(1997) 09 MAD CK 0156

In the Madras High Court

Case No : Writ Petition No. 15097/88

Madurai District Employees' Co-operative Credit Societies Employees Union	APPELLANT
Vs	
The Manager of TVS Employees Co-operative Credit Society Ltd., The Management of Madurai Coats Employees Co-operative Credit Society Ltd., The Management of Madurai Co-operative Sanitary Workers Co-op. Thrift and Credit Society Ltd. and The Presiding Officer, Principal Labour Court	RESPONDENT

Date of Decision : 10-09-1997

Acts Referred:
Payment of Bonus Act, 1965 — Section 6
Tamil Nadu Co-operative Societies Rules, 1988 — Rule 99
Trusts Act, 1882 — Section 20

Citation : (1997) 09 MAD CK 0156

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : R. Ganesan, for the Appellant; S. Raghavan, for the 1st Respondent, Vijay Narayan, for Respondents 2 and 3 and S. Gopinathan, for the 4th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

K. Sampath, J.—The writ petition is for the issue of a writ of certiorari calling for the records connected with the award of the Principal Labour Court, Madurai, made in I.Ds.113/1985, 135 and 171 of 1985, dated 28.10.1986 and quashing the same.

2. The affidavit in support of the writ petition states as follows:

The Petitioner Union raised an industrial dispute for bonus against the Respondent managements which came to be referred as I.Ds. 113, 135 and 171 of 1985 and the Labour Court passed a common award in the three industrial disputes. The disputes relate to payment of Bonus under the Payment of Bonus Act (hereinafter referred to as the Act). The first Respondent herein declared bonus at the rate of 9% for the year 1980-81 and 8.33% for the years 1981-82 and 1982-83. According to the Petitioner Union for the said years the workmen would be entitled to 20%, 18% and 20% bonus respectively. The Union therefore raised an industrial dispute. The contention of the Union was that the reserve utilized as capital alone was entitled to 8.5% deduction. However, since the management had not utilized the reserve. Equally." the amount shown as building fund could not also attract 8.5% on deduction. Only because in the working sheet, 8.5% on these amounts was deducted, the allocable surplus showed a lesser percentage of bonus.

In respect of the order two managements also identical points involved in all the three industrial disputes. The point involved in all the three industrial disputes was whether the management was entitled to deduct 8.5% on the reserves, which were not invested as capital by the society in its establishment and whether they were entitled to a deduction 8.5% on the building fund reserves. The contention of the Union that once the amounts are deposited in other institutions as fixed deposits, those amounts would be only assets in the hands of the societies and in as much as those amounts were not utilized as working capital in terms of Schedule 3/4(1) no such deduction was permissible. Since the Labour Court took the view that the amounts deposited by the Cooperative Societies in other institutions also should be considered as the reserves of the Cooperative Institutions and treated as having been utilized as working capital and held that the workmen were not entitled to additional bonus as claimed in the respective industrial disputes, the present petition has been filed.

3. The Respondents have not filed any counter, but made their legal submissions on the interpretation to be given to the relevant provisions.

4. The learned Counsel for the writ Petitioner Mr. R. Ganesan fairly brought to my notice the judgment of the Supreme Court in Jackson Co-operative Credit Society Ltd. v. Co-operative Banks and Societies Employees'' Federation and Ors. 1989 LLJ 563 S.C. The Supreme Court, while disposing of an appeal against the judgment of the Bombay High Court in W.P. No. 1048/82 instituted by a Co-operative Credit Society, in interpreting the relevant provisions of the Maharashtra Cooperative Societies Act held that,

amounts held by the Co-operative Society as reserve fund in terms of Section 66 of the Cooperative Societies Act must qualify for deduction, that the minimum reserve fund which was required to be maintained by Section 66 of the Co-operative Societies Act was one-fourth of the net profits of each year and that if larger amounts were carried forward to the reserve fund in terms of Section 66, all such amounts would come within the ambit of item (4) of the Third Schedule to the Bonus Act and qualify for deduction." The Supreme court held that, "8.5% of the capital invested by the Society in its establishment as disclosed by its books of accounts together with amounts carried forward to a reserve fund in compliance with Section 66 and other provisions of the Co-operative Societies Act read with the rules made thereunder would be deductible in terms of Section

6 of the Bonus Act.

4. The relevant provisions are Sections 68 of the Tamil Nadu Co-operative Societies Act, 1983 and Rule 99 of Tamil Nadu Cooperative Societies Rules, 1988. Section 68 of the Act runs as follows: Investment of funds: Subject to the provisions of Sub-section (3) of Section 66, a registered society may invest or deposit its funds in:

a) the shares or deposits of the financing bank, or

b) the shares or deposits of any co-operative bank, or

c) the shares or securities of any other registered society, or

d) any of the securities specified in Section 20 of the Indian Trusts Act, 1882 (Central Act II of 1882) or

e) any other mode as may be prescribed.

Provided that no such investment shall be made in any manner as aforesaid, other than in the shares or deposits of the financing bank, except with the general or special sanction of the Registrar and subject to such terms and conditions as may be specified by him.

(Explanation omitted)

Rule 99 runs as follows:

Reserve fund: (1) The reserve fund shall belong to the society as a whole and is intended to meet unforeseen losses. It shall be indivisible and no member shall have any claim to a share in it. It may be drawn upon with the special sanction of the Registrar to meet unforeseen losses.

(2) A society shall not invest or deposit its reserve fund except in the modes mentioned in Clauses (a), (b), (c) and (d) Section 68, subject to the proviso thereunder

Provided that when the reserve fund of a society exceeds twenty per cent of its working capital, the excess may, with the sanction of the Registrar, be utilized in the business of the society:

Provided further that a society not being a credit society, may with the sanction of the Registrar utilize the whole of its reserve fund in its business:

Provided also that when a society is prohibited by its by-laws from borrowing either from its members or from others, the whole of its reserve fund may be utilized in its business.

((3) Omitted)

5. From what is stated above, it would be clear that the order of the Labour Court holding that the amounts deposited by the Cooperative Societies in other

institutions also should be considered as reserves of Cooperative Institutions and also should be treated as having been utilized as working capital and that the managements are entitled to make a deduction of 8.5% on these amounts also even though cannot be faulted. It is in accord with the decision of the Supreme Court already referred to.

6. In these circumstances, the Petitioner is not entitled to any relief and the writ petition is dismissed. There will, however, be not order as to costs.

