

(2011) 07 MAD CK 0393

Madras High Court

Case No: Writ Petition No. 22622 of 2003

K. Rajasekaran and Others

APPELLANT

Vs

The Secretary to Government of
Tamil Nadu Co-operation, Food
and Consumer Protection
Department, The Registrar of
Co-operative Societies and
Tuticorin District Central Co-op.
Bank Ltd.

RESPONDENT

Date of Decision: July 18, 2011

Acts Referred:

- Industrial Disputes Act, 1947 - Section 9A

Hon'ble Judges: T. Raja, J

Bench: Single Bench

Advocate: S.M. Subramaniam, for the Appellant; S.V. Durai Solaimalai, Addl. Govt. Pleader for R1 and R2, S. Silambanan for N. Umapathi, for R3, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

T. Raja, J.

The present writ petition has been filed jointly by twenty four Assistants seeking issuance of writ of certiorarified mandamus to quash the order passed by the Special Officer, Tuticorin District Central Co-operative Bank Ltd., Tuticorin, the third Respondent herein in Rc.2248/2000/E dated 6.6.2003 with a direction to the third Respondent to restore to the Petitioners the pay of Rs. 2775/-in the scale of Rs. 1030 with effect from 1.6.99.

2. Mr. Suramaniam, the learned Counsel appearing for the Petitioner submitted that the erstwhile Adhoc Committee in certain District Central Co-operative Banks recruited Junior Supervisors and Clerks from the year 1970 to 31.12.1977 and thus

all these twenty four Petitioners were recruited by the erstwhile Adhoc Committee of the Tirunelveli District Central Cooperative Bank. After some time, some of the personnel recruited by the erstwhile Adhoc Committee were deputed to the Primary Agricultural Cooperative Banks and some of them were also appointed in the District Central Cooperative Banks. In the meanwhile, the Adhoc Committees also came to be abolished in the year 1977. The said Adhoc employees who were deputed to Primary Agricultural Co-operative Banks were not treated as the employees of the respective District Central Co-operative Banks. Therefore, all those Adhoc employees who were working in the Primary Agricultural Co-operative Banks made a representation seeking for their absorption in the District Central Cooperative Banks and for fixation of pay on par with the juniors who were recruited along with them and originally appointed in the District Central Cooperative Banks. Accepting the request of the Petitioners, the Government in their letter (Ms) No. 72 Co-operation dated 5.2.85 ordered regularising their services retrospectively with effect from the date of their selection by the Adhoc Committee giving exemption to those adhoc employees from the provisions contained in G.O.(Ms) No. 1138, Labour and Employment Department dated 25.9.78 for recruitment in the services of the District Central Co-operative Banks without reference to the employment exchange. Thereafter, the Government issued revised orders in G.O.(Ms) No. 331 dated 5.12.1988 permitting the absorption of the adhoc employees subject to the condition that the appointment of these employees shall be treated as fresh appointments. Accordingly, the Petitioners were appointed in the District Central Co-operative Bank, Tirunelveli. Subsequently, after the formation of Tuticorin District in the year 1994, the Petitioners were absorbed in the Tuticorin District Central Co-operative Bank.

3. The learned Counsel appearing for the Petitioners further submitted that the Government issued G.O. (2D) No. 46 dated 25.8.2000 directing to refix the scale of pay of the adhoc employees, who were absorbed in the year 1988 in the District Central Co-operative Banks on par with the juniormost eligible adhoc employees working in the erstwhile Tirunelveli District Central Co-operative Bank. On the basis of the said G.O.2(D) No. 46 dated 25.8.2000 the Special Officer of the Tirunelveli District Central Cooperative Bank by order dated 30.04.2001 has fixed the scale of pay of 37 adhoc employees on par with the junior most eligible adhoc employees. Likewise the scale of pay of the the Petitioners, who were absorbed in the Tuticorin District Central Co-operative Bank was also refixed by order dated 8.5.2001. Unfortunately, the order dated 8.5.2001 was cancelled and recovery was ordered by third Respondent by the impugned order dated 6.6.2003 after giving notice u/s 9-A of the Industrial Disputes Act. In the meanwhile, when the employees of the Tirunelveli District Central Co-operative Bank faced a similar order of recovery dated 22.5.2003, they approached this Court by filing a writ petition in W.P.(MD). No. 16430/2003 and this Court issued a direction ON 27.03.2007 to the Petitioners therein to approach the Registrar u/s 153 of the Tamil Nadu Co-operative Societies

Act (hereinafter "the Act"). As per the orders of this Court, the Registrar exercising power u/s 153 of the Act by elaborately considering the case of the similarly placed persons passed an order on 18.7.2007 reversing the order dated 22.5.2003 passed by the Special Officer concerned. Therefore, the learned Counsel for the Petitioners submits that the Registrar in the light of the order passed by this Court in exercise of his revisional power having considered and passed the order giving the benefit of the scale of pay on par with the junior most adhoc employees working the Tirunelveli District Central Co-operative Banks, the order of the third Respondent which is impugned in the present writ petition is liable to be set aside.

4. In his further submissions, the learned Counsel relied on an another order passed by me while I was sitting in Madurai Bench in W.P.(MD) No. 7943 of 2007 which came to be filed by the Bank aggrieved by the order passed by the Registrar u/s 153 of the Act. After considering the order passed by the Registrar u/s 153 of the Act and also the arguments advanced by the bank, I have dismissed the writ petition by upholding the order of the Registrar passed u/s 153 of the Act. Therefore, the learned Counsel appearing for the Petitioners submits that there is nothing more to be gone into except allowing the writ petition in tune with the order passed by this Court in W.P.(M.D.) No. 7943 of 2007 dated 3.12.2010. On that basis, he prayed for allowing the writ petition by setting aside the impugned order.

5. In response to the above arguments, Mr. Silambanan, the learned Senior Counsel appearing for the third Respondent submitted that it is not known on what basis the Registrar in exercise of his power u/s 153 has passed the order directing to fix the scale of pay of the similarly placed adhoc employees on par with the junior most adhoc employees working in the Tirunelveli District Central Co-operative Bank. The Registrar while passing the order u/s 153 has not properly mentioned whether one A.Thangavel Kulasekaran was an adhoc employee, if so whether he was juniormost employee in the Tirunelveli District Central Co-operative Bank. The learned Senior Counsel further submitted that the writ petition is not maintainable in view of the dictum laid down by this Court in Marappan's case. Thus, the learned Senior Counsel sought for dismissal of the writ petition by giving liberty to the Petitioners to approach the Registrar u/s 153 of the Act.

6. In support of the above submissions, the learned Additional Government Pleader appearing for the Respondents 1 and 2 also by relying upon his counter affidavit submitted that the Petitioners should have approached the Registrar u/s 153 of the Act, but the Petitioners without doing so have directly come to this Court by filing the present writ petition under Article 226, which should be negatived by this Court. Even if the Petitioners are covered by the order passed by the Registrar of the Co-operative Societies in view of the fact that the impugned order passed by the Special Officer dated 6.6.2003 has been passed only after issuing notice u/s 9A of the I.D. Act, the question of not addressing their grievance will not arise in the present writ petition. Therefore, he prayed this Court to dismiss the writ petition as

argued by the learned Senior Counsel for the third Respondent.

7. I have considered the submissions made by the learned Counsel appearing for the Petitioners as well as the learned Senior Counsel appearing for the third Respondent and the learned Additional Government Pleader appearing for the Respondents 1 and 2.

8. All the Petitioners were originally recruited through the erstwhile Adhoc committee of the Tirunelveli District Central Co-operative Bank Limited in the year 1970 to be appointed in various posts like Junior Supervisors, Clerks in the Tirunelveli District Central Co-operative Bank Limited. After their appointments, some of them were deputed to the Primary Agricultural Co-operative Banks and some of them were appointed in the District Central Co-operative Bank, Tirunelveli. After abolition of the Adhoc Committee, the Petitioners who were deputed to Primary Agricultural Co-operative Banks made a representation seeking for their absorption in the Central Co-operative Bank. Accepting the request made by the Petitioners, the Government ordered regularisation of their services and accordingly all the Petitioners were also absorbed in the Tirunelveli District Central Co-operative Bank, in the year 1988. After the bifurcation of the erstwhile Tirunelveli District, the Petitioners were absorbed in the District Central Co-operative Bank, Tuticorin. Since the adhoc employees like the Petitioners were getting lesser scale of pay than that of their juniors who were recruited along with them by the Adhoc Committee they made a representation for pay fixation on par with the juniors working in the District Central Co-operative Bank. When the Petitioners put forth their grievance, the Government examined the same and came to the conclusion that the junior adhoc employees appointed by the Adhoc committee have been drawing more pay and emoluments than the Petitioners. Therefore, taking into consideration the said fact, the Government in consultation with the Registrar of the Co-operative Societies, passed G.O. (2D) No. 46 Cooperation, Food and Consumer Protection Department dated 25.8.2000. By the said G.O. the Government directed that the pay of the Adhoc employees who were absorbed in the Central District Co-operative Banks in accordance with the earlier Government Order be refixed on par with the junior most eligible adhoc employees of the respective District Central Co-operative Banks recruited by the Adhoc Committee prior to 1977 and arrears of pay consequent on the refixation shall be given with effect from 1.6.1999. Only on the basis of the G.O. No. 46 dated 28.5.2000, the Special Officer, the third Respondent has rightly fixed the scale of pay of the Petitioners on 8.5.2001. But subsequently for the reasons best known to him the very same Special Officer has recalled the said order by passing the impugned order dated 6.6.2003 after issuing a notice u/s 9A of the Industrial Disputes Act 1947 calling upon the Petitioners to submit their explanation. Aggrieved by the said order of the Special Officer dated 6.6.2003, the Petitioners have approached this Court.

9. As already stated when the Government on examining the request of the Adhoc employees including the Petitioners on consultation with the Registrar of Co-operative Societies have directed that the pay of such employees who were absorbed in the Central District Co-operative Banks be refixed on par with the junior most eligible Adhoc employees of the District Central Cooperative Banks recruited by the Adhoc Committee and consequently that has been implemented by order dated 8.5.2001 in the case of Petitioners herein, the Special Officer should not have reversed the pay fixation by the impugned order which forced the Petitioners to come before this Court.

10. No. doubt, as contended by the learned Counsel appearing for the Respondents, the Petitioners have straight away come to this Court without resorting to the revisional remedy available u/s 153 of the Tamil Nadu Co-operative Societies Act. But in the peculiar facts and circumstances of the case, as put forth by the learned Counsel appearing for the Petitioners, I am of the considered opinion that the Petitioners need not be relegated to approach the Registrar u/s 153 of the Tamil Nadu Co-operative Societies Act. The reason being that when a similar order of cancellation of pay fixation and recovery passed by the Special Officer of the Tirunelveli District Co-operative Bank dated 22.5.2003 was challenged by similarly placed adhoc employees by filing writ petition before this Court in W.P. No. 16430 of 2003, this Court by order dated 27.3.2007 directed the Petitioners therein to approach the revisional authority viz., the Registrar u/s 153 of the Act. Following the direction of this Court, the Registrar after elaborately considering the case of both sides has finally passed an order on 18.7.2007 u/s 153 of the Act confirming the order of pay fixation on par with the junior most adhoc employees. Further, when the order of the Registrar dated 18.7.2007 was challenged by the Bank by filing a writ petition in W.P.(MD) No. 7943 of 2007 before the Madurai Bench of this Court, I have dismissed the writ petition by upholding the order of the Registrar dated 18.7.2007. In such circumstances, I am of the view that the Petitioners need not once again be relegated to approach the Registrar of Co-operative Societies u/s 153 of the Act since already the pay fixation of similarly placed employees has been confirmed by the Registrar.

11. For the foregoing reasons, I have No. other option except to allow the writ petition which is in tune with the reasonings assigned by the Registrar by setting aside the impugned order. Accordingly, the writ petition stands allowed and the impugned order dated 6.6.2003 stands quashed. In view of the fact that all the employees have already retired from service, the third Respondent, the Special Officer is directed to settle the arrears within a period of three months from the date of receipt of copy of this order. No costs