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**B. Ramesh Vs. the Registrar of Co.Operative Societies, V.C. 96, Cheyyar Division Revenue and Rural Development Department Employees Cooperative Thrift and Credit Society and the Enquiry Officer**

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**Court :** Chennai

**Decided On :** Oct-15-2008

**Reported in :** (2009)2MLJ355(1)

**Judge :** P. Jyothimani, J.

**Acts :** Tamil Nadu Co-operative Societies Act, 1983 - Sections 75, 75(5), 81, 81(1), 87 and 152; Tamil Nadu Co-operative Societies Rules, 1988 - Rule 104

**Appeal No. :** Writ Petition No. 17734 of 2008

**Appellant :** B. Ramesh

**Respondent :** The Registrar of Co.Operative Societies, V.C. 96, Cheyyar Division Revenue and Rural Development Dep

**Advocate for Def. :** P. Muthukumar Government Adv. for R. 1 and R. 3, R. 1 and R. 2 and ;M.S. Palanisamy, Adv. for R. 2 and R. 3

**Advocate for Pet/Ap. :** A.L. Somayaji, Sr.Counsel for T.S. Rajmohan, Adv.

**Judgement :**

ORDER

**P. Jyothimani, J.**

1. The writ petitioner is one and the same in all the writ petitions. W.P No. 17734 of 2008 is filed challenging the order of the first respondent, the Registrar of Co-operative Societies dated 7.12.2007 under which the appeal petition filed by the petitioner dated 15.11.2007 under Section 75(5)(a) of the Tamil Nadu Co-operative Societies Act, 1983 praying the first respondent to set aside the proceedings initiated against the petitioner under Section 81 of the Act and also to direct the Special Officer of V.C.96, Cheyyar Division Revenue and Rural Development Department Employees Co-operative Thrift and Credit Society to permit the petitioner to continue to execute his function as Secretary and draw his salary, came to be rejected on the basis that enquiry under Section 81 of the Act is pending, that the petitioner can put forth his defence before the Enquiry Officer, and that the petitioner does not come under common cadre and hence, the appeal under Section 75(5) of the Act does not lie.

2. W.P No. 18715 of 2008 is filed challenging the order of the Special Officer, viz., third respondent therein dated 23.7.2008 which is a notice issued by the third respondent to the petitioner to call for his explanation, enclosing the report of the Enquiry Officer in respect of the disciplinary proceedings initiated against the petitioner, while W.P No. 21231 of 2008 again relates to the said show-cause notice dated 23.7.2008 for declaration that the said notice is null and void and to permit the petitioner to function as Secretary of the third respondent society.

3. The petitioner has joined V.C.96, Cheyyar Division Revenue and Rural Development Department Employees Co-operative Thrift and Credit Society, Tiruvannamalai, the second respondent in W.P No. 17734 of 2008 and third respondent in other writ petitions as its Secretary functioning with effect from 22.10.2001. It is the case of the petitioner that the third respondent has issued summons under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 (in short, 'the Act') to conduct enquiry in respect of certain irregularities which took place in the conduct of the society. It is stated that as against such notice, the petitioner has approached this Court by filing W.P No. 26629 of 2007 in which there was a direction 5.10.2007 to file appeal under Section 75(5) of the Act and

on filing such appeal, the first respondent has passed the impugned order dated 7.12.2007 and the same is assailed by the petitioner.

4. As contended by the learned senior counsel for the petitioner Mr.AL.Somayaji, the procedures contemplated under Rule 104 of the Tamil Nadu Co-operative Societies Rules,1988 have not been followed while conducting enquiry under Section 81 of the Act and there has been no specific ground raised against the petitioner in the enquiry ordered under Section 81 of the Act and therefore, the discretion which has been vested with the first respondent has not been exercised in a proper manner, apart from stating that the Enquiry Officer has not furnished documents, etc. It is also his submission that by virtue of the fact that the Special Officer of the second respondent Thrift Society has formed part of the Board of Management by 1996 Act, the enquiry by the first respondent Registrar by nominating the second respondent Special Officer is not valid. His further submission is that in such view of the same, the order of the Special Officer dated 4.6.2007 placing the petitioner under suspension and the appeal filed to the first respondent are not sustainable. It is also his further contention that the first respondent while passing the impugned order has failed to take into consideration the order passed by this Court earlier especially when the appeal itself is not maintainable.

5. On the other hand, Mr.M.S.Palanisamy, learned Counsel appearing for the second respondent and Mr.P.Muthukumar, learned Government Advocate appearing for the first respondent would submit that the petitioner has actually and intentionally has confused the disciplinary proceedings with the enquiry under Section 81 of the Act. It is their submission that what was passed by the Special Officer on 4.6.2007 was relating to the disciplinary proceedings by which the petitioner was placed under suspension and when this Court has directed the petitioner to file an appeal under Section 75(5) of the Act in the appeal filed by him dated 15.11.2007, the petitioner has chosen to raise his grievance only about Section 81 of the Act which is relating to the enquiry in respect of functioning of the Co-operative Society and it was, under those circumstances, the first respondent has correctly directed the petitioner to raise his defence to the show-cause notice issued under Section 81 of the Act.

6. In respect of the appeal filed under Section 75(5) of the Act, it was held that the petitioner does not belong to the common cadre as per G.O.Ms No. 55, Co-operation, Food and Consumer Protection Department, dated 24.3.2000. The contention of Mr.AL.Somayaji, learned senior counsel is that if really the petitioner does not belong to the common cadre as per G.O.Ms. No.55, Co-operation, Food and Consumer Protection Department, dated 24.3.2000 which has been stated for the first time in the impugned order by the first respondent dated 7.12.2007, nothing prevented the respondents from stating so when the earlier writ petition in W.P No. 26629 of 2007 came to be disposed of on 5.10.2007. Otherwise, according to the learned senior counsel, by the conduct of the respondents, there is estoppel and the respondents who have not raised any objection when the direction was issued by this Court to file appeal under Section 75(5) of the Act cannot reject the appeal on the ground that the same is not maintainable.

7. A reference to the grounds raised by the petitioner in the affidavits filed in support of the writ petitions show that it is not the case of the petitioner at any point of time that the petitioner belongs to common cadre. It is also not the case of the petitioner in the affidavits that in spite of G.O.Ms. No. 55, Co-operation, Food and Consumer Protection Department, dated 24.3.2000, he would continue to be in the common cadre and therefore, the appeal would be maintainable.

8. Section 75 of the Tamil Nadu Co-operative Societies Act, 1983 which relates to the constitution of common cadre of service provides for an appeal in respect of service conditions of an employee placed in the common cadre against an order of competent authority in imposing punishment of withholding promotion, suspension by way of punishment, etc. The said Section 75(5) is as follows:

75. Constitution of common cadre of service.-

(1) to (4) ...

(5) (a) Any employee of a common cadre of service aggrieved by any order of the competent authority relating to censure, stoppage of increment, withholding of promotion, suspension by way of punishment, reduction to a lower rank in the seniority list, or to a lower post or time scale whether in the same service or in

another service or to a lower stage in a time scale, compulsory retirement, removal or dismissal, may appeal to the Registrar against such order within sixty days from the date of such order and the Registrar shall follow such procedure as may be prescribed for the disposal of the appeal.

(b) Where the order appealed against is that of the Registrar for the State, the appeal under Sub-clause (a) shall lie to the Government:

Provided that in disposing of an appeal under this sub-section, the Registrar or the Government, as the case may be, shall give a reasonable opportunity of being heard to the parties concerned:

Provided further that the Registrar or the Government, as the case may be, may pass such interlocutory order pending the decision on the appeal as he or they deem fit:

Provided also that the Registrar or the Government, as the case may be, may award costs in any proceedings under this sub-section to be paid either out of the funds of the competent authority or by such party to the appeal as the Registrar or the Government, as the case may be, may deem fit.

9. What is contended on behalf of the petitioner is that the respondents have never raised that the petitioner is not borne on common cadre as per G.O.Ms No. 55, Co-operation, Food and Consumer Protection Department, dated 24.3.2000 and therefore, it is not open to the respondents now to go back, in the absence of any material to show that the petitioner in fact does not belong to common cadre, especially when the petitioner is the Secretary of the Thrift and Credit Society. It is not possible to accept the contention of the learned senior counsel that there is estoppel against the respondents by their conduct.

10. On the other hand, as correctly submitted by the learned Counsel for the second respondent Mr.M.S.Palanisamy, the petitioner having challenged the order of suspension dated 4.6.2007 passed by the Special Officer as if it was a punishment and having filed W.P No. 26629 of 2007 and obtained an order dated 5.10.2007 permitting him to file appeal under Section 75(5) of the Act, however,

has chosen to file appeal primarily against the enquiry directed against the functioning of the Society under Section 81 of the Act in order to mislead the authorities and therefore, the authority have passed the impugned order stating that as far as enquiry under Section 81 of the Act is concerned, the show-cause notice has already been issued and the petitioner can always submit his explanation and put forth his defence and as far as appeal under Section 75(5) of the Act is concerned, the same is not maintainable since the petitioner does not belong to the common cadre. The said contention is certainly substantial to show the conduct of the petitioner who has attempted to mislead the authorities by confusing the enquiry under Section 75(5) which relates to service conditions with the enquiry under Section 81 of the Act which relates to the conduct of the Society.

11. It is also relevant to point out that in another writ petition filed by the petitioner in W.P No. 34113 of 2007 the petitioner has chosen to seek declaration that the enquiry conducted under Section 81 of the Act in respect of the Thrift and Credit Society is not valid and the same was dismissed as misconceived on 30.10.2007 by K. Chandru, J. who has in categorical terms held that ultimately if the enquiry under Section 81 of the Act culminates into an adverse order, an appeal nevertheless lies under Section 152 of the Tamil Nadu Co-operative Societies Act, 1983. The total conduct of the petitioner is no doubt clear that he has attempted to confuse the enquiry under Section 75(5) of the Act with the enquiry under Section 81 of the Act, which are totally different.

12. Section 81 of the Act which empowers the Registrar either on his own motion or on application by majority of the Board or of not less than one third of the members, can direct the authority to hold an inquiry in respect of the working and financial conditions of a registered Society or in respect of any misappropriation, fraudulent retention of any money, property, etc. Section 81(1) of the Act is as follows:

81. Inquiry: (1) The Registrar may, of his own motion and shall, on the application of a majority of the board or of not less than one third of the members or on the request of the financing bank or of the District Collector, hold an inquiry or direct some person authorised by him by order in writing in this behalf to hold an inquiry

into the constitution, working and financial conditions of a registered society or any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice, or mis-management in relation to that society or into any particular aspect of the working of that society.

13. In respect of enquiry under Section 81 of the Act, ultimately the authority can pass surcharge order under Section 87 of the Act when it is proved in the inquiry that the person who has been interested in the organisation and management of the Society, was involved in any misappropriation or fraudulent retention of money and that order under Section 87 is appealable under Section 152 of the Act and that relates to the inquiry regarding the functioning of the Society. On the other hand, what is contemplated under Section 75 of the Act is relating to the service conditions of persons who are in the common cadre authority under which, if any order of suspension or any punishment has been passed, an appeal is provided under Section 75(5) of the Act.

14. On the factual matrix of this case, as against the petitioner an order of suspension has been passed by the Special Officer on 4.6.2007, against which an appeal was filed by him under Section 75(5) of the Act which, of course, as directed by this Court as stated above, came to be dismissed on the ground that the petitioner does not belong to the common cadre authority as per G.O.Ms No. 55, Co-operation, Food and Consumer Protection Department, dated 24.3.2000. In such a situation, when the factual issue is not in much dispute, there is no illegality in the impugned order of the first respondent dated 7.12.2007 and there is absolutely no question of estoppel when on facts it is not in dispute that the petitioner is not having any benefit under G.O.Ms No. 55, Co-operation, Food and Consumer Protection Department, dated 24.3.2000 since he does not belong to the common cadre. Accordingly, the writ petition in W.P No. 17734 of 2008 is liable to be dismissed.

15. Insofar as other writ petitions are concerned, the subject matter of challenge is only the show-cause notice issued by the Special Officer dated 23.7.2008 which relates to the inquiry regarding disciplinary proceedings initiated against the petitioner. It is seen that the impugned proceeding of the Special Officer dated

23.7.2008 is only a show-cause notice enclosing the Enquiry Officer's report directing the petitioner to give his explanation to the said Enquiry Officer's report. Without even giving his explanation to the Enquiry Officer's report, the petitioner has filed the said writ petitions in W.P No. 18715 and 21231 of 2008.

16. On the face of it, the said writ petitions are not maintainable since it is always open to the petitioner to give his explanation to the said show-cause notice. Needless to state that even in respect of the inquiry commenced under Section 81 of the Act as stated in the order of the first respondent dated 7.12.2007 impugned in W.P No. 17734 of 2008, it is always open to the petitioner to put forth his defence. In such circumstances, giving liberty to the petitioner to submit his explanation, the writ petitions in W.P.Nos. 18715 and 21231 of 2008 stand dismissed. It is made clear that in the event of petitioner submitting his explanation to the impugned show-cause notice dated 23.7.2008 within a period of two weeks from the date of receipt of the order, the Special Officer shall take the same into consideration without rejecting it on the ground that the explanation has been submitted beyond the time granted and pass appropriate orders on merits and in accordance with law.

In view of the same, W.P No. 17734 of 2008 is dismissed; W.P.Nos. 18715 and 21231 of 2008 are dismissed with liberty to the petitioner to submit explanation to the show-cause notice dated 23.7.2008 within the time stipulated above. No costs. Connected miscellaneous petitions are closed.

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