

(2013) 02 MAD CK 0179

In the Madras High Court

Case No : Writ Petition (MD) . No's. 6508 of 2005 and 2544 of 2006 and M.P. (MD) . No. 7071 of 2005

K. Sathyamurthy and Another

APPELLANT

Vs

Joint Registrar of Cooperative Societies and Another

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11(A)
Tamil Nadu Co-operative Societies Act, 1983 — Section 153

Citation : (2013) 2 LLJ 663

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : P. Subbaraj and S. Seenivasagam in W.P. MD. No. 2544 of 2006, for the Appellant; R. Anand Raj Government Advocate and S. Seenivasagam for Respondent in W.P. (MD). Nos. 6508 of 2005, for the Respondent

Judgement

T.S. Sivagnanam, J.—The writ petition (W.P. (MD). No. 2544 of 2006) has been filed by the management of the Dindigul Co-operative Primary Agricultural and Rural Development Bank Limited (hereinafter referred as the petitioner society), challenging the orders passed by the first respondent, the Joint Registrar of Co-operative Societies, Dindigul Region, Dindigul, in Revision Petition in No. 36 of 2003 and Review Petition No. 2 of 2004, dated 26.12.2003 and 31.3.2005 respectively, which Revision/Review petitions were filed by the second respondent. The case of the petitioner society is that the second respondent was working as a Supervisor in the petitioner society and was placed under suspension and a show cause notice dated 17.11.1997 was issued to the second respondent. Thereafter, a charge memo dated 23.2.1998 was issued calling upon the second respondent to submit his explanation. As the second respondent failed to give an explanation, an enquiry officer was appointed to enquire into the charges and the Enquiry Officer submitted a report, dated 16.7.1998 holding that the charges were proved.

2. A second show cause was issued to the second respondent on 31.7.1998 and the second respondent was granted 15 days time to submit his explanation. Further 10 days time was granted by the letter, dated 10.8.1998. Since the second respondent failed to submit any explanation within the time granted, the petitioner society by order, dated 18.8.1998, dismissed the second respondent from service. Aggrieved by the said order of dismissal, the second respondent filed a writ petition in W.P. No. 12175 of 1998 and challenging the second show cause notice dated 31.7.1998, the second respondent filed a writ petition in W.P. No. 13194 of 1998.

3. The above-said writ petitions were disposed of by this Court by order, dated 12.12.2002 and thereafter, the second respondent filed a Revision Petition u/s 153 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter, referred as the Act) before the first respondent. The same was taken on file as Revision Petition No. 36 of 2003 and the Revisional Authority held that the domestic enquiry conducted against the second respondent by the petitioner society was not fair and proper and the punishment of dismissal was disproportionate with the proved charges and accordingly, set aside the order of dismissal and imposed lesser punishment of withholding of increment for two years with cumulative effect and to treat the period of non-employment as leave on loss of pay. This order, dated 26.12.2003, passed by the first respondent is challenged in this writ petition by the petitioner society.

4. The second respondent also filed a Review Petition challenging the order passed by the first respondent with regard to back wages and the Review Petition was dismissed. Challenging the order of dismissal of Review Petition, the second respondent has filed a writ petition in W.P. (MD). No. 6508 of 2005.

5. Since, the issues involved in both the writ petitions were identical and in both the writ petitions the same proceedings were challenged, they are heard together and disposed of by this Common order.

6. Mr. S. Seenivasagam, learned counsel appearing for the petitioner society contended that the Revision Petition filed by the second respondent u/s 153 of the Act is not maintainable and the first respondent has no jurisdiction to entertain a dispute as regards non employment.

7. It is submitted that u/s 153 of the Act, the Registrar can examine records in respect of any proceedings under the Act or Rules or the by-laws. The word "proceedings" u/s 153 of the Act has to be understood from the construction of the Statute and it not be the proceeding in respect of which, an appeal to the Tribunal is provided under sub-section (1) of Section 152 of the Act. It is further contended that the "proceedings" does not come within the ambit of the Act or Rules or by-laws or in exercise of power conferred under them and the order of dismissal passed by the disciplinary authority is not the "proceedings" under the Act and therefore, the Revision is not maintainable before the first respondent.

8. It is further submitted that the issues regarding employment, non

employment and terms and conditions of service of an employee would fall within the ambit of Industrial Dispute as defined u/s 2(k) of the Industrial Disputes Act and if the jurisdiction of the Industrial Disputes Act is ousted, then the remedy open to the second respondent is to move the Civil Court and file a Revision u/s 153 of the Act.

9. Further, it is submitted that the Co-operative Societies Act, is not an Act made to regulate the Service conditions of the employees, analogous to the various Labour Laws. It is further submitted that the Co-operative societies would fall within the definition of industries as defined in Section 2(j) of the Industrial Disputes Act and therefore, the second respondent if aggrieved, ought to have moved the Labour Court for appropriate relief. Further it is submitted that the first respondent cannot interfere with the punishment imposed on the second respondent and he has no power to re-appraise the evidence or to interfere with the punishment as conferred u/s 11(A) of the Industrial Disputes Act.

10. Further, it is stated that the Joint Registrar of the Cooperative Societies, the first respondent herein, is not a judicial officer, but an administrative officer far below the rank and experience of a judicial officer in the cadre of District Judge, who acts as a Presiding Officer in the Labour Court or the Tribunal and therefore, the first respondent cannot adjudicate such disputes. Further, the learned counsel for the petitioner society referred to the factual details as to how the second respondent was guilty of the charges and it is not a case of denial of opportunity to the second respondent, but in spite of sufficient time granted, he did not submit his explanation to the second show cause notice and therefore, the petitioner society dismissed him from services.

11. In support of his contentions, the learned counsel for the petitioner society relies on the following decisions:

- (i) Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others,
- (ii) Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others,
- (iii) Life Insurance Corporation of India Vs. D.J. Bahadur and Others,
- (iv) Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others,

12. Mr. P. Subbaraj, learned counsel appearing for the second respondent in W.P. (MD). No. 2544 of 2006, who is the writ petitioner in W.P. (MD). No. 6508 of 2005, submitted that sufficient opportunity was not given to the second respondent and the order of dismissal from service was vitiated on account of violation of principles of natural justice. The domestic enquiry itself was vitiated, since no opportunity was granted to the second respondent to cross-examine the prosecution witnesses and in effect, the petitioner society erroneously imposed the order of punishment and the same was rightly interfered by the Revisional

Authority. However, the Revisional Authority, while setting aside the order of dismissal, erroneously imposed double punishment i.e. annual stoppage of increment as well as denial of back wages.

13. Further, it is contended that the principle of "No Pay No Work" will not be applicable to the case on hand and the order has not been passed by the Board of the petitioner society, but by the managing Director, who is incompetent. Further, it is submitted that the second respondent is entitled to full back wages. In support of his contentions, the learned counsel placed reliance on the following decisions;-

(i) Arunagiri, L. Vs. Management of Tirunelveli Central Co-operative Bank and Another,

(ii) K. Radhakrishnan Vs. The Additional Registrar (Marketing, Planning and Development), Office of the Registrar of Co-operative Societies, Kilpauk, Madras-10 and another,

(iii) P. Eswaramoorthy and Others Vs. R.J.B. Leoraj and Others,

14. With the above submissions, the learned counsel for the second respondent prayed for the order of reinstatement of the second respondent with full back wages and all consequential benefits.

15. In reply, the learned counsel for the petitioner society would contend that the decision to dismiss the second respondent was taken by the board and not the decision of the Managing Director and only the order was communicated by the Managing Director. That apart, in the domestic enquiry, the second respondent neither raised any objection nor raised any contentions that he was prejudiced by the manner in which it was conducted and unless there is proof of prejudice, the domestic enquiry ought not to have been interfered.

16. It is submitted by the learned counsel for the petitioner society that though an earlier Division Bench of this Court held that the Revision is maintainable u/s 153 of the Act against an order of dismissal, the points canvassed by the petitioner society has not been canvassed before the earlier Division Bench and in the event, if this Court is not inclined to accept the submissions of the petitioner society, the matter may be placed for reference to the Larger Bench.

17. I have heard the submissions of the learned counsel on either side and carefully perused the materials available on record.

18. The sheet anchor of the contention of the learned counsel for the petitioner society is that the Revision petition u/s 153 of the Act is not maintainable before the first respondent, as against the order of dismissal passed against the second respondent. Before we go into such question, it has to be noted that the second respondent did not on his own volition approached the Revisional Authority. In fact, he filed two writ petitions being W.P. Nos. 12175 and 13194 of 1998.

19. In the above-said two writ petitions, the second respondent challenged the

second show cause notice dated 31.7.1998 and the order of dismissal from service, dated 18.8.1998. The petitioner society was impleaded as the second respondent in the said writ petitions and they entered appearance through counsel and contested the matter. It is thereafter, the writ petitions were disposed of by order, dated 12.12.2002, which is extracted hereunder:-

The proper remedy for the petitioner is to go before the Registrar of Co-operative Societies u/s 153 of the T.N. Co-operative Societies Act. The writ petitioner has bona fide prosecuted the writ petitions and therefore if and when the writ petitioner files a regular revision u/s 153 of the T.N. Co-operative Societies Act, the authority concerned will decide the same on merits without going into the question of limitation. The writ petitioner is granted four weeks time from today to file the revision petition. If and when the revision petition is filed the authority concerned shall take up the matter and dispose it of within a period of three months from the date of receipt of the revision petition. The writ petitions are dismissed and the connected petition is closed. Consequently, WMP Nos. 20048/98 and 30242/99 are dismissed. No costs.

20. In terms of the direction issued as aforesaid, the second respondent preferred a Revision Petition before the first respondent. The first respondent entertained the Revision Petition and issued notice to the petitioner society. The copy of the counter statement filed by the petitioner society has not been filed in the typed set of papers. But, however, the order passed by the Revisional Authority, dated 26.12.2003, refers to the contentions raised by the petitioner society before the said authority.

21. On a careful reading of the order of the Revisional Authority, it is seen that the petitioner society did not raise the question of jurisdiction of the authority to entertain the Revision Petition u/s 153 of the Act. Therefore, the net result is neither the petitioner society objected to the order passed by this Court in the earlier writ petitions dated 12.12.2002 nor preferred an appeal as against the order in the said writ petitions, rather it was a consenting party to the said order and accepted the verdict. Thereafter, when the second respondent filed Revision before the first respondent, it was always open to the petitioner society to raise the question of jurisdiction. However, even before the Revisional Authority, the petitioner society did not raise the question of jurisdiction, but rather allowed the matter to be decided only on merits. Therefore, the question is as to whether at this point of time, the petitioner society would be entitled to raise the question of jurisdiction.

22. The learned counsel for the petitioner society would state that it being a question of law, could have been raised at any point of time. In the decision of H.V. Nirmala Vs. Karnataka State Financial Corporation and Others, , the Hon''ble Supreme Court was dealing with a case of an Assistant Manager in the State Financial Corporation, who was dismissed from service by the Board of Directors of the Corporation. She preferred an appeal before the Board, it was treated as Review Petition and the same was dismissed. Challenging the said order she filed

a Writ Petition before the High Court, Karnataka and the single Judge dismissed the Writ Petition and the Intra-Court appeal was also dismissed by the Honourable Division Bench. Before the Honourable Supreme Court, the petitioner therein contended that in terms of the relevant staff regulation, a legal adviser could not have been appointed as an enquiry officer and in the absence of any regulation like that of the CCS Rules, the Managing Directors of the Corporation could not have transfer the proceedings to the Board of Directors. Essentially the question of jurisdiction was raised. It was contended by the Corporation that the appellant therein did not raise objections regarding the appointment of Enquiry Officer, but participated in the enquiry proceedings without objecting it and number of witnesses were examined and cross-examined by the appellant therein. Therefore, she should not be permitted to raise such a question of jurisdiction. Therefore, the question arose before the Hon'ble Supreme Court as to whether the appellant therein having not raised any objection before the said authority at an earlier point of time, shall be entitled to raise before the Honourable Supreme Court. While answering the said question and as to whether the principle of estoppel and acquiescence would apply, the Honourable Supreme Court referred to its earlier decision in *State Bank of India Vs. Ram Das and Another*, , wherein it was held as follows in paras 12 and 13:-

12. In *State Bank of India Vs. Ram Das and Another*, this Court held:

27.....It is an established view of law that where a party despite knowledge of the defect in the jurisdiction or bias or malice of an arbitrator participated in the proceedings without any kind of objection, by his conduct it disentitles itself from raising such a question in the subsequent proceedings. What we find is that the appellant despite numerous opportunities made available to it, although it was aware of the defect in the award of the umpire, at no stage made out any case of bias against the umpire. We, therefore, find that the appellant cannot be permitted to raise the question of bias for the first time before this Court.

13. There are questions and questions in regard to the jurisdictional issues. An authority may lack inherent jurisdiction in which case the order passed would be a nullity but he may commit a jurisdictional error while exercising jurisdiction. The legal rights conferred upon the employees in this behalf may be different under different statutes. A legal admission under the common law is not debarred for acting as an enquiry officer. Even in relation to applicability of the principles of natural justice, breaches whereof would ordinarily render the decision nullity, the Courts have been applying the prejudice doctrine to uphold the validity thereof.

23. In the light of the above decision, the only conclusion that can be arrived at, is that the petitioner society would be estopped from raising such contention before this Court for the first time having acquiesced themselves of the said position. If the said objection was raised at the earliest point of time, namely when the earlier writ petitions were disposed of by this Court, during December 2002, it could have been taken that the petitioner society was put to some

prejudice on account of the said order. But, the petitioner society thought it fit not to raise any objection at that stage. Even subsequently, when the matter went before the first respondent, and the revision petition was entertained, it was well open to the petitioner society to raise such a contention and even at that point of time they did not raise such objection. Therefore, the jurisdiction issue having not been raised at the earliest possible opportunity and petitioner society having participated in the disposal of the revision petition, without any kind of objection, by their conduct it would disentitle them from raising such a question for the first time before this Court. Therefore, by applying the principles of estoppel and acquiescence, this Court is of the firm view that the petitioner society cannot be permitted to raise such a contention at this stage and therefore, no necessity to examine the correctness of the submissions made on behalf of the petitioner Society with regard to the scope and power of the Joint Registrar u/s 153 of the Act and whether the Revision Petition was maintainable.

24. The Honourable Division Bench of this Court in *K. Subramanian Vs. Madras Christian College Association, The Secretary, Madras Christian College Board, Madras Christian College, S.W. Kanagaraj, Law Member, Madras Christian College Board, Madras Christian College and The Headmaster and Correspondent, Madras Christian College Higher Secondary School* considered the meaning of the term "Waiver". The matter also related to a disciplinary action taken against a staff of the College and during the proceedings before the Honourable Division Bench as regards the validity of the appointment of the enquiry officer, the Honourable Division Bench observed that a "Waiver" is essentially an unilateral act of a person that results in surrender of a legal right. In the event a person knowingly surrenders his right, it must be termed to be an express waiver. Therefore, even assuming without admitting that the first respondent inherently lacks jurisdiction to entertain the revision petition and the petitioner being a society managed by an elected board and subsequently managed by a Special Officer nominated by the Government knowingly surrender their alleged right and it should be termed to be one of "express waiver".

25. At this stage it would also be useful to refer to the recent decision of this Court in *W.P. No. 6542 of 2010, dated 2.7.2012, A. Vijayakumar v. Regional Joint Registrar*, wherein this Court referred the case of *K. Subramanian v. Madras Christian College Association (supra)* and the same was rendered following the decision in *H.V. Nirmala v. Karnataka State Financial Corporation and Others (supra)*.

26. The next question to be considered is that even if it is held that the petitioner society has waived its right to raise the question of jurisdiction at the earliest point of time, it is necessary to take note of the binding judgment as regards the scope and jurisdiction of the Revisional Authority u/s 153 of the Act. At this stage I am straight away refer to the decision of this Court in *Radhakrishnan K v. The Additional Registrar (supra)* wherein, an identical issue arose as to whether a revision is maintainable u/s 153 of the Act as against an order in a service

matter consisting of an employee of a cooperative society and it has held as follows in paragraph 6 of the order:-

6. The reading of the said provision makes it clear that it is open to the Registrar either on his own motion or on application from any aggrieved person to call for and examine the record of any officer subordinate to him or any officer of a registered society and examine in respect of any proceedings under the Act or the Rules or the By-laws as to the regularity of such proceedings or correctness, legality or propriety of any decision passed or made therein. It is clear that wide power, has been entrusted with the Registrar as well as the Government in respect of any order or decision made by any subordinate Officer or Officer of any Society registered under sub-section (3) of Section 75 of the Act in respect of any proceedings under the Act or the Rules or the By-laws. Only exception mentioned therein is that in respect of matters in which an appeal is provided to the Tribunal as per sub-section (1) of Section 152 in all other matters, the Registrar or the Government is empowered and authorised to consider and pass orders. Proviso (i) to sub-section (1) enables of Section 152 the Registrar of the Government to consider and exercise the powers under the said Section if any application is made within 90 days on the date on which the proceedings, decision or order to which the application relates was communicated to the applicant concerned. As per sub-section (2) of Section 153 no order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representation. Except the said provision no other provision has been brought to my notice by any or the counsel. No doubt, learned counsel for the 2nd respondent has brought to my notice sub-section (5) of Section 75 of the Act. As rightly contended by the learned counsel for the petitioner, the said provision relates to common cadre of service has not been constituted by the Government. In such a circumstance, the said provision is not applicable to our case. Learned Government advocate has also stated that the petitioner is justified in approaching the first respondent u/s 153 of the Act to ventilate his grievance. I am satisfied that the order of the second respondent dated 19-8-92 itself is an order under the by-laws of the 2nd respondent Union. Therefore, the revision petition u/s 153 of the Act before the first respondent is maintainable. Even otherwise, as rightly contended by Mr. S. Ayyathurai, inasmuch as the seniority is the part of the service condition of the employees and the second respondent is obliged to prepare the list of seniority of employees call for objection and pass orders thereon, the action of the second respondent with regard to the seniority or the employees may be construed as an action under the special by-laws of the Union. Therefore, I hold that the revision petition u/s 153 of the Act is maintainable. The Contrary view taken by the first respondent is liable to be set aside.

27. The Honourable Division Bench of this Court in *P. Eswaramoorthy v. R.J.B. Leoraj* (supra) also considered the question as to who can invoke the power u/s 153 of the Act and whether the said power impliedly ousted the jurisdiction of the Labour Court/Industrial Tribunal. While answering this question, the

Honourable Division Bench has held as follows in paragraphs 23 and 24:-

23. While dealing with the question of the Karnataka Co-operative Societies Act, excluding the jurisdiction of the Industrial Disputes Act, the Supreme Court clarified the legal position in *Dharappa Vs. Bijapur Co-operative Milk Producers Societies Union Ltd.*, . The relevant passages found in paragraphs 18 to 21 and 24 may be usefully reproduced below:-

18. This aspect has been completely overlooked by the Division Bench of the Karnataka High Court in *Veerashaiva Coop. Bank (supra)*. It misled itself to an erroneous assumption that two decisions of this Court in *R.C. Tiwari Vs. M.P. State Co-operative Marketing Federation Ltd. and others*, and *Sagarmal v. Distt. Sahkari Kendriya Bank Ltd., Mandsaur and Anr.*, (1997) 9 SCC 354 laid down the proposition that once a specific procedure and effective remedy is provided under the Cooperative Societies Act, it ipso facto excluded the settlement of disputes u/s 10 of the Industrial Disputes Act. On that assumption, the High Court held that Section 70 of the KCS Act excluded the jurisdiction of Labour Courts/Industrial Tribunals in regard to references u/s 10 of the ID Act. The High Court held so in view of Clause (d) of sub-section (2) of Section 70 which provided that any dispute between a cooperative society and its employees (past or present) in regard to terms of employment, working conditions and disciplinary action will be deemed to be a dispute to be decided by the Registrar under sub-section (1) of Section 70, overlooking the fact that Amendment Act 19 of 1976 by which Clause (d) was inserted in Section 70(2), had not received the assent of the President and therefore the jurisdiction of the Registrar u/s 70(1) of the KCS Act as expanded by Section 70(2)(d), could not prevail over the provisions of the ID Act. If the amendment to Section 70(2) by Act 19 of 1976 should be read or construed as having the effect of enabling Section 70(1) of the KCS Act to prevail over the provisions of the ID Act, then the said Amendment Act (Act 19 of 1976) would have required the assent of the President under Article 254(2). But there was no such assent.

19. As the Division Bench had relied on two decisions of this Court in *R.C. Tiwari (supra)* and *Sagarmal (supra)*, it is necessary to refer to them. But before doing so, we have to note that many a time, a principle laid down by this Court with reference to the provisions of a particular State Act is mechanically followed to interpret cognate enactments of other States, without first ascertaining whether the provisions of the two enactments are identical or similar. This frequently happens with reference to the laws relating to rent and accommodation control, cooperative societies and land revenue. Before applying the principles enunciated with reference to another enactment, care should be taken to find out whether the provisions of the Act to which such principles are sought to be applied, are similar to the provisions of the Act with reference to which the principles were evolved. Failure to do so has led to a wrong interpretation of Section 70 of the KCS Act, in *Veerashaiva Coop. Bank (supra)* and *Karnataka Sugar Workers Federation (supra)*.

20. R.C. Tiwari (supra) related to the Madhya Pradesh, where the ID Act itself was inapplicable (except to the extent indicated in the M.P. Industrial Relations Act, 1960). In that case, an employee of a cooperative society who had been dismissed from service for misconduct, raised a dispute under the Madhya Pradesh Cooperative Societies Act, 1960. The Deputy Registrar concerned held that the dismissal was proper and rejected the reference. Thereafter the employee sought a reference u/s 10(1) of the ID Act. The Labour Court held that the domestic inquiry was vitiated and set aside the order of dismissal. The said order was challenged by the employer society before the Madhya Pradesh High Court. The High Court held that in view of the provisions of Section 55 of the Madhya Pradesh Cooperative Societies Act, 1960, the Labour Court had no jurisdiction and therefore the reference to the Labour Court was bad. It also held that the findings recorded by the Deputy Registrar, Cooperative Societies against the employee in the award made u/s 55 of the Madhya Pradesh Cooperative Societies Act, would operate as res judicata. This Court upheld the said decision of the High Court and dismissed the special leave petition. The decision was rendered with reference to the special provisions of the M.P. Cooperative Societies Act, 1960 and the M.P. Industrial Relations Act, 1960. Having regard to Section 110 of the M.P. Industrial Relations Act, the provisions of the Central Act the Industrial Disputes Act, 1947 (except Chapters V-A, V-B and V-C relating to lay-off and retrenchment, special provisions relating to lay-off, retrenchment and closure in certain establishments and unfair labour practices), did not apply to any industry to which the said M.P. Industrial Relations Act applied. The ID Act did not apply in the State of Madhya Pradesh to adjudication of disputes between the employer and employees, not because of any bar in the M.P. Cooperative Societies Act, but because of the State having made a law relating to industrial disputes, namely, the M.P. Industrial Relations Act, 1960 which had received the assent of the President. The M.P. Cooperative Societies Act, 1960, vide Section 55, specifically provided that where a dispute including a dispute relating to terms of employment, working conditions and disciplinary action by a society arises between a society and its employees, the Registrar or any officer appointed by him shall decide the dispute and his decision shall be binding on the society and its employees; and Section 93 of the M.P. Cooperative Societies Act provided that nothing contained in the M.P. Industrial Relations Act, 1960 shall apply to a society registered under that Act (the M.P. Cooperative Societies Act). It is in these circumstances that in R.C. Tiwari this Court held that the ID Act did not apply to a dispute between a society and its employees in regard to any disciplinary action. In that case, the question of any repugnancy between a State Act (the Madhya Pradesh State Cooperative Societies Act) and the Central Act (the Industrial Disputes Act, 1947) did not arise. The State of Karnataka does not have a State Act governing industrial disputes as in Madhya Pradesh and therefore, the question of the Karnataka Cooperative Societies Act excluding the applicability of a State law relating to industrial disputes did not arise. The decision in R.C. Tiwari (supra) was not, therefore, relevant or applicable.

The Division Bench of the Karnataka High Court committed an error in following the decision in R.C. Tiwari (supra) to hold that the jurisdiction of Labour Court under the ID Act was barred, in view of Section 70 as amended by the Amendment Act 19 of 1976, even prior to the amendment of Sections 70(1) and (2) by Act 2 of 2000.

21. The decision of this Court in Sagarmal (supra) also related to Madhya Pradesh. In that case, the appellant was an employee of a cooperative bank and he was removed from service after a disciplinary inquiry. The employee challenged his removal by seeking a reference to the Labour Court u/s 10 of the Industrial Disputes Act, 1947. A reference was made and the Labour Court granted him relief of reinstatement with back wages. The employer bank challenged the award in a writ petition and the High Court quashed the award on the ground that it was a nullity, having been made in an incompetent reference. While affirming the decision of the High Court, this Court held that the provisions of the ID Act, did not apply to the respondent cooperative bank, and the only question was about the availability of remedy either under the Madhya Pradesh Cooperative Societies Act, 1960 or under the Madhya Pradesh Industrial Relations Act, 1960. This Court observed that if such a question had arisen, Section 93 of the Madhya Pradesh Cooperative Societies Act would have come into effect, but no occasion arose for consideration of such a question inasmuch as the employee did not resort to the remedy either under the Madhya Pradesh Cooperative Societies Act, 1960 or under the Madhya Pradesh Industrial Relations Act, 1960, but chose the remedy of a reference u/s 10 of the ID Act, which was inapplicable in the State of Madhya Pradesh. This Court reiterated that as the only question before the High Court was the competence of a reference u/s 10 of the Industrial Disputes Act, 1947, and not the availability of the remedy under the Madhya Pradesh Cooperative Societies Act, 1960 or the Madhya Pradesh Industrial Relations Act, 1960, the view taken by the High Court that the reference u/s 10 of the ID Act was incompetent, and the award made therein a nullity, did not suffer from any infirmity. In short, Section 10 of the ID Act was held inapplicable not because the Madhya Pradesh Cooperative Societies Act, 1960 prevailed over the provisions of the Industrial Disputes Act, 1947 but because in Madhya Pradesh, the provisions of the ID Act, 1947 (except certain specified provisions relating to lay-off, etc.) did not apply in view of the provisions of the Madhya Pradesh Industrial Relations Act, 1960. Therefore, the decision in Sagarmal (supra) was also of no assistance. Therefore, the decision in Veerashaiva Coop. Bank was erroneous.

24. The resultant position can be summarised thus:

(a) Even though Clause (d) was added in Section 70(2) with effect from 20-1-1976, Section 70(1) did not exclude or take away the jurisdiction of the Labour Courts and Industrial Tribunals under the ID Act to decide an industrial dispute between the society and its employees. Consequently, even after insertion of Clause (d) in Section 70(2) with effect from 20.1.1976, the Labour

Courts and Industrial Tribunals under the ID Act, continued to have jurisdiction to decide disputes between societies and their employees.

(b) The jurisdiction of Labour Courts and Industrial Tribunals to decide the disputes between cooperative societies and their employees was taken away only when sub-section (1) and sub-section (2)(d) of Section 70 were amended by Act 2 of 2000 and the amendment received the assent of the President on 18.3.2000 and was brought into effect on 20.6.2000.

(c) The jurisdiction to decide any dispute of the nature mentioned in Section 70(2)(d) of the KCS Act, if it answered the definition of

industrial dispute, vested thus:

(i) exclusively with Labour Courts and Industrial Tribunals till 20.1.1976;

(ii) concurrently with Labour Courts/Industrial Tribunals under the ID Act and with Registrar u/s 70 of the KCS Act between 20.1.1976 and 20.6.2000; and

(iii) exclusively with the Registrar u/s 70 of the KCS Act with effect from 20.6.2000.";

24. In the light of the above legal journey through various decisions of this Court as well as of the Supreme Court, the following propositions will emerge:-

(a) Section 90 of the 1983 Act providing for settlement of disputes will not include a dispute between a servant of a Co-operative Society and its Management. Therefore, no dispute can be referred to the Registrar or his nominee u/s 90 and consequently, no appeal will lie to the Tribunal u/s 152.

(b) Section 153 of 1983 Act is a departure from Section 97 of the 1961 Act and it is wider in nature. Power has been specifically conferred on the revisional authority u/s 153 to call for and examine the record of any proceeding under the Act or the Rules or the bye-laws of any officer subordinate to the Registrar or of the Board of Director or any officer of a registered society or of the competent authority constituted u/s 75(3) of the 1983 Act. Therefore, the employees of a Co-operative Society can approach the Registrar or any competent authority u/s 153 to revise any order passed by the Co-operative Society relating to disciplinary action taken against him or denial of promotion or wrong fixation of seniority, etc.

(c) There is no implied ouster of the jurisdiction of the power of the Labour Court/Industrial Tribunal to deal with similar matters if disputes are raised before them by workmen or employees covered by those provisions. Both remedies are available.

(d) The decision in Somasundaram Vs. Liyakat Ali and another, may not be a good law. The employees therein filed a Civil Suit regarding promotion issue. As remedy for the aggrieved parties in that case are available either u/s 153 or by an industrial dispute u/s 2(k) of the Industrial Disputes Act, 1947, they could not

have gone before the Civil Court. Therefore, the bar u/s 156 of the Co-operative Societies Act as well as the implied ouster of jurisdiction of the Civil Court by the provisions of the I.D. Act will directly apply and the suit is barred.

(e) The decision of P. Sathasivam, J. (as he then was) in K. Radhakrishnan Vs. The Additional Registrar (Marketing, Planning and Development), Office of the Registrar of Co-operative Societies, Kilpauk, Madras-10 and another, upholding the right of revision u/s 153 has laid the correct position of law. Likewise, the judgment of P. Sathasivam, J. (as he then was) in The Management of Madras Atomic Power Project Employees Consumers Co-operative Stores Limited Vs. The Deputy Commissioner of Labour (Appeal) Madras -6 and 2 others, holding that Section 90 of the 1983 Act is not available for employees of Co-operative Societies against the orders of termination has been correctly decided.

28. The next question would be as to whether the second respondent was justified in seeking for reinstatement with back wages and continuity of service. It is contended by the learned counsel for the second respondent that the Revisional Authority having set aside the order of dismissal, ought to have ordered for back wages and continuity of service, as it is automatic and that by ordering stoppage of increment and not allowing back wages amounts to imposition of double punishment. It is well settled that payment of back wages is not automatic merely because the order of dismissal has been set aside. The Authority had found that the second respondent had committed delinquency. In respect of the penalty alone, the Revisional Authority found it to be disproportionate to the proved charges. Therefore, it exercised its power and interfered with the penalty and, denial of back wages depends upon the facts and circumstances of each case. After having gone through the order passed by the Revisional Authority, it could be seen that the Authority has given cogent reasons and has discussed each of the charges and findings of the Enquiry Officer, defence raised and thereafter, rendered the findings.

29. This Court in exercise of its power under Article 226 of the Constitution of India does not propose to covert itself as an appellate Authority, over the findings of the revisional authority which is a fact finding authority. Thus, the order passed by the Revisional Authority being a reasoned order, without any perversity or illegality, the same does not call for any interference at the hands of this Court. For the above reasons, both the Writ Petitions are devoid of merits and accordingly the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.