

(2017) 01 MAD CK 0207

In the Madras High Court

Case No : W.A. No. 1330 of 2012 and M.P. No. 1 of 2012

B. Janakiram

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision : 04-01-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Section 114
Industrial Disputes Act, 1947 — Section 18(3)
Tamil Nadu Co-operative Societies Act, 1983 — Section 180
Tamil Nadu Co-operative Societies Rules, 1988 — Rule 149

Citation : (2017) 1 LLN 461

Hon'ble Judges : Mr. S. Manikumar and Mr. M. Govindaraj, JJ.

Bench : Division Bench

Advocate : Mr. R. Krishnamoorthy, Advocate, for the Petitioner in all cases; Mr. L.P. Shanmugasundaram, Spl. Govt. Pleader (Co-op), for the Respondent Nos. 1 and 2 in all cases; Mr. C.K. Chandrasekan, Advocate, for the Respondent No. 3 in Rev.82 of 2009; No appearance, for the Respondent Nos. 3 to 9 in Rev.83 of 2009; Mr. S. Silambanan, Sr. Counsel, for the Respondent No. 3 in W.A. 1330 of 2012

Final Decision : Disposed Off

Judgement

S. Manikumar, J.—W.P. No. 8801 of 2008 has been filed by Periyar District Cooperative Land Development Bank Employee's Union, represented by its General Secretary, Erode District for a writ of certiorarified mandamus, to quash G.O. Ms. No. 186 Co-operation Food & Consumer Protection Department dated 16.08.2000 and consequently, the said Union has prayed for a direction to respondents therein, to allow the salary and other allowances including terminal benefits in terms of the concluded settlement under Section 12(3) of the Industrial Disputes Act 1947.

2. W.P. No. 8826 of 2008 has been filed by K. Selvaraj & two others for a similar prayer, to quash the said Government Order and the consequential order dated 03.03.2008 of the Special Officer, Harur Co-operative Primary Agricultural &

Rural Development Bank Ltd., Harur, Dharmapuri District, 3rd respondent therein, in so far as the petitioners are concerned. The petitioners have also sought for a direction to the respondents therein, to allow the salary and other allowances including terminal benefits, in terms of the concluded settlement under Section 18(1) of the Industrial Disputes Act 1947.

3. W.A. No. 1330 of 2012, is against the order made in W.P.No.23496 of 2008, dated 17.04.2012, filed by Mr. B. Janakiraman and two others, for a Writ of Certiorarified Mandamus, to quash G.O.Ms. No.186, Co-operation Food & Consumer Protection Department, dated 16.08.2000 and the consequential proceedings, passed by the Registrar of Co-operative Societies, Chennai, the 2nd respondent therein, in his proceedings in Rc. No. 165450/2003ARDB2, dated 20.07.2004 and consequently, to direct the respondents therein, to allow the salary, including allowances and the terminal benefits, in terms of the Concluded Settlements, under Section 12(3) of the Industrial Disputes Act, 1947, dated 19.11.1998, with interest at the rate of 12% p.a., from the date of due, till payment.

4. Following a decision of the Hon"ble Division Bench in Tamil Nadu Vatta Koturavu Veetu Vasathi Sangangalin Anaithu Paniyalargal Madya Sangam (rep. by its General Secretary, R. Raghavendran) v. Deputy Registrar of Co-operative Societies (Housing) Cuddalore Circle, and others, reported in 2008 (2) LLN 236 : 2008 (2) MLJ 385, a learned Single Judge, by a common order, dismissed W.P.Nos. 8801 and 8826 of 2008, dated 27.06.2008. Being aggrieved, Periyar District Cooperative Land Development Bank Employee's Union, represented by its General Secretary, Erode District, has filed W.A. No.1103 of 2008. Mr. K. Selvaraj and others have filed W.A. No.1104 of 2008.

5. After hearing the submissions of the learned counsel for the parties, vide common order in W.A.Nos.1103 and 1104 of 2008 dated 25.09.2008, a Hon"ble Division Bench of this Court dismissed both the writ appeals, as hereunder.

"8. In the case of T.N.V.K.V.V.S.A.P. Madya Sangam v. Deputy Registrar of Co-operative Societies [2008 (2) LLN 236], the validity of an order passed by the Deputy Registrar of Co-operative Societies (Housing) fell for consideration whereby the authorities directed the concerned Society to cancel the settlement made under Section 19(1) of the Industrial Disputes Act, 1947, based on which, higher scale of pay was fixed and paid to the members of the petitioner Union (Sangam). In the said case, the Division Bench noticed the history for substitution of Rule 149 of the Rules and observed as under:

"In fact, Rule 149 of the Rules 1988 came into being by way of G.O.Ms. No. 212 dated 4 January 1997, i.e., after the pronouncement of the Division Bench decision reported in Tiruchirapalli Hiruthayapuram Co-operative Bank Employees Union v. Joint Registrar of Co-operative Societies, Tiruchirapalli (vide supra). On the basis of the judgment of the earlier Division bench, the State Government in order to restrain the individual societies entering into such wage settlements

without reference to the viability of the concerned co-operative societies thought it fit to incorporate the provision in the Rules by introducing Rule 149."

9. From the aforesaid judgment, it would be evident that the State Government, in order to restrain the individual Society entering into such wage settlements without reference to the viability of the concerned cooperative societies, introduced and incorporated Rule 149 of the Rules.

10. Under Rule 149, every Society have been mandated to frame bye-laws covering the service conditions, including the scale of pay and allowances for each of the post, with the prior approval of the State Government. Rule 149(1) of the Rules is quoted here under:

"Rule 149.- Conditions of service of paid officers and servants of Societies.- (1) Every society shall, taking into account its nature of business, volume of transaction and financial position, adopt, with the prior approval of the Government, a Special by-law covering the service conditions of its employees. The special bylaw shall, inter alia, prescribe the following:

(i) Cadre strength and classification of various categories of posts and the qualifications required thereof for each such posts.

(ii) The method of recruitment for each such posts.

(iii) The scale of pay and allowances for each such posts.

(iv) Conditions of probation for each such posts.

(v) Duties and responsibilities for each such posts.

(vi) Leave for various kinds admissible and, the conditions thereto for each such posts.

(vii) The penalties that may be imposed upon, the procedure for taking disciplinary action and inflicting various kinds of punishments on an employee holding each such post and the authority competent to entertain and dispose of appeal made against an order of punishment imposed by the competent authority on a disciplinary proceedings.

(viii) Conditions relating to acquisition and disposal of movable and immovable property:

Provided that a minimum period of three years of satisfactory service shall be prescribed for eligibility for promotion from one category to the immediate next higher category of post:

Provided further that the Co-operative Training at the appropriate level may be prescribed as a necessary qualification for specific categories of non-technical posts. ... "

11. As far as Section 73 of the Tamil Nadu Cooperative Societies Act, 1983 is

concerned, the said provision empowers the registered Society to make appointment of paid officers and servants as are necessary for the efficient performance of Sections 74, 75, 76 and 77 and subject to the Rules made in that behalf. In view of Section 73, no Co-operative Society can make any appointment of paid officers in violation of Rule made in that behalf, including Rule 149 of the Rules.

12. In view of the specific mandate made under the Act and Rules, we hold that the Co-operative Societies, including the Bank in question or its Board of Directors, cannot enter into any settlement with regard to wages of paid employees and staffs, without prior approval of the State Government.

13. It is informed that the respondent Bank has not framed any by-law under Rule 149. If no such by-law has been framed by the Bank prescribing the condition of service, such as scale of pay of its employees and staff in that case, it is always open to the State Government to make minimum prescription of the scale of pay to be paid in favour of such employees and staffs.

14. We find no illegality in the impugned Government Orders and therefore, we are not inclined to interfere with the order passed by the learned single Judge. Accordingly, the appeals are dismissed.

However, there is no order as to costs. Consequently, M.P. No. 1 of 2008 is also dismissed."

6. Seeking review of the orders made in W.A.Nos.1103 and 1104 of 2008 dated 25.09.2008, appellants have filed review application Nos.82 & 83 of 2009, respectively. Citing the common order in W.P.Nos.8801 and 8826 of 2008, dated 27.06.2008, W.P.No.23476 of 2008, has been dismissed on 17.04.2012. Challenging the order made in W.P.No.23476 of 2008, dated 17.04.2012, W.A.No.1330 of 2012 has been filed. Since the common order made in W.A.Nos.1103 and 1104 of 2008 dated 25.09.2008, is sought to be reviewed on the same grounds and in W.A.No.1330 of 2012, the very same issues are raised, they are taken up together and disposed of by a common order.

7. Inviting the attention of this Court to Section 73 of the Tamilnadu Co-operative Societies Act, 1983, Mr. R. Krishnamoorthy, learned counsel for the review applicants submitted that the said provision empowers the registered society to make appointment of paid officers and servants of society, as are necessary for efficient performance of its functions, subject to the provisions of Sections 74, 75, 76 & 77 of the said Act and subject to the rules made in their behalf.

8. Referring to paragraph No.10 of the common order made in W.A.Nos.1103 and 1104 of 2008 dated 25.09.2008, Mr. R. Krishnamoorthy, learned counsel for the review applicants submitted that at the time when G.O. Ms. No. 186 Co-operation Food & Consumer Protection Department dated 16.08.2000, was issued, it contained the expression "with the prior approval of the Registrar". But the above said writ appeals were dismissed stating that under Rule 149, every

Society is mandated to frame bye-laws, covering the service conditions, including the scale of pay and allowances for each of the post, with the prior approval of the State Government.

9. According to the learned counsel for the review applicants, as per G.O.Ms. No.251, Co-operation, Food and Consumer Protection (CJ1) Department, dated 07.08.2007, Rule 149 of the Tamil Nadu Cooperative Societies Rules, 1988 has been amended, by inserting the expression "with the prior approval of the Registrar" instead of "with the prior approval of the Government". Therefore, there is an error apparent on the face of record, which requires to be corrected, by exercise of review jurisdiction. Learned counsel for the review applicants also invited the attention of this Court to Rule 149, as it stood in the year 1988. On the grounds raised in W.A.No.1330 of 2012, he sought for reversal of the order made in W.P.No.23476 of 2008, dated 17.04.2012.

10. Per contra, while taking this Court through the judgment in Tamil Nadu Vatta Koturavu Veetu Vasathi Sangangalin Anaithu Paniyalargal Madya Sangam v. Deputy Registrar of co-operative Societies, reported in [2008 (2) LLN 236] relied on, in the common order made in W.A.Nos. 1103 and 1104 of 2008 dated 25.09.2008, Mr. C.K. Chandrasekar, learned counsel for the Harur Cooperative Primary Agricultural & Rural Development Bank Limited, 3rd respondent therein, submitted that the Hon"ble Division Bench of this Court had extensively considered the scope of the Government orders issued, including G.O. Ms. No.186 Co-operation Food & Consumer Protection Department dated 16.08.2000 and therefore, the grounds raised in the review applications do not merit any consideration. He further submitted that admittedly, Harur Cooperative Primary Agricultural & Rural Development Bank Limited has not framed byelaws approved by the competent authority. He further stated that neither the union nor the employee of any society, is entitled to seek for a mandamus, for implementation of any settlement made, either under Section 12(3) or 18 (1) of the Industrial Disputes Act, 1947, as the case may be and therefore, there is no manifest error, in the common order dated 25.09.2008 in W.A.Nos.1103 and 1104 of 2008, warranting review.

11. The fact that no special bye-law was framed by the concerned society and approved by the competent authority, has not been disputed by the learned counsel for the appellants. Mr. R. Krishnamoorthy, learned counsel for the review applicants, submitted that in Tamil Nadu Vatta Koturavu Veetu Vasathi Sangangalin Anaithu Paniyalargal Madya Sangam (rep. by its General Secretary, R. Raghavendran) v. Deputy Registrar of Cooperative Societies (Housing) Cuddalore Circle, and others, reported in 2008 (2) LLN 236, G.O. Ms. No. 186 Co-operation Food & Consumer Protection Department dated 16.08.2000, was not challenged, and therefore, whatever is observed in the said judgment by the Hon"ble Division Bench, is only an obiter dicta and not to be applied as a binding precedent, to the case on hand.

12. Mr. L.P. Shanmugasundaram, learned Special Government Pleader submitted

that the well considered common order made in W.A. Nos.1103 and 1104 of 2008 dated 25.09.2008, does not require interference, in exercise of review jurisdiction.

Heard the learned counsel for the parties and perused the materials available on record.

13. Section 149 of the Tamil Nadu Co-operative Societies Act, 1983, in the year 1988, reads as follows:

"149. Conditions of service, etc., of paid officers and servants of societies - (1) (a) The posts, both administrative and technical in a society shall be classified as follows:-?

Class I.- Posts the minimum of the time scale of pay of which is not less than one thousand and three hundred rupees.

Class II.- Posts the minimum of the time scale of pay of which is not less than one thousand rupees.

Class III.- Posts the minimum of the time scale of pay of which is not less than seven hundred and fifty rupees.

Class IV. - Posts the minimum of the time-scale of pay of which is not less than five hundred rupees.

Class V. - Posts the minimum of the time-scale of pay of which is not less than three hundred and fifty rupees.

Class VI.- Posts the minimum of the time-scale of pay of which is not less than three hundred and fifty rupees but excluding posts under.

Class VII. - Posts of peons, drivers, gardeners, watchmen and other last grade employees.

(b) Appointment to the posts specified in column (2) of the Table below shall be made by the method specified in column (3) thereof:-

The Table

Sl. No.

Posts

Method of Appointment

Administrative Staff

1

Class I

By promotion only.

2

Class II

By promotion and direct

3

Class III

By promotion and direct recruitment in the proportion of 3: 1

Technical Staff

4

Class I, II and III

Either by promotion or direct recruitment

Administrative Staff and Technical Staff

5

Class IV

By promotion and direct recruitment in the proportion of 3: 1

6

Class V

By promotion and direct recruitment in equal proportion.

7

Class VI

By direct recruitment only.

8

Class VII

By direct recruitment only.

(2) (a) No person shall be eligible for appointment by direct recruitment to the class of posts specified in column (2) of the Table below unless he possesses the qualifications specified in the corresponding entries in columns (3) and (4) thereof:-

The Table

Sl. No

Class of posts

Educational Qualifications

Other Qualifications

A. Administrative Post

1.

Class I, II and III

A degree of M.Com., B.Com. (Hons.), B.Com., M.A., B.A. (Hons), B.A., or M.S., B.Sc. (Hons.), BSc., of any University or Institution recognised by the University Grants Commission or the National Diploma in Commerce awarded by the Indian Council for Technical Education or D.R.S. (Diploma in Rural Service) or M.Co-op. Post Graduate Diploma in Cooperation and Rural Economics awarded by the National Council for Rural Higher Education or Post Graduate Diploma in Cooperative Management awarded by any University Recognised by the University Grants Commission]

(i) Co-operative training (ii) Previous experience as may be required by the society.

Explanation - Preference shall be given to persons holding any of the above degree or diploma with co-operation as special subject.

B. Technical Post

Degree or diploma or certificate in the concerned discipline or subject

Previous experience as may be required by the society

A. Administrative Post

2.

Class IV

A pass in PUC or Higher Secondary Course or its equivalent with declaration of eligibility for college course.

(i) Co-operative training (ii) Previous experience as may be required by the society.

B. Technical Post

Degree or diploma or certificate in the concerned discipline or subject.

Previous experience as may be required by the society

A. Administrative Post

3

Class V and VI

A pass in S.S.L.C. Examination with eligibility for Higher Secondary Course or for appointment under the State Services.

(i) Co-operative training.(ii) Previous experience as may be required by the society

B. Technical Post

A degree or diploma or certificate in the concerned discipline or subject.

Previous experience as may be required by the society.

C. Steno-typist

A pass in S.S.L.C. Examination with eligibility for Higher Secondary Course or for appointment under the State Service.

(i) A pass certificate both in English and Tamil Typewriting Examination and English Shorthand Higher Examination. (ii) Previous experience as may be required by the society.

D. Typists

A pass in S.S.L.C. examination with eligibility for Higher Secondary Course or for appointment under the State Services.

(i) A pass certificate in English and Tamil Higher Examination. (ii) Previous experience as may be required by the society.

4

Class VII

Eighth Standard Passed

(i) Knowledge of cycling (ii) in addition in the case of a driver a valid driving licence heavy or light motor vehicle as the case may be.

Provided that the educational qualification prescribed in column (3) of the Table shall not apply to an employee of a society holding a post other than a post in Class VII for appointment to higher posts in the society by promotion subject to the provisions contained in clause (d) of this sub-rule.

Explanations.- For the purpose of this clause Cooperative Training means-

(i) a full course of training successfully undergone in the Central Co-operative Training Institute, Madras or in any of the Mofussil Co-operative Training Institutes or in anyone of the Co-operative Training Colleges for Intermediate or senior personnel conducted by the National Council for Co-operative Training set up by the National Co-operative Union of India; and

(ii) a pass in the Government Technical Examination in Book-keeping, Banking, Co-operation and Auditing or the examinations on these subjects conducted by the Tamil Nadu Public Service Commission, Madras or the examinations for Co-operative Supervisor's Training Course conducted by the Tamil Nadu Union or the examination for the Higher Diploma in Co-operation conducted by the Co-

operative Training Colleges:

Provided that this shall not apply to a person who has undergone short term basic training course in cooperation and has passed the examinations,-

(i) for the co-operative supervisor's training course and in possession of certificate issued by the Tamil Nadu Co-operative Union, Madras; or

(ii) for the Higher Diploma in Co-operation and in possession of certificate issued by the National Council for Co-operative Training:

Provided further that a person who has undergone short term course but has not passed all the examinations prescribed for the Co-operative Supervisor's Training Course or Higher Diploma Course in Co-operation, as the case may be, on the date of commencement of these rules, shall pass the final examination conducted by the Tamil Nadu Co-operative Union, Madras, for the Co-operative Supervisor's Course within a period of two years and till such date he passes all the examinations of the Tamil Nadu Co-operative Union, Madras, he shall not be eligible for confirmation in his present post, but however, such person may be promoted to a higher post subject to the condition that he shall not be eligible for regularisation in the higher post unless and until he passes final examinations for Cooperative Supervisor's Course; conducted by the Tamil Nadu Co-operative Union, Madras:

Provided also that a person who is a M.Com., B.Com.(Hons.) degree holder with co-operation as special subject or M.A.(Co-operation) degree holder shall be exempted from undergoing the training referred to in item (i) above. But a person who is a M.Com., or B.Com.(Hons.) degree holder with a subject other than cooperation as his special subject shall undergo the training referred to in item (i) above and shall pass the examinations referred to in item (ii) in subjects which he has not studied for his M.Com., or B.Com.(Hons.) Course:

Provided also that a B.Com. degree holder of any University or Institution recognised by the University Grants Commission with "Co-operation" as optional subject and a B.A. (Co-operation) Degree holder shall be exempted from undergoing the training referred to in item (i) above, but a B.Com., or B.A. (Co-operation) degree holder shall be exempted only from passing examinations referred to in item (ii) in subjects which he studied for the B.Com., or B.A. (Co-operation) degree course.

(b) For direct recruitment to the posts other than the post in Class VII in apex and federal societies, experience for such period as may be specified in the bylaws which shall not be less than two years in affiliated societies or "other societies shall be one of the qualifications.

(c) An employee holding a post other than the posts which are technical, or steno-typists or typists or posts in Class VII who has not successfully undergone cooperative training as specified in column (4) of the Table under clause (a) of this sub-rule on the date of commencement of these rules, shall not be continued

in service unless he takes steps to acquire the qualification within one year thereof and acquires the qualification within two years thereof:

(d) All promotions for one category of post to the immediate next higher category or post shall be made on grounds of merit and ability of the employee, his seniority being taken into account only where merit and ability are approximately equal:

Provided that no employee shall be considered for promotion to a higher category of post unless he has put in satisfactory service in the present category of post held by him for such period which shall be not less than five years.

(3) (a) No appointment by direct recruitment to any post shall be made except by calling for from the societies applications from their employees who possess the qualifications for the post and unless the Government have accorded special sanction for recruitment by advertisement in dailies, by also calling for a list of eligible candidates from the Employment Exchange.

(b) Where the Employment Exchange issues a nonavailability certificate or the Government have accorded special sanction for recruitment by advertisement in dailies, the society shall invite applications from candidates including those working in other societies by advertisements in one English daily and two Tamil dailies having circulation within the area of operations of the society approved by the Government for the purposes of issue of Government advertisements.

(c) Every appointment by direct recruitment shall be made by holding written examination and interview or by holding only interview as decided by the board and on the basis of the rank given with reference to the marks obtained in the written examination, if any, and the marks awarded in the interview:

Provided that nothing contained in this sub-rule shall apply to any of the posts for the recruitment of which a Recruitment Bureau has been constituted under section 74 or in respect of which common cadre of service has been constituted under section 75;

Provided further that nothing contained in this sub-rule shall apply to appointments of dependents of the employees of any society who died or medically invalidated while in service.

(4) (a) No person shall be appointed to the service of a society, if he has on the date on which he joins the post, attained the age of thirty years and in the case of persons belonging to Scheduled Castes and Scheduled Tribes thirty-five years:

Provided that in the case of a person who is already employed in another society and had joined its service before he attained his thirtieth year or thirty-fifth year, as the case may be, the restrictions as to the age: of entry into service shall not apply.

(b) No employee shall be continued in service of a society, if he has attained the age of fifty-eight years. However, the age of retirement for an employee in a post

in Class VII shall be sixty years.

(c) The date of retirement of an employee shall be on the afternoon of the last day of the month in which he attains the age of superannuation.

(5) No person shall be appointed to the service of any society, if he has been found guilty of any offence involving moral turpitude. An employee shall cease to be as such in a society, if he is found guilty of any such offence.

(6) (a) a person appointed to any post in a society shall, from the date on which he joins duty be on probation for a total period of two years on duty within a continuous period of three years.

(b) It shall be competent to the appointing authority to extend the period of probation upto three years to enable the authority to decide whether the probationer is fit for regularisation or confirmation.

(c) It shall be competent for the appointing authority to terminate the services of an employee before the expiry of six months of his service, if his work or conduct have not been satisfactory. No appeal shall lie against an order terminating the probation of an employee during this period.

(7) No person who is a near relation as specified in rule 63 of a member of the board or of a paid officer of a society shall be appointed to any post in the service of the society. If a doubt arises as to whether a person is or is not a near relation of a member of the board or of a paid officer, the board shall refer it to the Registrar for decision.

(8) (a) Every employee of a society shall be entitled to casual leave not exceeding twelve days in a year subject to the following conditions, namely:-

(i) holidays and Sundays falling within or before or after the period of casual leave shall not be treated as part of casual leave:

(ii) casual leave shall not be combined with any other kind of leave:

(iii) an employee who is on casual leave shall not be treated as absent; and

(iv) casual leave shall not be availed of for more than six days continuously and casual leave combined with the holidays shall not exceed ten days at a time;

Provided that a temporary employee shall be entitled to casual leave proportionate to the period actually spent on duty.

(b) Every employee of a society shall be entitled to privilege or earned leave at the rate of twelve days for every twelve months of service provided that such leave may be accumulated up to a maximum period of sixty days;

Provided that a temporary employee or probationer shall be eligible for privilege or earned leave at half the rates specified above.

(c) Every employee regularised or confirmed in the service of a society shall also

be entitled to sick leave up to eighteen days for every twelve months of service.

(d) Nothing contained in this sub-rule shall affect the eligibility of higher rate of casual leave, privilege or earned leave or sick leave applicable to the employees of a society under the terms of agreement of service conditions existing before the commencement of these rules.

(e) No leave other than privilege leave or earned leave shall be surrendered and encashed. The surrender and encashment of privilege leave or earned leave shall be subject to the conditions that such surrender shall be made without actually going on leave for a period not exceeding fifteen days once a year or within an interval of not less than twelve months from the date on which the privilege leave or earned leave was surrendered previously and for a period not exceeding thirty days once in two years or with an interval of not less than twenty-four months from the date on which privilege leave or earned leave was surrendered previously.

(9) (a) No employee who is in-charge of cash or stock or any other valuable property or having authorisation under by-laws to sign documents or to institute and defend suits or other legal proceedings shall absent himself from station or leave his headquarters even during holidays without obtaining previous sanction in writing from the competent authority.

(b) An employee before proceeding on leave shall intimate to the sanctioning authority his address while on leave and shall keep the said authority informed of the change in the address, if any, previously furnished by him.

(c) No employee who is on leave shall during such leave take service or accept any employment elsewhere which involve the receipt of a fee or remuneration without obtaining the previous sanction of his appointing authority.

(10)(a) The Chief Executive shall be the authority competent to sanction casual leave to all other employees of the society and the President shall be the authority competent to sanction casual leave to the Chief Executive and privilege leave or earned leave to all the employees, including the Chief Executive.

(b) No employee shall claim leave as a matter of right but shall be entitled to leave before the lapse of the leave accumulated upto the limit.

(c) Leave shall ordinarily be applied for, and sanction obtained in advance.

(d) Staying away from duty, over-stayal of leave and absents from duty without permission are liable to be punished with anyone of the penalties specified in sub-rule (17) besides being treated as extraordinary leave without pay to avoid interruption in service of the employee.

(e) Every application for sick leave shall be accompanied by a Medical Certificate from a registered medical practitioner.

(f) In case of other leave applied on the basis of sickness medical certificate,

certificate shall be produced if required within twenty-four hours of such requisition.

(g) Where leave is availed of on the basis of medical certificate. Certificate of physical fitness from a registered medical practitioner shall be produced at the time of joining duty.

(h) Extraordinary leave without pay may be granted in special circumstances when no other leave is permissible. Such leave may be combined with any other kind of leave except casual leave but the total period of combined absence shall not exceed three years during the service of an employee. No leave salary is admissible during such leave.

(i) Any employee absenting without any leave application or over staying leave beyond a period of two months, shall be deemed to have resigned from the service of the society.

(j) If an employee entitled to privilege or earned leave is discharged from service or resigns from service before he has been allowed such leave, or if, having applied for and been refused such leave, the appointing authority shall grant him leave which is to his credit or pay him the amount of salary equal to such leave to his credit.

(11) No employee shall, except when generally or specially empowered or permitted in this behalf by the board, communicate directly or indirectly any document or information which has come into his possession or knowledge in the course of his official duties, or has been prepared or collected by him in the course of such duties, whether from official source or otherwise, to any other person, institution or to the press.

(12) (a) Every employee shall be responsible for and liable to make good any financial" loss which the society may sustain on account of his negligence or breach of orders.

(b) For, any such loss sustained by the society the employee or his heirs, legal representatives, executors or administrators to the extent of the assets of the deceased employee in their hands and his assets with the society by way of security deposit, etc., shall be liable.

(13) No employee shall have pecuniary transactions with individuals or institutions coming in contact with him in the course of his official duties or accept directly or indirectly on his own behalf or on behalf any other person, or permit any member of his family to accept any gift, gratification or reward from any person with whom he is concerned in the performance of his work:

Provided that this sub-rule shall not apply to any borrowings by an employee on the security of his own deposits, savings, insurance policy or the like from other institutions.

(14) No employee of a society shall stand for election to any legislature or local

authority or any institution constituted under any State or Central Act. No employee of a society shall canvass or otherwise interfere or use his influence in connection with or take part in an election to any legislature or local authority or any institution constituted under any State or Central Act:

Provided that he may ;t record a vote if he is qualified to do so and where he does so he shall give no indication of the manner in which he proposes to vote or has voted.

(15)(a) No employee shall accept any employment or work elsewhere, whether honorary or otherwise, without the previous permission in writing of the board.

(b) No employee shall engage himself in any trade or business outside the scope of his duties either in his name or in the name of his family members or relative except with the previous permission of the board.

(16)(a) No employee of a society shall acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift, exchange or otherwise either in his own name or in the name of any member of his family except after giving due notice to the Chief Executive and in the case of a Chief Executive to the President:

Provided that any such transaction conducted otherwise than through a regular or reputed dealer shall require the previous sanction of the Chief Executive or the President, as the case may be:

Provided further that no employee of a society shall encroach upon the lands of Government or any other body whether incorporated or not.

(b) No employee of a society shall enter into any transaction concerning any movable property exceeding two thousand rupees in value whether by way of purchase, sale or otherwise except with or through a regular, or reputed dealer or agent or with the previous sanction of the Chief Executive or the President, as the case may be:

Provided that any transaction made with or through a regular or reputed dealer or agent shall be reported to the Chief Executive or the President, as the case may be, within one month from the date of every such transaction.

(c) Every employee of a society shall submit a return in Form No.42 of his assets and liabilities within a period of three months from the date of commencement of these rules and thereafter at an interval of five years on or before thirty-first day of March of the year immediately following the year to which the return relates.

Provided that a person, who enters the services of a society during the course of a year, shall submit the return of his assets and liabilities as on the date of his entry into services within a period of three months, from such date and thereafter shall submit the return at an interval of five years as though he has submitted his first return on the thirty-first December preceding the year in which he enters into the service of the society.

(d) The Registrar, or any person authorised by him in this behalf, may at any time by general or special order require an employee of a society to submit within a period specified in the order, a full and complete statement of such movable or immovable property held or acquired by him or by any member of his family as may be specified in the order. Such statement shall include details of the means by which or the sources from which such property was acquired.

(e) Whenever an employee of a society, by inheritance, succession or bequest, becomes possessed of immovable property in the area of operations of the society in which he is employed or of such interest in such immovable property as specified in clause (a), he shall communicate all the particulars thereof to the Chief Executive or the President, as the case may be.

(f) If an employee of a society receives an order of transfer to a place at which or around which he possesses or has an interest in immovable property, he shall at once bring the fact to the notice of the Chief Executive or the President, as the case may be.

(g) Every society shall maintain a register group-wise in respect of all the employees in Form No.43 showing all immovable properties held by each of them and shall revise them with reference to the particulars furnished by the employees in subsequent returns as specified in clause (c).

(h) Any attempt to mislead or any failure to give full and correct information shall render the employee of a society concerned liable to severe disciplinary action.

(i) Sanction on no account shall be accorded for purchase of land for any commercial purpose.

(j) No land of a society shall be sold or granted on lease or otherwise to any employee of the society or of its financing bank or federal society or of any society for which it is the financing bank or federal society.

(k) No employee of a society shall ordinarily be permitted to acquire land within the area of operation of the society, in which he is serving. Permission to such acquisition shall be granted only in very special circumstances.

(l) An annual statement shall be submitted by every employee of a society of acquisition or relinquishment of any immovable property during every calendar year before thirty-first March of the succeeding year. The annual return shall include all immovable properties acquired or registered in the name of the employee of a society either on his own account or as a trustee, executor or administrator, or temple Mirasdar, or acquired or registered in the name of, or held or managed by, his wife or any other member of his family living with, or in any way dependent on him.

(m) Nothing contained in this rule shall apply to acquisition of land including house-sites through the Tamil Nadu State Housing Board or any housing unit

established by the said board or a society registered or deemed to be registered under the Act.

(17) The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon every employee namely:-

(i) Censure.

(ii) Fine in the case of employees, on whom such penalty may be" imposed.

(iii) Withholding of increments with or without cumulative effect.

(iv) Withholding of promotion.

(v) Suspension by way punishment.

(vi) Reduction to a lower rank in the seniority list or to a lower post or to a lower stage in a time-scale.

(vii) Recovery from the pay of the whole or part of any pecuniary loss caused to the society by negligence or breach of orders.

(viii) Compulsory retirement.

(ix) Removal from service.

(x) Dismissal from service.

(18)(a) The authority competent to impose the various penalties on different classes of employees shall be as shown in the Table below:-

The Table

Class of the employees

Censure or fine

Withhold increment or promotion or recovery from pay

Suspend or reduce to a lower rank or lower post or lower stage in a time-scale

Compulsorily retire or remove or dismiss

A. In the case of a society where there is no managing director Authority competent to

Chief Executive

President

President

President

President

Employees of Class I to V above other than the Chief Executive

Chief executive or where there is no Chief executive, President

Chief executive or where there is no chief executive, president

Chief Executive or where there is no chief executive, president

President

Employees of Class VI to VII

One of the officers to be authorised by the Board

One of the officers to be authorised by the Board

Chief executive or where there is no chief executive, president

President

B. In the case of societies where there is Managing Director Authority competent to

Paid Officers other than Managing Director

Board

Board

Board

Board

Employees of all Classes other than Managing Director and paid Officers

Managing Director

Managing Director

Board

Board

(b) No penalty shall be imposed on any employee unless he has been given a reasonable opportunity of making any representation that he may desire to make and such representations, if any, shall be taken into consideration before final orders are passed.

Provided that where it is proposed to impose penalties specified in items (v) to (x) in sub-rule (17), the employee concerned shall be afforded an opportunity of personal hearing to defend himself.

(c) Every order imposing penalty shall be communicated to the employee concerned in writing stating the grounds on which the penalty has been imposed.

(d) Every penalty or fine imposed under this rule shall be imposed in accordance with the provisions of section 35 of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947) and the rules relating thereto, and for

the said purpose the reference to "prescribed authority" occurring in the said section 35 shall be construed as a reference to the Registrar.

(19)(a) An employee "of a society may be placed under suspension from service where-

(i) an inquiry into grave charges against him is contemplated or is pending or

(ii) where a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest or in the interest of the society.

(b) The authority competent to suspend an employee may sanction to the employee suspended who is not governed by the provisions of the Tamil Nadu Payments of Subsistence Allowance Act, 1981 (Tamil Nadu Act 43 of 1981) a subsistence allowance at a rate not exceeding fifty per cent of the basic pay during the period of his suspension. In respect of suspended employee governed by the provisions of the aforesaid Act, subsistence allowance shall be paid in accordance with that Act.

(c) No employee shall in any case be kept under suspension for a period exceeding one year without the approval of the Registrar.

(d) The period of suspension already undergone under clause (c) may be awarded as a penalty to an employee to the extent considered necessary by the authority imposing the penalty.

(20)(a) Every employee of a society shall be entitled to appeal against every order imposing a penalty upon him to the appellate authority as shown in the Table below:-

The Table

Class of the employees

Censure or fine

Withholding increment or promotion or recovery from pay

Suspension or reduction to a lower rank or lower post or lower stage in a time-scale

Compulsory retirement or removal or dismissal

A. In the case of society where there is no Managing Director Authority Authority

Chief Executive

Board

Board

Board

Board

Employees of Class I to V above other than the Chief Executive

(i) In the case of penalty is imposed by the Chief Executive

President

President

President

Board

(ii) In case the penalty is imposed by the President

Board

Board

Board

Board

Employees of classes VI and VII

Chief Executive or where there is no chief executive, president

Chief Executive or where there is no chief executive, president

President or the Board, if the penalty is imposed by the President

Board

B. In the case of a society where there is a Managing Director Authority

Paid Officers other than Managing Director

Managing Director

Managing Director

President

President

Employees of all Classes other than Managing Director and paid Officers

One of the officers to be authorised by Managing Director

One of the officers to be authorised by Managing Director

Managing Director

Managing Director

Provided that where the officer authorised by the board to impose penalty in Table A in sub-rule (18) is the Chief Executive, the appeal against such penalty

shall lie to the President.

Provided further that where no other officer is authorised by the Managing Director to impose penalty in Table B in sub-rule (18), the appeal against such penalty shall lie to the board.

(b) No appeal shall be entertained if it is not preferred within a period of two months from the date of the order imposing the penalty.

(21) Every employee governed by the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (Central Act XIX of 1952) shall contribute to the provident fund in accordance with the provisions of that Act. In the case of an employee of a society who has been regularised or confirmed but not governed by the provisions of the said Central Act XIX of 1952 contribute to the Employees Provident Fund of the society in accordance with the regulations framed by the board for the purpose with the approval of the Registrar.

(22) When an employee, who has put in not less than ten years of satisfactory service in a society governed by the provisions of the Payment of Gratuity Act, 1972 (Central Act 39 of 1972) retires from service or if he dies while in service, it shall be competent for the board to sanction him or to his heirs, as the case may be, a gratuity as may be specified in the by-laws of the society which shall be not less than three times the basic pay drawn by him on the date of retirement or death as the case may be.

(23) (a) Every society shall maintain a register of the services of every employee in its service as also an account of leave earned and availed of by him. All changes, affecting the rank and emoluments, transfers and other allied matter shall be entered in this register then and there and attested by the President in the case of Chief Executive and in the case of all other employees by the Chief Executive or where there is no Chief Executive by the president. In the service register of every employee entry shall be made every year about the verification of the service with reference to the pay bills and other records.

(b) The society shall maintain a list of seniority of employees in each post and it shall be brought up to date every cooperative year if there is any change during that year.

(24) Every society shall maintain confidential report of officers of Classes I to IV and every adverse remark shall be substantiated by concrete instances. Every confidential report shall be written by the Chief Executive and where there is no Chief Executive by the President. The President shall also maintain the confidential report of the Chief Executive.

(25) The principle of reservation of appointment for Scheduled Castes/Scheduled Tribes and Backward Classes followed by the Government of Tamil Nadu for recruitment to the State and Sub-ordinate Services under rule 22 of the General Rules of the Tamil Nadu State and Subordinate Service Rules shall apply to any post to which appointment is made by direct recruitment by an apex or a

scheduled society or any society specified in sub-section (4) of section 33 or any other society specified by the Government for the purpose.

(26) The provisions of this rule shall save as otherwise provided in the Act or these rules shall be applicable to managing director or any employee borne on common cadre of service. In the case of managing director or an employee borne on common cadre of service the notice or report to be given or permission to be obtained as the case may be, under this rule shall be to or from the appointing authority or such person as may be nominated in this behalf by the appointing authority.

(27) Nothing contained in this rule except the provisions contained in clause (a) of sub-rule (1), sub-rules (7) and (9), clause (a) of sub-rule (10) and sub-rules (11) to (16) shall apply to a Government servant deputed, or to a person taken on deputation from any other institution, to work in a society."

14. Tamil Nadu Co-operative Societies Rules, 1988, have been framed in exercise of powers conferred by sub-section (1) (2) & 3 of Section 180 of Tamil Nadu Co-operative Societies Act, 1983 [Tamil Nadu Act 30 of 1983] and in supersession of all the Rules made under Tamil Nadu Co-operative Societies Act, 1961 [Tamil Nadu Act 53 of 1961] and under the Tamil Nadu Co-operative Land Development Banks, 1934 (Tamil Nadu Act X of 1934). Rule 149 of the Tamil Nadu Co-operative Societies Rules, 1988, sets out the conditions of service etc. of paid officers and servants of societies.

15. While framing Rule 149, Government have dealt with cadre strength, classification of various categories of posts, qualifications required thereof, for each post, method of recruitment, minimum time scale of pay, the authorities competent to impose punishment etc., Bare reading of Rule 149, as it stood in 1988, in our view, does not indicate that the government have conferred any right on the society, to fix time scale of pay to any post, classified in Rule 149.

16. In *Thiruchirappalli Hirudayapuram Co-op Bank Employees Union etc., v. Joint Registrar of Co-op. Societies, Thiruchirappalli etc.* reported in 1992 (1) LLJ 747, the dispute was with reference to the settlements under Sections 12(3) and 18(1) of the Industrial Disputes Act, 1947, concerning wage structure for the employees in Co-operative Societies.

17. In exercise of powers conferred by Section 180 of the Tamil Nadu Co-operative Societies Act, 1983 [Tamil Nadu Act 30 of 1983], Government have issued G.O.Ms. No. 212, Cooperation, Food and Consumer Protection Department dated 04.07.1995, amending rule 149, as hereunder:

"Rule 149.- Conditions of service of paid officers and servants of Societies.- (1) Every society shall, taking into account its nature of business, volume of transaction and financial position, adopt, with the prior approval of the Government, a Special by-law covering the service conditions of its employees. The special bylaw shall, inter alia, prescribe the following:

- (i) Cadre strength and classification of various categories of posts and the qualifications required thereof for each such posts.
- (ii) The method of recruitment for each such posts.
- (iii) The scale of pay and allowances for each such posts.
- (iv) Conditions of probation for each such posts.
- (v) Duties and responsibilities for each such posts.
- (vi) Leave for various kinds admissible and, the conditions thereto for each such posts.
- (vii) The penalties that may be imposed upon, the procedure for taking disciplinary action and inflicting various kinds of punishments on an employee holding each such post and the authority competent to entertain and dispose of appeal made against an order of punishment imposed by the competent authority on a disciplinary proceedings.
- (viii) Conditions relating to acquisition and disposal of movable and immovable property:

Provided that a minimum period of three years of satisfactory service shall be prescribed for eligibility for promotion from one category to the immediate next higher category of post:

Provided further that the Co-operative Training at the appropriate level may be prescribed as a necessary qualification for specific categories of non-technical posts.

(2) No appointment by direct recruitment to any post shall be made except by calling for a list of eligible candidates from the Employment Exchange and also giving due publicity by means of announcement in the notice board of the Society and also of the affiliated societies, inviting application from the eligible employees of such societies. Where the Employment Exchange issues a nonavailability certificate, the society shall invite applications by giving advertisement in more than one daily newspapers in which one should be in regional language having wide circulation throughout the State.

Provided that the above stipulation shall not apply-

- (i) to the appointments made on compassionate grounds;
- (ii) for the absorption of surplus employees of other Co-operative Societies;
- (iii) to the posts for which a Recruitment Bureau has been constituted under Section 74 of the Act or in respect of which a common cadre of service has been constituted under Section 75 of the Act.

(3) In matters of reservation for appointments and age for appointment and retirement, the rules applicable to the Government servants shall be followed.

(4) No person shall be appointed to the service of any society, if he has been found guilty of any offence involving moral turpitude. An employee shall cease to be as such in a society, if he is found guilty of any such offence.

(5) No person who is a near relative as specified in rule 63, of a member of the Board or of an officer of a society shall be appointed to any post in the service of such society. If a doubt arises as to whether a person is or is not a near relative of a member of the board or of an officer of a society, the board shall refer it to the Registrar for decision.

(6) No employee of a society shall contest, or canvass or otherwise interfere or use his influence in connection with or take part in any election to any legislature, Parliament or local authority or any institution constituted under any State or Central Act except with the previous permission of the Board.

(7) (a) No employee shall accept any employment or work also where, whether honorary or otherwise except with the previous permission of the Board.

(b) No employee shall engage himself in any trade or business outside the scope of his duties either in his name or in the name of any member of his family or relative except with the previous permission of the Board.

(8) Nothing contained in this rule, except the items (i) (v) and (viii) of sub-rule (1) and the provisions contained in sub-rule (5) to (7) shall apply to a Government Servant deputed or a person deputed from any other institution, to the services of any society."

18. Earlier in 1988, Rule 149 of the Tamil Nadu Co-operative Societies Rules, had comprehensively dealt with, the classification, qualification, mode of recruitment etc., as stated supra. By virtue of the amendment made in G.O.Ms. No. 212, Cooperation, Food and Consumer Protection Department dated 04.07.1995, it has been made clear that every society shall take into account the nature of business, volume of transaction, financial position, etc., and with the prior approval of the Registrar of Societies, the society shall frame a special bye-law covering every condition of the society and that the bye-law shall, contain the details, as stated supra.

19. From the above, it is clear that from 1995 onwards, every society was mandated to frame, special bye-laws, with the prior approval of the Registrar of the Co-operative society. Subsequently, Rule 149(1) has been amended by G.O. (Ms).No.373, Cooperation, Food and Consumer Protection (CJ1) Department, dated 29.10.2002, by which the expression in Rule 149(1) "with the prior approval of the Registrar", has been substituted with the expression "with the prior approval of the Government"

20. Thereafter, Rule 149(1) of the Tamilnadu Co-operative Societies Rules, 1988, underwent another amendment in G.O.(Ms).No.251, Co-operation, Food and Consumer Protection (CJ1) Department dated 07.08.2007, restoring the original position that the expression "with the prior approval of the Government", would

be substituted, "with the prior approval of the Registrar".

21. Whether, in paragraph No.10 of the common order in W.A. Nos.1103 and 1104 of 2008 dated 25.09.2008, the expression "with the prior approval of the State Government" used by the Hon"ble Division Bench is correct or not, on the date of disposal of the writ appeals, the fact remains that every society, taking into account its nature of business, volume of transaction and financial position, was mandated in law, to adopt bye-laws only with prior approval of the competent authority, and no society was empowered to fix any pay scale to any post, without the approval of the competent authority, whether it is the Government or the Registrar, as the case may be. No society, was empowered to enter into any settlement under Section 12(3) or 18 (1) of the Industrial Disputes Act, 1947, on the subjects mentioned in G.O.Ms. No. 212, Cooperation, Food and Consumer Protection Department dated 04.07.1995, which includes, classification of posts, qualification, method of recruitment, scale of pay and allowances for the posts.

22. When G.O. Ms. No. 186 Co-operation Food & Consumer Protection Department dated 16.08.2000, was not challenged, in Tamil Nadu Vatta Kooturavu Veetu Vasathi Sangangalin Anaithu Paniyalargal Madya Sangam rep. by its General Secretary R. Raghavendran v. Deputy Registrar of Co-operative Societies (Housing) Cuddalore Circle, Cuddalore District and Others, reported in (2008) 2 MLJ 385, it is the contention of the review applicants that whatever opinion expressed by the Hon"ble Division Bench, in the said case, the same has to be considered only as obiter dicta, and does not have any binding effect. The Hon"ble Division Bench in Tamil Nadu Vatta Kooturavu Veetu Vasathi Sangangalin Anaithu Paniyalargal Madya Sangam's case, at paragraph Nos. 11 to 15, held as follows.

"11. A reading of the said provision makes it clear that the said provision empowers the Registrar to issue such directions if he is satisfied that in public interest or for the purpose of securing proper implementation of co-operative production and other developmental programmes and also to secure the proper management of the business of any class of registered societies generally or for preventing the conduct of any society which would otherwise be detrimental to the interest of its members or depositors or creditors such directions are imminently required. The powers thus invested with the Registrar under Section 181 of the Act 1983 is wide enough and so long as such powers are exercised keeping in mind the purport and intend of the said provision and with a view to fulfil the statutory obligations prescribed therein, there would be no scope for anyone to contend that the exercise of such power could be called in question.

12. In fact, under Rule 149 of the Rules 1988, it is specifically provided that by taking into account its nature of business, volume of transaction and financial position, frame a special bye-law, with prior approval of the Government, and such special bye-law should prescribe inter alia the service conditions of its employees, scale of pay and allowances etc. for each such post.

13. In fact, it was brought to our notice that by G.O. Ms. No. 289, dated 18.12.1998 a Committee was constituted to revise the scale of pay and other service conditions of the employees of the co-operative banks with effect from 1.7.1997 and that subsequently, under G.O. Ms. No. 186, dated 16.8.2000 such revision in scales of pay of different posts came to be prescribed with effect from 1.7.1997 to be in operation for a period of five years. Therefore, it can be safely concluded that the provisions contained in the 1983 Act as well as the Rules framed thereunder were being implemented in regard to the prescription of pay scales and other service conditions by the authorities concerned from time to time. In fact, a perusal of the impugned orders disclose that contrary to the provisions contained in the 1983 Act and the Rules, the individual societies instead of adhering to the directions issued by the Registrar of Co-operative Societies, under Section 181 of the Act 1983 were entering into various settlements with their employees under the provisions of the I.D. Act and thereby torpedo the statutory directions issued by the Registrar of Co-operative Societies under Section 181 of the 1983 Act.

14. In fact, Rule 149 of the Rules 1988 came into being by way of G.O. Ms. No. 212, dated 4.1.1997, i.e., after the pronouncement of the Division Bench decision reported in 1992-1-LLJ 747. On the basis of the judgment of the earlier Division Bench, the State Government in order to restrain the individual Societies entering into such wage settlements without reference to the viability of the concerned Cooperative Societies thought it fit to incorporate the provision in the Rules by introducing Rule 149.

15. By no stretch of imagination, the said Rule can be said to be either conflicting with the provisions of I.D. Act or introduced with any other ulterior motive to defeat the lawful rights of the employees of any of the registered societies. The purport of the rule is to ensure that a registered society does not become defunct or unwieldy and any of the registered societies should not be allowed to be closed due to dearth of funds by mismanagement. Therefore, the constitution of the Committee for formulating the common wage structure for the employees of the registered Cooperative Societies by G.O. Ms. No. 289, dated 18.12.1998 and the subsequent G.O. Ms. No. 186, dated 16.8.2000 were all in furtherance of the fulfilment of the above objective of the State Government."

23. On the contentions of the appellants that when G.O. Ms. No. 186 Co-operation Food & Consumer Protection Department dated 16.08.2000, was not challenged and that the observations in Tamil Nadu Vatta Kooturavu Veetu Vasathi Sangangalin Anaithu Paniyalargal Madya Sangam's case, is only an obiter dicta, we wish to consider, what "obiter dicta" means. Rupert Cross and J.W. Harris in "Precedent in English Law"(4th Edition - page 41) say thus:-

"There are undoubtedly good grounds for the importance attached to the distinction between ratio decidendi and obiter dictum. In this context an obiter dictum means a statement by the way, and the probabilities are that such a statement has received less serious consideration than that devoted to a

proposition of law put forward as a reason for the decision. It is not even every proposition of this nature that forms part of the ratio decidendi."

24. Distinction between obiter dicta and a ratio decidendi has been explained by the Hon''ble Supreme Court in Director of Settlements, A.P. v. M.R. Apparao reported in AIR 2002 SC 1598, held that,-

"So far as the first question is concerned. Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has "declared law" it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a ratio decidendi is an observation by Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a bind effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practise of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (See Ballabhadas Mathurdas Lakhani v. Municipal Committee, Malkapur, AIR 1970 SC 1002 and Dir. of Settlements, A.P. & Ors. v. M.R. Apparao & anr., AIR 1973 SC 794). When Supreme Court decides a principle it would be the duty of the High Court or a subordinate Court to follow the decision of the Supreme Court."

25. In Arun Kumar Aggarwal v. State of Madhya Pradesh reported in AIR 2011 SC 3056, the Hon''ble Supreme Court explained "obiter dicta", as follows:

"21.The expression obiter dicta or dicta has been discussed in American Jurisprudence 2d, Vol. 20, at pg. 437 as thus:

"74. -Dicta Ordinarily, a court will decide only the questions necessary for determining the particular case presented. But once a court acquires jurisdiction, all material questions are open for its decision; it may properly decided all

questions so involved, even though it is not absolutely essential to the result that all should be decided. It may, for instance, determine the question of the constitutionality of a statute, although it is not absolutely necessary to the disposition of the case, if the issue of constitutionality is involved in the suit and its settlement is of public importance. An expression in an opinion which is not necessary to support the decision reached by the court is dictum or obiter dictum.

"Dictum" or "obiter dictum": is distinguished from the "holding of the court in that the so-called "law of the case" does not extend to mere dicta, and mere dicta are not binding under the doctrine of stare decisis, As applied to a particular opinion, the question of whether or not a certain part thereof is or is not a mere dictum is sometimes a matter of argument. And while the terms "dictum" and "obiter dictum" are generally used synonymously with regard to expressions in an opinion which are not necessary to support the decision, in connection with the doctrine of stare decisis, a distinction has been drawn between mere obiter and "judicial dicta," the latter being an expression of opinion on a point deliberately passed upon by the court." Further at pg. 525 and 526, the effect of dictum has been discussed:

"190. Decision on legal point; effect of dictum ... In applying the doctrine of stare decisis, a distinction is made between a holding and a dictum. Generally stare decisis does not attach to such parts of an opinion of a court which are mere dicta. The reason for distinguishing a dictum from a holding has been said to be that a question actually before the court and decided by it is investigated with care and considered in its full extent, whereas other principles, although considered in their relation to the case decided, are seldom completely investigated as to their possible bearing on other cases. Nevertheless courts have sometimes given dicta the same effect as holdings, particularly where "judicial dicta" as distinguished from "obiter dicta" are involved."

22.....

23. The Wharton's Law Lexicon (14th Ed. 1993) defines term "obiter dictum" as an opinion not necessary to a judgment; an observation as to the law made by a judge in the course of a case, but not necessary to its decision, and therefore of no binding effect; often called as obiter dictum, ; a remark by the way.

24. The Blacks Law Dictionary, (9th ed, 2009) defines term "obiter dictum" as a judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive). -- Often shortened to dictum or, less commonly, obiter. "Strictly speaking an "obiter dictum" is a remark made or opinion expressed by a judge, in his decision upon a cause, "by the way" -- that is, incidentally or collaterally, and not directly upon the question before the court; or it is any statement of law enunciated by the judge or court merely by way of illustration, argument, analogy, or suggestion.... In the common speech of lawyers, all such extrajudicial expressions of legal opinion are referred to as

"dicta," or "obiter dicta," these two terms being used interchangeably."

25. The Word and Phrases, Permanent Edition, Vol. 29 defines the expression "obiter dicta" or "dicta" thus:

"Dicta are opinions of a judge which do not embody the resolution or determination of the court, and made without argument or full consideration of the point, are not the professed deliberate determinations of the judge himself; obiter dicta are opinions uttered by the way, not upon the point or question pending, as if turning aside for the time from the main topic of the case to collateral subjects; It is mere observation by a judge on a legal question suggested by the case before him, but not arising in such a manner as to require decision by him; "Obiter dictum" is made as argument or illustration, as pertinent to other cases as to the one on hand, and which may enlighten or convince, but which in no sense are a part of the judgment in the particular issue, not binding as a precedent, but entitled to receive the respect due to the opinion of the judge who utters them; Discussion in an opinion of principles of law which are not pertinent, relevant, or essential to determination of issues before court is "obiter dictum".

26. The concept of "Dicta" has also been considered in Corpus Juris Secundum, Vol. 21, at pg. 309- 12 as thus:

"190. Dicta a. In General A Dictum is an opinion expressed by a court, but which, not being necessarily involved in the case, lacks the force of an adjudication; an opinion expressed by a judge on a point not necessarily arising in the case; a statement or holding in an opinion not responsive to any issue and not necessary to the decision of the case; an opinion expressed on a point in which the judicial mind is not directed to the precise question necessary to be determined to fix the rights of the parties; or an opinion of a judge which does not embody the resolution or determination of the court, and made without argument, or full consideration of the point, not the professed deliberate determination of the judge himself. The term "dictum" is generally used as an abbreviation of "obiter dictum" which means a remark or opinion uttered by the way.

Such an expression or opinion, as a general rule, is not binding as authority or precedent within the stare decisis rule, even on courts inferior to the court from which such expression emanated, no matter how often it may be repeated. This general rule is particularly applicable where there are prior decisions to the contrary of the statement regarded as dictum; where the statement is declared, on rehearing, to be dictum; where the dictum is on a question which the court expressly states that it does not decide; or where it is contrary to statute and would produce an inequitable result. It has also been held that a dictum is not the "law of the case," nor res judicata."

27. The concept of "Dicta" has been discussed in Halsbury's Laws of England, Fourth Edition (Reissue), Vol. 26, para. 574 as thus:

"574. Dicta. Statements which are not necessary to the decision, which go beyond the occasion and lay down a rule that it is unnecessary for the purpose in hand are generally termed "dicta". They have no binding authority on another court, although they may have some persuasive efficacy. Mere passing remarks of a judge are known as "obiter dicta", whilst considered enunciations of the judge's opinion on a point not arising for decision, and so not part of the ratio decidendi, have been termed "judicial dicta". A third type of dictum may consist in a statement by a judge as to what has been done in other cases which have not been reported.

... Practise notes, being directions given without argument, do not have binding judicial effect. Interlocutory observations by members of a court during argument, while of persuasive weight, are not judicial pronouncements and do not decide anything."

28. In *Municipal Corporation of Delhi v. Gurnam Kaur*, (1989) 1 SCC 101 and *Divisional Controller, KSRTC v. Mahadeva Shetty*, (2003) 7 SCC 197, this Court has observed that, "Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex-cathedral statement, having the weight of authority."

29. In *State of Haryana v. Ranbir*, (2006) 5 SCC 167, this Court has discussed the concept of the obiter dictum thus:

"A decision, it is well settled, is an authority for what it decides and not what can logically be deduced therefrom. The distinction between a dicta and obiter is well known. Obiter dicta is more or less presumably unnecessary to the decision. It may be an expression of a viewpoint or sentiments which has no binding effect. See *ADM, Jabalpur v. Shivakant Shukla*. It is also well settled that the statements which are not part of the ratio decidendi constitute obiter dicta and are not authoritative. (See *Divisional Controller, KSRTC v. Mahadeva Shetty*)"

30. In *Girnar Traders v. State of Maharashtra*, (2007) 7 SCC 555, this Court has held:

"Thus, observations of the Court did not relate to any of the legal questions arising in the case and, accordingly, cannot be considered as the part of ratio decidendi. Hence, in light of the aforementioned judicial pronouncements, which have well settled the proposition that only the ratio decidendi can act as the binding or authoritative precedent, it is clear that the reliance placed on mere general observations or casual expressions of the Court, is not of much avail to the respondents."

31. In view of above, it is well settled that obiter dictum is a mere observation or remark made by the court by way of aside while deciding the actual issue before it. The mere casual statement or observation which is not relevant, pertinent or essential to decide the issue in hand does not form the part of the judgment of the Court and have no authoritative value. The expression of the personal view

or opinion of the Judge is just a casual remark made whilst deviating from answering the actual issues pending before the Court. These casual remarks are considered or treated as beyond the ambit of the authoritative or operative part of the judgment."

26. Let us consider some more case laws on the aspect of ratio decidendi and the binding precedent,-

(i) In *Yeshbai and another v. Ganpat and another* reported in AIR 1975 Bombay 20, a Hon"ble Division Bench of the Bombay High Court held as follows:

"37.we may at this stage refer to a passage from Halsbury's Laws of England, Third Edition, Volume 22, paragraph 1682 on page 796. It is as follows:

"1982. Ratio decidendi. The enunciation of the reasons or principle on which a question before a court has been decided is alone binding as a precedent. This underlying principle is often termed the ratio decidendi, that is to say, the general reasons given for the decision or the general grounds on which it is based, detached or abstracted from the specific peculiarities of the particular case which gives rise to the decision. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding; but, if it is not clear, it is not part of a tribunal's duty to spell out with difficulty a ratio decidendi in order to be bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment all are taken as forming the ratio decidendi".

(ii) In *State of Karnataka v. Ranganatha Reddy* reported in AIR 1978 SC 215, the Hon"ble Apex Court held what was under consideration was not a statute or a legislation, but a decision of the Court. A decision ordinarily was a decision on the case before the Court while the principle underlying the decision would be binding as a precedent in a case, which came up for discussion subsequently. Hence, while applying the decision to later case, the Court, which was dealing with it, should carefully try and ascertain the true principle laid down by the previous decision. The decision often takes its colour from the question involved in the case in which it was rendered. The scope and authority of the precedent never be expanded unnecessarily beyond the needs of a given situation. The Hon"ble Supreme Court in the above case further observed that the expressions like "virtually overruled" or "in substance overruled" were expressions of inexactitude. In such circumstances, it is the duty of the Court to consider the effect of the precedent in question to read it over again and to form its own opinion instead of wholly relying upon the gloss placed on it in some other decisions.

(iii) In *Prakash Amichand Shah v. State of Gujarat & Ors* reported in AIR 1986 SC 468 : 1985 SCR Supl. (3) 1025, the Hon"ble Apex Court held if a contention is

raised that a particular judgment is an obiter dicta or not specifically overruled, then it shall be the duty of the Court to consider the effect of the precedent in question to read it over again and form an opinion, instead of relying upon the gloss placed on it in some other decision.

(iv) In *Delhi Municipal Corporation v. Gurnam Kaur* reported in AIR 1989 SC 38, it has been held that:-

"It is axiomatic that when a direction or order is made by consent of the parties, the Court does not adjudicate upon the rights of the parties nor lay down any principle. Quotability as "law" applies to the principle of a case, its ratio decidendi. The only thing in a Judge's decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty because without an investigation into the facts, as in the present case, it could not be assumed whether a similar direction must or ought to be made as a measure of social justice.

(v) In *Krishena Kumar v. Union of India and Others* reported in AIR 1990 SC 1782, the Hon"ble Apex Court held as follows:-

"19. In other words, the enunciation of the reason or principle upon which a question before a Court has been decided is alone as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a preexisting rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the Court to spell it out with difficulty in order to be bound by it. In the words of Halsbury, 4th Edn., Vol.26, Para 573:

"The concrete decision alone is binding between the parties to it but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which when it is clear it is not part of a tribunal's duty to spell out with difficulty a ratio decidendi in order to be bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi."

(vi) In *State of UP v. Synthetics & Chemicals Ltd.*, reported in (1991) 4 SCC 139, at Paragraph 41, it was observed by the Hon"ble Supreme Court as under :

"Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions

be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. (Salmond on Jurisprudence 12th Edn., p. 153). In *Lancaster Motor Company (London) Ltd. v. Bremith Ltd*, (1941) 1 KB 675, the Court did not feel bound by earlier decision as it was rendered without any argument, without reference to the crucial words of the rule and without any citation of the authority?. It was approved by this Court in *Municipal Corporation of Delhi v. Gurnam Kaur*, (1989) 1 SCC 101. The bench held that, "precedents sub-silentio and without argument are of no moment". The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In *B. Shama Rao v. Union Territory of Pondicherry*, AIR 1967 SC 1480, it was observed, "it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein". Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

(emphasis supplied)

(vii) In *Commissioner of Income Tax v. M/s. Sun Engineering Works (P) Ltd.*, reported in AIR 1993 SC 43, it has been held as follows:

".....It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings."

(viii) In *Union of India and others v. Dhanwanti Devi and others* reported in (1996) 6 SCC 44, the Hon"ble Apex Court held as follows:

"Before advertng to and considering whither solatium and interest would be payable under the Act, at the outset, we will dispose of the objection raised by

Shri Vaidyanathan that Hari Kishan Khosla's case is not a binding precedent nor does it operate as ratio decidendi to be followed as a precedent and per se per incuriam. It is not everything said by a Judge who giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well settled theory of precedents, every decision contain three basic postulates - [i] findings of material facts, is the inference which the Judge draws from the direct, or perceptible facts; [ii] statements of the principles of law applicable to the legal problems disclosed by the facts; and [iii] judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding between the parties to it, but it, is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi."

In the said case, the Hon"ble Supreme Court at page 52 held as follows:

"According to the well-settled theory of precedents, every decision contains three basic postulates : (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there

from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi."

(emphasis supplied)

(ix) In *Arnit Das v. State of Bihar* reported in (2000) 5 SCC 488, the Hon'ble Supreme Court observed in paragraph 20 as under :

"A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point of law was not consciously determined."

(x) In *Government of Karnataka and Others v. Gowramma and Others* AIR 2008 SC 863, with reference to precedential value of a decision, the Hon'ble Supreme Court, held thus,-

"Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: *State of Orissa v. Sudhansu Sekhar Misra and Others* AIR 1968 SC 647 and *Union of India and Others v. Dhanwanti Devi and Others* (1996) 6 SCC 44. A case is a precedent and binding

for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In *Quinn v. Leathern* (1901) AC 495 (H.L.), EARL OF HALSBURY LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes."

(xi) Words of LORD DENNING, in the matter of applying precedents, have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases. One should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

.. . . .

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

(emphasis supplied)

27. In Tamil Nadu Vatta Kooturavu Veetu Vasathi Sangangalin Anaithu Paniyalargal Madya Sangam's case, by orders, dated 12.03.1999 and 08.04.1999, the Deputy Registrar of Cooperative Societies Housing, the 1st respondent therein, directed the 3rd respondent therein, to cancel the 18(1) settlement, based on which, higher scale of pay was fixed and paid to the members of the appellants therein, and to recover the said payments, already been made. The Hon'ble Division Bench has categorically considered the issues raised therein, statutory provisions, powers conferred on the competent authorities to issue directions, held that the constitution of the committee for formulating the structure of the co-operative societies, vide G.O.Ms.289 dated

18.12.1998 and the subsequent G.O.Ms. No. 186 Co-operation, Food & Consumer Protection Department dated 16.08.2000, are in furtherance of the fulfilment of the objectives of the State Government. Finally, while setting out the reasons, a Hon"ble Division Bench, held that there is no scope to interfere with the orders impugned, in the writ petitions and accordingly, sustained the order of the learned Single Judge.

28. Tamil Nadu Vatta Kooturavu Veetu Vasathi Sangangalin Anaithu Paniyalargal Madya Sangam's case, has been decided, considering the objects of the Co-operative Societies Act, 1983, rules made thereunder, directions issued by the Government from time to time, on the aspect of framing of special bye-laws for the purpose of classification of posts, scale of pay, etc., and taking note of the vital factors, nature of business, volume of transaction and financial position of the society. Analysing the judgment of Tamil Nadu Vatta Kooturavu Veetu Vasathi Sangangalin Anaithu Paniyalargal Madya Sangam's case, in the light of the judgments of the Hon"ble Supreme Court, stated supra, we are of the considered opinion that Tamil Nadu Vatta Kooturavu Veetu Vasathi Sangangalin Anaithu Paniyalargal Madya Sangam's case, has laid down the law to be followed, as a precedent and the observations made therein, cannot be said to be obiter dicta and therefore, the contention to the contra, are not tenable.

29. Review can be made only if there is any mistake or apparent on the face of the record in the order sought to be reviewed. Reference can be made to a few decisions on the point of review.

(i) In *Aribam Tuleswar Sharma v. Aibam Pishak Sharma*, reported in AIR 1979 SC 1047, the Supreme Court has held that,-

"there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

(ii) In yet another decision in *Rajindersingh v. Lt. Governor* reported in 2005 (13) SCC 289, at paragraph Nos. 15 and 16, the Hon"ble Supreme Court held that law is well settled that the power of judicial review of its own order by the High Court inheres in every Court of plenary jurisdiction to prevent miscarriage of justice.

Power of judicial review extends to correct all errors to prevent miscarriage of justice. It was further held that Courts should not hesitate to review their own earlier order, when there exists an error on the face of record and the interest of justice so demands in appropriate cases.

(iii) In *Union of India v. Kamal Sengupta* reported in 2008 (8) SCC 612, the Hon"ble Supreme Court, at Paragraphs 14 and 15, has held that,-

"14. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court earlier.

15. The term "mistake or error apparent" by its very connotation signifies an error which is evident *per se* from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47, Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law. In any case, while exercising the power of review, the concerned Court/Tribunal cannot sit in appeal over its judgment/decision."

30. Considering the decisions, stated *supra*, we are of the view that merely because, at paragraph No.10 of the common order made in W.A. Nos.1103 and 1104 of 2008 dated 25.09.2008, the Hon"ble Division Bench has used the expression, "with prior approval of the State Government" and not "with the prior approval of the Registrar", that would not give rise to a cause for review and set aside the common order, made in W.A. Nos.1103 and 1104 of 2008 dated 25.09.2008. Usage of the expression, "with the prior approval of the Government" could have been made, due to an inadvertent typographical mistake. Typographical mistake, if any made, would not give rise to a cause to contend that the entire judgment has to be reviewed.

31. When the Hon"ble Division Bench in W.A. Nos.1103 and 1104 of 2008 dated 25.09.2008, has categorically held that the society had not framed any bye-law, under Rule 149 and approved by the competent authority and further observed that if no such bye-law has been framed by the Society, prescribing the condition of service, such as, scale of pay of its employees and staff in that case, it is always open to the State Government to make minimum prescription of the scale

of pay to be paid in favour of such employees and staff and we are of the considered view that there is absolutely no ground to interfere, with the above orders.

32. In the light of the above discussion and decisions, we are of the considered view that the appellants have not made out a strong case, to review of the common order made in W.A. Nos.1103 and 1104 of 2008 dated 25.09.2008. For the very same reasons, we find that the order of the writ Court in W.P. No.23476 of 2008, dated 17.04.2012, does not call for any interference. However, this Court deems it fit to rectify the inadvertent mistake occurred at paragraph No.10 of the common order made in W.A. Nos.1103 and 1104 of 2009 dated 25.09.2008 ie., the expression "with the prior approval of the State Government", be modified into that of, "with the prior approval of the Registrar of co-operative societies".

33. With the above modification, the Review Application Nos.82 and 83 of 2009 are disposed of. Writ Appeal W.A. No.1330 of 2012 is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.