative Societies. While so, one Mr. Kamalakannan who was a salesman of fair price shops number 133 and 178 failed to remit the sale proceeds relating to the months of November and December 1997 and the same was brought to the notice of then Managing Director-cum-Administrator, who had allowed the said Kamalakkannan to go on voluntary retirement with effect from 30.11.1997, based on the recommendation of the plaintiff. During the alleged period the plaintiff was Superintendent of the first defendant society and was having the day to day control and inspection of all the 39 shops. Though the plaintiff had found a cash deficit of Rs.20,329.30 in respect of the fair price shop number 133 and 178 which was under the salesmanship of Mr. Kamalakannan, the plaintiff has only given oral report followed by a written report to the Managing Director. Further no efforts were taken to examine the witnesses to find out the truth. Further, it is alleged that it is because of the recommendation of the plaintiff, the said Kamalakkannan was relieved under the voluntary retirement scheme which was in existence at the relevant time for a period of 180 days. While that being so, the first defendant passed an order of suspension of the plaintiff with effect from 21.6.1999 and a charge sheet was issued on

17.7.1999 for which the plaintiff has submitted his explanation on 23.7.1999. In respect of said charge sheet, enquiry has been held and accordingly the plaintiff was directed to the cadre of Superintendent by an order dated 20.12.1999. The plaintiff also filed the suit in O.S.No.10 of 1997 as against the order dated 20.12.1999 seeking for a declaration of the impugned order as null and void. In the said suit the defendant raised the preliminary objection regarding the maintainability of the suit stating that the civil Court has no jurisdiction and that the plaintiff has to seek remedy only before the industrial dispute. However, the judgment was passed confirming the jurisdiction of the civil Court, against which no appeal has been preferred by the first defendant. Consequent thereto, the plaintiff was issued with second charge relating to the sale of iron pipes of the first defendant's society to one Govindaraj, who was alleged to be the *Benami* of the plaintiff. Though the plaintiff had joined duty subsequent to the decree passed in O.S.No.10 of 2007, the defendant had suspended the plaintiff on 16.08.2007. Despite the submission of the explanation on 28.01.2001, the defendant had proposed to terminate the plaintiff from service. Further, the defendant had passed an order on 2.4.2001, depromoting the plaintiff to the junior most Superintendent. Hence the plaint for declaration to declare the impugned order as null and void and for other consequential reliefs.

4. *The brief averments of the written statement filed by the first defendant and adopted by the second and third defendants are as follows:* The defendant denied the allegations stating that the plaintiff only with the malafide intention is attributing the false and imaginary colour to the exercise of the power made by the Registrar of Co-operative Societies. The plaintiff has not exhausted the remedies available in the regulations and the suit itself is not maintainable. Though the plaintiff had discovered the absence of remittance of the sale price pertaining to the months of November and December of 1997 in respect of shop number 133 and 178 by one Kamalakannan the Salesman of the said Fair price shop, the plaintiff has not taken any action and instead the plaintiff had recommended the Managing Director to relieve the said Kamalakannan under the voluntary retirement scheme. The plaintiff himself had admitted in his evidence before the enquiry officer that he has recommended to relieve the said Kamalakannan only with the good intention to send out a troublesome person. The said action is dereliction of the duty and hence he was charge sheeted and after due enquiry he was found guilty. The

allegation that out of malice the plaintiff was sacked is false. Further, in respect of the 2nd charge relating to the sale of iron pipe it is only at the instance of the plaintiff, the iron pipe was purchased in the name of Govindarajan for a low rate without following the rules and regulations of the society. The evidence collected during the enquiry relating to the said charge proved that the iron pipes were purchased only for the use of the plaintiff. The allegation that the enquiry officer has not given sufficient opportunity to the plaintiff is incorrect. Only after considering the objections and explanation submitted by the plaintiff, the impugned order of reversion of the plaintiff dated 2.4.1991 to the post of Superintendent has been passed. Hence, the defendant prays to dismiss the suit with costs.

5. In admitting this appeal, the following substantial questions of law are framed by this Court.

> "(i) Whether the Civil Court has the jurisdiction to try matter exclusively which comes under the jurisdiction of Registrar of Co-operative Societies?;
>
> (ii) Whether the civil Court can interfere with respect of proportionality when the same is within the discretion of the appointing authority?;
>
> (iii) Whether the Court not exceeded its limitation placed on it by *Om Kumar Vs. The Union of India 2001 (2) SCC 356* and its order to the contrary is manifestly erroneous?;
>
> (iv) Whether the lower appellate Court was correct in granting back wages when the same was not sought for by the plaintiff?".

6. The learned counsel for the appellant submitted that the respondent/plaintiff was working as a Deputy Manager and for the misconduct 2 separate distinct charges were framed i.e. Ex. A2 and Ex. A3 and after duly conducting the enquiry and based on the findings of the enquiry officer, the order was passed dated 2.4.2001 which is marked as Ex. A27 in reverting him to the cadre of Superintendent as junior post and the same was challenged before the Civil Court by filing O.S.No.270 of 2001 and the Court below after going into the merits of the case and after

carefully considering the evidence on record dismissed the suit and as against which an appeal was filed and allowed. Even though, there is a finding that the first charge is proved and furthermore the Court exceeding its limitation and interfered with the amount of punishment awarded and also granted the relief of reinstatement with backwages and furthermore the Civil Court has no jurisdiction at all to entertain such suit as per the provisions contained under Section 144 of the Pondicherry Co-operative Societies Act, 1972 which is analogous to the provisions of the Section 156 of the Tamil Nadu Co-operative Societies Act. Furthermore for the said proposition that the Civil Court has no jurisdiction, the learned counsel for the appellant relied upon the judgment of the Division Bench of this Court in a case, namely *P. Eswaramoorthy and 15 others vs. R.J.B. Leoraj and 10 others*, reported in *2008 (6) CTC 770 ; LNIND 2008 Mad 1400 : 2008-IIII-LLJ-694 : (2008) 5 MLJ 238*. In the reported judgment, the Division Bench has held as hereunder:

> *"24(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."*

7. Furthermore, the learned counsel for the appellant submitted that the very face of the order under challenge which is marked as Ex. A-27 shows that sufficient opportunities have been given and thereby natural justice have been followed in the case of the respondent which is reflected under references of the order passed. After taking lenient view and after considering the lengthy services, family condition and on humanitarian grounds an order of reversion was passed and no serious lapses have been taken place and hence the Civil Court has no jurisdiction to entertain such claim.

8. The learned counsel for the respondent submitted that this is not the first case wherein the respondent has approached the Civil Court for the illegal order passed by the appellant/defendant and in earlier occasion

also the respondent has filed O.S. No.10/2000 and wherein the preliminary issue was also raised about the Civil Court jurisdiction and the same was also decided in favour of the respondent/plaintiff and rightly a decree was passed and after upholding the decree and judgment passed, revocation of the order of management was passed which is marked as Ex. A-21 and after reinstating the respondent/plaintiff into services, again such illegal order was passed on the flimsy charges framed and the same has not been proved through valid enquiry and after considering all aspect of the matter, the First Appellate Court after setting aside the judgment and decree of the trial Court granted decree rightly reinstating the respondent/plaintiff into services and hence the appellant/defendant is estopped from questioning the jurisdiction of the Civil Court.

9. It is not disputed that in the earlier proceeding there was a disciplinary action taken against the respondent/plaintiff herein, and O.S. No.10/2000 was filed and after accepting the judgment and decree the respondent/plaintiff was reinstated into service vide order of the appellant which is marked as Ex. A-21 and the contention of the respondent/plaintiff shall not sustainable in the light of the substantial questions of law raised in this appeal with the special reference to the fact that the Civil Court has no jurisdiction according to the case put forward on different cause of action. Hence the question of estoppel shall not arise and each circumstances of the case shall be looked into by the Court and decide the question of law on merits. As rightly pointed out by the learned counsel for the appellant with regard to the charge framed there is a clear cut finding by the First Appellate Court that the 1st charge is proved and with regard to the 2nd charge, there is a finding that it is not proved through valid substantial evidences. As regarding the first charge proved, absolutely there is no regular appeal or cross appeal on the side of the respondent and as it infers that there is no lapse on the part of the appellant/defendant in conducting the enquiry in a fair manner and after following the principles of natural justice. If there is any lapses on the part of the management and there is a infringement of right of the individual, that can be questioned before the Civil Court. With regard to the jurisdiction of the Civil Court, the learned counsel for the respondent submitted that the Civil Court has every jurisdiction to question the management and cited a judgment of this Court in cases namely *Madurai District Co-operative Supply and Marketing Society Limited A.No.1437 by its Special officer vs. S.Sankara Narayanan and others* reported in

(1982) 1 MLJ 140 : LINND 1980 Mad 208, The Musiri Co-operative Land Development Bank Ltd., by the Special Officer vs. Ranganathan and others reported in *(1985) 1 MLJ 67 : LNIND 1984 Mad 352, The Central Co-operative Bank Limited, Kumbakonam, represented by (Board of Management) Special Officer, Kumbakonam vs. M.Parthasarathy* reported in *(1988) 1 MLJ 210.*

10. Though, in the above judgments cited by the learned counsel for the respondent a decision was rendered by holding that the Civil Court has jurisdiction, the judgment cited by the learned counsel for the appellant is arising out of the writ petitions and the Division Bench has held after referring to the judgments rendered by this Court by holding that the Civil Court has no jurisdiction at the time of the relief sought for and the above decision cited by the learned counsel for the appellant/defendant is squarely applicable to the facts and circumstances of the case and with due respect after following the same, that too after rejecting the three Judgments cited by the respondent/plaintiff this Court holds that civil Court has no jurisdiction to entertain the suit.

11. The learned counsel for the appellant/respondent submitted that the Court can interfere with punishment awarded unless the punishment awarded is 'shockingly' disproportionate to the misconduct proved. However, in a rarest of the case the Court could award alternate penalty and cited a judgment of the Supreme Court in a case namely *Om Kumar and others vs. Union of India* reported in *AIR 2000 SC 3689 : (2001) 2 SCC 356 : LNIND 2000 SC 1585.*

12. In the reported judgment the Apex court has held as hereunder:

> *"69. The principles explained in the last preceding paragraph in respect of Article 14 are now to be applied here where the question of 'arbitrariness' of the order of punishment is questioned under Article 14.*
>
> *70. In this context, we shall only refer to these cases. In Ranjit Thakur vs. Union of India (MANU / SC/ 0691/ 1987) this Court referred to 'proportionality' in the quantum of punishment but the Court observed that the punishment was 'shockingly' disproportionate to the misconduct proved. In B.C. Chaturvedi vs. Union of India, MANU/ SC/ 0118/ 1996: (1996) 1 LLJ1231 (SC), this Court stated that the Court will not interfere unless*

the punishment awards was one which shocked the conscience of the Court. Even then, the court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the Court could award an alternative penalty. It was also so stated in Ganayutham.

71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as 'arbitrary' under Article 14, the Court is confined to Wednesbury principles as a secondary reviewing authority. The Court will not apply proportionality as a primary reviewing Court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The Court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts, and such extreme or rare cases can the Court substitute its own view as to the quantum of punishment.".

13. As already pointed out as well as referred to, the appellant/defendant after considering the lengthy of services as well as family circumstances, awarded the punishment under Ex. 27 and hence punishment at any cast shall not be construed as shockingly disproportionate and hence the modification of punishment awarded by the First Appellate Court in reinstating the respondent with backwages is not in accordance with law.

14. With due respect after considering the above cited judgment of the Apex Court in a case reported in *Om Kumar and others vs. Union of India (supra,)* this Court holds that the interference of the First Appellate Court with the punishment awarded is not in accordance with law and the same is liable to be set aside and accordingly set aside. In the result, the appeal is allowed after setting aside the Judgment and decree of the First Appellate Court made in A.S.No.47/2003 dated 27.12.2004 and confirming the Judgment and decree passed in O.S.No.270/2001 dated 19.9.2003 in dismissing the suit. Consequently, connected C.M.P. is also closed.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 4.2.2014

CORAM

THE HONOURABLE Mr. JUSTICE R. SUBBIAH

W.P. No. 623 of 2014

P. Purushothaman ..... Petitioner

Vs.

1. The Registrar of Co-operative Societies,
   Puducherry.

2. The Administrator,
   Kothapurinatham Primary Agricultural
   Co-operative Society Ltd. No. P. 130,
   Kothapurinatham, Puducherry.

3. K. Sadasivam ..... Respondents

The petitioner instituted the writ petition seeking a direction to the Administrator of the society to initiate disciplinary proceedings against the third respondent employee, as per the order passed by the Registrar in the revision petition under Section 141 of the Puducherry Co-operative Societies Act, 1972.

As on date, the petitioner is not the President of the second respondent society and he has no locus standi to file the petition seeking a direction to the second respondent to initiate disciplinary proceedings against the third respondent. He is not personally affected by the order of the first respondent in setting aside the order of dismissal passed against the third respondent.

The writ petition has no merit and hence dismissed.

Advocates appeared :

For Petitioner	...	Mr. C. Prakasam
For Respondent	...	Mr. R. Sreedhar, For Respondent No. 2

Writ petition has been filed under Article 226 of the Constitution of India, praying for a writ of mandamus directing the second respondent to initiate disciplinary proceedings against the third respondent as per order passed by the first respondent in his proceedings in R. P. No. 5/2013 dated 3.12.2013.

JUDGMENT

The petitioner has come up with the present writ petition for a mandamus, directing the second respondent to initiate disciplinary proceedings against the third respondent as per order passed by the first respondent in his proceedings in R. P. No. 5/2013 dated 3.12.2013.

2. It is the case of the petitioner that he was elected as President of the second respondent society for the years 2006-2011. While he was discharging his duties as President, the third respondent committed so many irregularities. Hence, the petitioner passed a suspension order on 7.2.2011 against the third respondent. After that, the petitioner issued a charge memo to the third respondent on 9.6.2011 on the allegation of misappropriation. The third respondent submitted his explanation. Thereafter, an enquiry officer was appointed. After enquiry, the enquiry officer submitted his report before the petitioner stating that all the charges framed against the third respondent were proved. After that, a second show cause notice was issued to the third respondent. Being not satisfied with the explanation submitted by the third respondent, the petitioner passed a dismissal order as against the third respondent on 7.10.2011. Aggrieved over the same, the third respondent preferred a revision before the first respondent under Section 141of Pondicherry Co-operative Societies Act. In the meantime, the petitioner's post of President came to an end and an Administrator was appointed for administering the second respondent society. But the first respondent without considering the misappropriation committed by the third respondent, set aside the order of dismissal passed against the third respondent, by giving liberty to the second respondent for initiating fresh disciplinary proceedings against him. After that, the Administrator of the second respondent society reinstated the third respondent into service without challenging the order passed by the first respondent before this Court. The second respondent openly stated that he would not reopen the disciplinary proceedings against the third respondent. Hence, seeking a direction to the second respondent to initiate disciplinary proceedings

against the third respondent as per order passed by the first respondent in his proceedings dated 3.12.2013, the petitioner has come up with the present writ petition.

3. Counter affidavit was filed on behalf of the second respondent stating that the petitioner's service as President of the second respondent society came to an end during December, 2011. He is not aggrieved by the revision order and he is the person who passed the termination order and he has no role and no locus standi to file the present writ petition. Thus, he sought for the dismissal of the writ petition.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the second respondent. In view of the limited order to be passed hereunder, I am not ordering notice to respondents 1 and 3.

5. I find that the present writ petition has been filed by the petitioner stating that while he was working as President of the second respondent society, he initiated action against the third respondent with regard to certain irregularities alleged to have been committed by him and dismissed him from service on 7.10.2011. Thereafter, the service of the petitioner as President came to an end in December, 2011 and an Administrator was appointed for administering the second respondent society. The first respondent, by his proceedings in R. P. No. 5/2013 dated 3.12.2013, set aside the order of dismissal passed by the petitioner as President against the third respondent, by giving liberty to the Administrator of the second respondent society to initiate fresh disciplinary proceedings against the third respondent. As contended by the learned counsel appearing for the second respondent, as on date, the petitioner is not the President of the second respondent society and he has no locus standi to file the present petition seeking a direction to the second respondent to initiate disciplinary proceedings against the third respondent. He is not personally affected by the order of the first respondent in setting aside the order of dismissal passed against the third respondent by the petitioner. Therefore, I find that absolutely there is no merits in this writ petition. Hence, the present writ petition is liable to be dismissed and accordingly, dismissed. No costs.

Note: This order was affirmed in writ appeal, vide page No.320.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 2.4.2014

CORAM

THE HON'BLE Mr. SATISH K. AGNIHOTRI,

ACTING CHIEF JUSTICE

and

THE HON'BLE Mr. JUSTICE M. M. SUNDRESH

W. A. No. 371 of 2014

P. Purushothaman ... Appellant

Vs.

1. The Registrar of Co-operative Societies,
   Puducherry.

2. The Administrator,
   Kothapurinatham Primary Agricultural
   Co-operative Credit Soceity Ltd.,
   No. P. 130, Kothapurinatham,
   Puducherry.

3. K. Sadasivam .... Respondents

The tenure of the appellant as President of the second respondent society has come to an end and an Administrator has been appointed. Therefore, the appellant has got no locus standi to seek a direction to take action against the third respondent. The appellant is neither a person interested nor he could maintain a public interest litigation in the service matters pertaining to the third respondent.

Writ appeal is dismissed.

Advocate appeared :

For appellant ... Mr. C. Prakasam

Writ Appeal filed under clause 15 of Letters Patent against the order dated 4.2.2014 made in W. P. No. 623 of 2014 (*page 317 ibid*).

W. P. No. 623 of 2014:

Writ petition has been filed under Article 226 of the constitution of India praying for a writ of mandamus directing the 2nd respondent to initiate disciplinary proceedings against the 3rd respondent as per order passed by the 1st respondent in his proceedings R. P. No. 5/2013 dated 3.12.2013.

JUDGMENT

The appellant herein was the elected President of the second respondent society from 2006-2011. After conducting an enquiry, the third respondent was dismissed from service by the appellant. The third respondent filed the revision before the first respondent under Section 141 of Pondicherry Co-operative Societies Act. The first respondent was pleased to set aside the order of dismissal passed against the third respondent giving liberty to the second respondent to initiate fresh disciplinary proceedings. However, according to the appellant, for the reasons known, the second respondent has not taken any action against the third respondent. Therefore, the appellant has filed the writ petition seeking a writ of mandamus directing the second respondent to initiate departmental proceedings against the third respondent and recover the amount said to have been misappropriated. The learned single Judge was pleased to dismiss the writ petition on the ground that inasmuch as the appellant is not the President of the second respondent society as of now, he does not have any locus standi to file this writ petition (*page 317 ibid*). Being aggrieved against the same, the appellant has come forward to file this present writ appeal.

2. Admittedly, the service of the appellant as President of the second respondent society has come to an end and an Administrator has been appointed for the second respondent society. Therefore, the appellant has got no locus standi to seek a direction to take action against the third respondent. The appellant is neither a person interested nor he could maintain a public interest litigation in the service matters pertaining to the third respondent. In such view of the matter, we do not find any reason to interfere with the order passed by the learned single Judge. Accordingly, the writ appeal fails and the same is dismissed. No costs.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.9.2014

CORAM:

THE HONOURABLE Mr. JUSTICE D. HARIPARANTHAMAN

W.P. No. 26351 of 2012

K. Ramamurthy ... Petitioner

Vs.

1. The Registrar of Co-operative Societies,
   V.V.P. Nagar, Thattanchavadi,
   Puducherry.

2. The Administrator,
   Thiruvandarkoil Primary Agricultural
   Co-operative Credit Society Ltd., No. P. 59,
   Villupuram Main Road,
   Thiruvandarkoil, Puducherry – 605 102. ... Respondents

Puducherry Co-operative Societies Act, 1972 – Section 72 – Contributory Provident Fund – The claim of the petitioner, whose services were terminated from the society, is for the provident fund due to him. The Court, by its earlier order, directed the society to consider his representation and pass order on it. The society declined to pay the provident fund on the ground that the employee has misappropriated huge amount. The order of the society is under challenge in this writ petition.

The society took a plea that the petitioner has an alternative remedy by filing a revision petition under Section 141 of the Act before the Registrar and the writ petition was not maintainable. The society also claimed that a surcharge proceeding is pending against the petitioner and hence the provident fund was not payable to him.

Disallowing the contentions of the petitioner and allowing the writ petition, the Court held that Section 72 of the Act makes it clear that the provident fund shall not be liable to attachment or be subject to any other process of

any court or other authority. That protection is given for payment of provident fund, after the person leaves the service of the employer. When the facts are also not in dispute, no useful purpose would be served in driving the petitioner to the revisional authority after two years of filing of the writ petition for claiming provident fund.

The pendency of the surcharge proceeding cannot be a reason to withhold the provident fund. Even if surcharge proceedings is issued and it reaches finality, the provident fund cannot be withheld against surcharge proceeding. However, society can very well proceed against the petitioner for collection of amount payable under the surcharge proceeding.

Case law referred :

K. Marappan Vs. The Deputy Registrar of Co-operative Societies, Namakkal Circle, Namakkal and another, (2006)4 MLJ 641 : 2006(4) CTC 689 :2006-4 L.W.495.

Advocates appeared:

For Petitioner	...	Mr. R. Thiagarajan
For Respondents	...	Mr. T. Tamilvanan, Government Advocate, Pondicherry for R-1
		Mr. L. Swaminathan for R-2

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus, to call for the records relating to order dated 13.9.2012 made in No. 4/2012 passed by the 2nd respondent quash the same and consequently direct the second respondent to release the provident fund and gratuity payable to the petitioner.

JUDGMENT

The petitioner was employed as a Manager in the second respondent co-operative society. He rendered 30 years of service. However, he was dismissed from service, by an order dated 14.2.2012 for the alleged misappropriation of huge amount along with the co-employee. This Court

is not concerned about the dismissal in this writ petition, as the claim of the petitioner is only for payment of provident fund payable under Section 72 of the Pondicherry Co-operative Societies Act, 1972 (for short "Act").

2. The petitioner earlier made a representation dated 21.5.2012 to the second respondent, to disburse the provident fund and other amounts due to him. Since no order was passed, he approached this Court by filing a writ petition in W. P. No. 16827of 2012 for issuance of a writ of mandamus to direct the respondent to disburse the provident fund and other amounts due to him. This Court, by an order dated 6.7.2012 directed the second respondent to consider the representation of the petitioner dated 21.5.2012 and pass appropriate orders on merits, within a period of four weeks from the date of receipt of a copy the order.

3. It is relevant to extract the following passages found in paragraphs 3 and 4 of said order:-

> *"3. Since the provident fund amount is payable even after dismissal of the employee, Mr. Tamilvanan, learned counsel for respondents, on taking notice, submitted that four weeks time may be granted to the second respondent to consider and dispose of the representation of the petitioner on merits.*
>
> *4. In such circumstances, the writ petition is disposed of, giving direction to the second respondent to consider the representation of the petitioner dated 21.5.2012 and pass appropriate orders on merits, within a period of four weeks from the date of receipt of a copy of this order. No costs."*

4. While so, the impugned order dated 13.9.2012 was passed by the second respondent refusing to pay the provident fund amount payable to him on the ground that the petitioner misappropriated huge amount and caused loss to the Society.

5. The petitioner has filed this writ petition to quash the aforesaid order dated 13.9.2012 and for a consequential direction to pay the provident fund amount.

6. The learned counsel for the petitioner placed heavy reliance on Section 72 of the Act. According to the learned counsel, even after dismissal, the

provident fund amount cannot be withheld. The learned counsel also referred to paragraphs 3 and 4 of the order dated 6.7.2012 extracted above.

7. On the other hand, the learned counsel for the second respondent has submitted that the writ petition itself is not maintainable since the petitioner can avail remedy of revision under Section 141 of the Act against the impugned order passed by the second respondent before the first respondent. Further, it is submitted that at the most, the petitioner can claim contribution made by him towards provident fund and he cannot claim the contribution made by the employer, since he misappropriated huge amount. The learned counsel also submitted that the petitioner also failed to invest the provident fund in the financing bank as per Section 72 (2) (d) of the Act and therefore, he was negligent, besides committing misappropriation. Hence, he is not entitled to the employer's contribution. The learned counsel also submitted that on facts, the petitioner took loan from the provident fund account and he has to repay the loan amount Rs. 63,700 and after adjusting the said amount, in the normal course, the society is liable to pay Rs. 2,32,944. But now the petitioner could not claim the employer contribution and he could claim only the employee's contribution.

8. I have considered the submissions made by the learned counsel on either side.

9. It is relevant to extract Section 72 of the Act:-

> *"72. Contributory Provident fund:-*
>
> *(1) A registered society shall establish a contributory provident fund for the benefit of its employees to which shall be credited all contributions made by the employees and the society in accordance with the rules and by-laws or the Employees Provident Funds Act, 1952 whichever is more beneficial.*
>
> *(2) A contributory provident fund established by a registered society under sub-section (1)—*
>
> *(a) shall not be used in the business of the society;*

(b) shall not form part of the assets of the society;

(c) shall not be liable to attachment or be subject to any other process of any court or other authority;

(d) shall be invested in the financing bank."

10. In the aforesaid facts and circumstances of the case, two issues arise for consideration in this writ petition. The first issue is whether the writ petition is maintainable in view of the remedy available under Section 141 of the Act and the second issue is whether the petitioner can be deprived of the provident fund.

11. It is true that the petitioner has a remedy by way of revision against the impugned order passed by the second respondent before the first respondent. If it is not the payment of terminal benefits viz., provident fund, this Court, would have no hesitation in directing the petitioner to approach the revisional authority, namely, the first respondent under Section 141 of the Act. But the prayer is for payment of provident fund. Section 72 of the Act, which was extracted above, makes it clear that the provident fund shall not be liable to attachment or be subject to any other process of any court or other authority. That protection is given for payment of provident fund, after the person leaves the service of the employer. In this case, I am not going in to the merits or allegations relating to dismissal. Even if an employee is dismissed, in view of Section 72 of the Act, provident fund cannot be withheld.

12. In view of a Larger Bench judgment of this Court in *K. Marappan Vs. The Deputy Registrar of Co-operative Societies, Namakkal Circle, Namakkal and another* reported in *(2006)4 MLJ 641 : 2006(4) CTC 689 :2006-4 L.W.495*, the writ petition is maintainable against co-operative society, if the order impugned is contrary to the statutory provision. Furthermore, in this case, the payment, which the petitioner claims is provident fund, I am of the view that it amounts to deprival of livelihood under Article 21 of the constitution.

13. Furthermore, when the facts are also not in dispute, no useful purpose would be served in driving the petitioner to the revisional authority after two years of filing of the writ petition for claiming provident fund. Even in the earlier occasion, this Court passed an order dated

6.7.2012 in W. P. No. 16827 of 2012, wherein, it has been clearly held in paragraphs 3 and 4 that the petitioner is entitled to provident fund. But the second respondent can withhold the amount of loan, for which the petitioner has no objection.

14. Taking into account the aforesaid facts, I am of the view that the writ petition is maintainable in view of the aforesaid decision and particularly taking into account Section 72 of the Act, the petitioner is entitled to provident fund. The records produced by the second respondent as well as the submission made by the learned counsel makes it clear that after deducting the loan amount, provident fund amount payable to the petitioner is Rs. 2,32,944.

15. The writ petition is allowed and a direction is issued to the second respondent to pay the amount payable to the petitioner in respect of the provident fund, within a period of three months from the date of receipt of a copy of this order. It is stated by the learned counsel for the respondents that surcharge proceeding is pending against the petitioner. The pendency of the surcharge proceeding cannot be a reason to withhold the provident fund. Even if surcharge proceeding is issued and it reaches finality, the provident fund cannot be withheld against surcharge proceeding. However, society can very well proceed against the petitioner for collection of amount payable under the surcharge proceeding. No costs.

ANNEXURE

IN THE SUPREME COURT OF INDIA

DATE : 13.11.2007

BENCH

THE HONOURABLE Mr. JUSTICE ASHOK BHAN

AND

THE HONOURABLE Mr. JUSTICE V.S. SIRPURKAR

Appeal (Civil) No. 8315 of 2001

Pondicherry State Co-operative Consumer Federation Limited ... Petitioner

Vs.

Union Territory of Pondicherry ... Respondent

The denial of exemption from payment of sales tax is under challenge in this appeal at the instance of the appellant Pondicherry State Co-operative Consumer Federation Ltd. The authorities had firstly certified the assessee's industry to be small scale industry and had then proceeded to grant exemption to it from payment of sales tax on the goods manufactured. The said certificate was not found to have been erroneously issued and was very much in vogue when the show cause notices came to be served on the assessee. The G.O. providing exemption clearly suggested that such exemption was given in the public interest.

Since in the present case the exemption was granted to all small scale industrial units registered with the Director of Industries and since the assessee was recognized and certified as a small industrial unit, engaged in the activity of re-packing of edible oil and further since the exemption was granted with the open eyes to this particular industry, the State cannot be allowed to run around and take a stance that the appellant- assessee was not entitled to the exemption on the ground that it did not manufacture any goods.

The appeal was allowed, the order passed by the High Court was set aside and the order of the Tribunal was restored.

Case law referred :

Vadilal Chemicals Ltd. vs. State of U.P. and others,(2006) 6 SCC 292.

Advocates appeared :

For Appellant … Mr. Venkataraman, Senior Advocate

For Respondent … Mr. T.L.V. Iyer, Senior Advocate

V.S. Sirpurkar, J.

1. The judgment of the High Court (*page 22 ibid*) denying the exemption from payment of sales tax is under challenge in this appeal at the instance of the appellant Pondicherry State Co-operative Consumer Federation Ltd. (for short 'the assessee'). Such exemption was granted by the Sales Tax Appellate Tribunal at Pondicherry by allowing an appeal filed by the assessee. Prior to that the assessee was assessed by the Assessing Authority and on an appeal by the assessee the taxable liability was brought down to Rs.14,26,729.86 by the Appellate Commissioner. An appeal was, thereafter, filed before the Tribunal which allowed the appeal holding that the assessee was covered by the G.O. Ms. No.15/74 dated 25.6.1974 and was as such exempted from paying the sales tax.

2. The assessee is a small scale industry certified as such by Director of Industries, Government of Pondicherry by G.O. No. 35/IND/88-89/ A-5/A- 9 dated 19.5.1989. The said certificate specifically provided that the unit of the assessee was exempted from payment of Sales Tax for five years vide G.O. Ms.No.15/74/FIN (CT) dated 25.6.1974. It is obvious that thereafter this tax holiday was extended from time to time. The assessee is also registered as a small industrial unit and is certified as such by the Director of Industries by his order dated 9.3.1989. The assessee purchases Palmolive oil in bulk and packs the oil in small packages for the purpose of selling in retail and this packing of Palmolive oil is done in the small industrial unit of the assessee.

3. The Government of Pondicherry has issued a G.O. which we have referred to earlier dated 25.6.1974 and vide that G.O., in exercise of powers

conferred by sub-section (3) of Section 19 of the Pondicherry General Sales Tax Act, 1967 a general exemption is provided from payment of sales tax on the turnover of the sales of goods "manufactured" by (i) small scale industries which went into production on or after 6th November; and (ii) all industries other than small scale industries which went into production on or after 1st April, 1971, as certified by the Director of Industries, Pondicherry. There is no difficulty and it is an accepted position that the appellant-assessee is covered by this G.O.

4. The Department, however, took the view that purchase of Palmolive oil and then re-packing the same could not amount to manufacture of goods and as such the said G.O. could not be made applicable to the assessee's case. It is in that view that the assessment orders were passed. The Tribunal took the view that though in the strict legal sense the assessee's activities could not be viewed as "manufacturing" yet since the Director of Industries had exempted the assessee from payment of sales tax it had to be accepted as a valid legal document founded on the authority of the Finance Department in terms of G.O. Ms. No.15/74 dated 25.6.1974. In that view the Tribunal allowed the appeal filed by the assessee. However, the High Court took the view that for being covered under G.O. Ms. No.15/74 dated 25.6.1974 it had to be proved by the assessee that it "manufactured" the goods since the said G.O. was applicable to the industries manufacturing goods and the turnover relating to such manufactured goods. The High Court further took the view that it could not be said that there was any manufacturing process involved in the assessee's small scale industry and, therefore, held that no exemption would be available to the assessee. It is this judgment of the High Court which is assailed before us.

5. Learned Senior Counsel Shri Venkatraman appearing for the appellant-assessee submitted that this question was no more res integra and was covered by the judgment of this Court reported in *Vadilal Chemicals Ltd. vs. State of U.P. and others [(2006) 6 SCC 292]*. It was pointed out that in that case an identical question fell for consideration under the similar circumstances. There also, the question was: as to whether the small scale industry which was engaged in bottling of anhydrous ammonia could be said to be entitled to the exemption from payment of sales tax on the ground that it was manufacturing such goods since there was a general exemption offered by the Andhra Pradesh

Government by G.O. Ms. No.117 dated 17.3.1993 to the small scale industry. There also it was found on inspection that the assessee industry was allowed irregular tax exemption on the first sales of anhydrous liquified ammonia as it was found that the commodity that was purchased and sold was one of the same and there was no new commodity that had emerged and that the assessee had only done bottling of ammonia. The show cause notices were issued to the assessee in that case suggesting therein that the activity of bottling/packing of gases into unit containers from bulk quantities was not recognized as "manufacture" even under the Central Excise Act. In that view the question which fell for consideration before this Court was as to whether under the circumstances the assessee could claim the exemption. This Court firstly held that the exemption certificate was granted by the authorities after due consideration. It was then noted that though the exemption was available on the products "manufactured" in industrial units, the interpretation put forth by the authorities on the word "manufacture" was incorrect. This Court took the view that the authorities had based the interpretation of word "manufacture" on the law relating to excise and that it was erroneous to do so. It was observed that in the State Sales Tax Act there was no provision relating to "manufacture" and the concept was to be found only in the 1993 G.O. which had provided the exemption. The Court further took the view that the exemption was granted with a view to give a fillip to the industry in the State and also for the industrial units of the State. The Court, therefore, took the view that a liberal interpretation of the term "manufacture" should have been adopted by the State authorities, more particularly, when the State authorities had granted the certificate of eligibility after due consideration of the facts.

6. In our view the law laid down in this decision is applicable to the present case on all fours. Here also the authorities had firstly certified the assessee's industry to be small scale industry and had then proceeded to grant exemption to it from payment of sales tax on the goods manufactured. The said certificate was not found to have been erroneously issued and was very much in vogue when the show cause notices came to be served on the assessee. The G.O. providing exemption clearly suggested that such exemption was given in the public interest. Therefore, it is obvious that the decision in *Vadilal Chemical's* case would be equally applicable as even in that case what the industry did was to bottle the ammonia gas purchased in bulk. In the present case it is Palmolive oil which is purchased in bulk and is re-packed so as to facilitate its sale in the retail market.

7. Shri T.L.V. Iyer, Senior Advocate appearing on behalf of the Union territory of Pondicherry, however, tried to suggest that the exemption from payment of tax granted on 19.5.1989 was granted by the Director of Industries and it was clear from that exemption that it was only on the basis of the G.O. Ms. No.15/74 dated 25.6.1974. Our attention was invited to the last lines of the aforementioned G.O. dated 19.5.1989. The last portion is as under:

"The unit is exempted from payment of sales tax for five years vide G.O. Ms. No.15/74/FIN(CT) dated 25.6.1974."

On this the learned Senior Counsel argued that therefore, it had to be proved that the goods were manufactured by the assessee and in the present case since the Palmolive oil did not change its character on its being re-packed by the assessee, it could not be said that the assessee had manufactured any goods. Learned counsel also urges that in the absence of any definition of "manufactured goods" in the Sales Tax Act, we would have to fall back upon either the dictionary meaning of the term or to borrow it from the Central Excise Act. We are afraid, the contention cannot be accepted in the wake of clear law laid down by this Court in *Vadilal Chemical's* case. We have already shown as to how the decision in that case is applicable to the present situation. In that view we are of the clear opinion that since in the present case the exemption was granted to all small scale industrial units registered with the Director of Industries and since the assessee was recognized and certified as a small industrial unit, engaged in the activity of re-packing of edible oil and further since the exemption was granted with the open eyes to this particular industry, the State cannot be allowed to run around and take a stance that the appellant- assessee was not entitled to the exemption on the ground that it did not manufacture any goods. We are in respectful agreement with the view taken in Vadilal Chemical's case which is more particularly reflected in paras 19 and 20 of that decision where this Court observed as under: "In this case the State Sales Tax Act contains no provision relating to "manufacture". The concept only finds place in the 1993 G.O. issued by the Department of Commerce and Industries. It appears from the context of the other provisions of 1993 G.O. that the word "manufacture" had been used to exclude dealers who merely purchased the goods and resold the same on retail price. What the State Government wanted was investment and industrial activity. It is in this background that the 1993 G.O. must be

interpreted (See *CST vs. Industrial Coal Enterprises*). The exemption was granted in terms of 1993 G.O., the thrust of which was to increase industrial development in the State."

8. We respectfully agree with the aforesaid observations and would chose to take the same view by accepting the contention of the appellant that a liberal view of G.O. Ms.No.15/74 dated 25.6.1974 would have to be taken. We accordingly allow the appeal, set aside the order passed by the High Court and restore that of the Tribunal but without any order as to costs.