

(2012) 03 MAD CK 0030
In the Madras High Court
Case No : Writ Petition No. 10798 of 2004

N.P. Palanisamy

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 29-03-2012

Acts Referred:

Constitution of India, 1950 — Article 320, 320(3)(c)
Government of India Act, 1935 — Section 256, 75
Limitation Act, 1963 — Section 5
Tamil Nadu Co-operative Societies Act, 1983 — Section 152, 152(2), 153, 153(1), 90

Citation : (2012) 4 CTC 257

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : R.N. Amarnath, for the Appellant; L.P. Shanmugasundaram, Additional Government Pleader for Respondent No. 2, No appearance for Respondent No. 3 and M.R. Raghavan, Advocate, for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—""Whether the period of ninety days prescribed in the Proviso to Section 153 of the Tamil Nadu Co-operative Societies

Act for filing a Revision is mandatory or directory ?"" This is the only question which needs to be explored in this Writ Petition. The above question

has arisen in the following factual back ground. The Petitioner was employed as a Cashier-cum-Assistant in the Thalavadi Branch of the ""Erode

District Central Co-operative Bank"" which is a Co-operative Society governed by the Tamil Nadu Co-operative Societies Act. On 7.2.2000, a

charge memorandum was issued to the Petitioner levelling a lone charge. The Petitioner denied the said charge. Having not satisfied with the same,

the Third Respondent appointed an Enquiry Officer to hold enquiry into the same. The Petitioner participated in the enquiry. The Enquiry Officer

finally held that the Petitioner is guilty of the said charge. Based on the same, the Petitioner was dismissed from service by the Fourth Respondent by his proceedings in Na.Ka.26843/99-2000-D2 on 23.8.2000.

2. According to the Petitioner, challenging the said termination, he raised an industrial dispute before the Labour Officer, Erode. The said

proceeding was kept pending before the Labour Officer under conciliation for quite some time. At last, the conciliation failed. Thereafter,

according to the Petitioner, when he attempted to approach the Labour Court, he was informed that the proper remedy for him was to file

Revision u/s 153 of the Tamil Nadu Co-operative Societies Act, before the Second Respondent herein. Accordingly, the Petitioner filed a Revision

before the Second Respondent on 3.3.2003. Having considered the above, the Second Respondent by his proceedings in

Na.Ka.183954/2002/Sa.Pa.1 dated 23.4.2003 rejected the Revision solely on the ground that the Revision was barred by limitation as provided

in Section 153(1) of the Tamil Nadu Co-operative Societies Act (hereinafter referred to as "the Act"). Aggrieved over the same, the Petitioner is

before this Court with this Writ Petition.

3. In this Writ Petition, it is contended by the Petitioner that Section 153(1) of the Act, is not mandatory and it is purely directory and therefore,

the same cannot be equated to limitation so as to non-suit the Petitioner from getting the Revision disposed of on merits. As per Section 152 of the

Act, in the matter of Appeal, there is limitation provided and there is also an enabling provision to condone the delay for reasons to be recorded by

the Appellate Authority. But, there is no such provision in Section 153 of the Act for the condonation of delay.

4. The Learned Counsel for the Petitioner would refer to Rule 169(5) of the Tamil Nadu Co-operative Societies Rules, 1988 wherein, it is

provided that on receipt of an Appeal, the Appellate authority has to examine the same and ensure that it is made within the time limit specified for

Appeal or is accompanied by a Petition for condonation of delay. The Learned Counsel for the Petitioner would further submit that there is no such

provision in the Rules which mandates that the Revision shall be rejected if the same is filed beyond the period of limitation. From this, according to

the Learned Counsel, it is evident that what is contained in 153(1) of the Act is

only directory and not mandatory. Therefore, according to the

Learned Counsel, the impugned order rejecting the Revision only on the ground that the Revision was not filed within the time prescribed in Section

153(1) of the Act, is not sustainable. To substantiate his contention, the Learned Counsel has placed reliance on some of the judgments of the

Hon"ble Supreme Court as well as this Court about which, I would make reference at the appropriate stage of this order.

5. But the learned Additional Government Pleader appearing for the First Respondent and the Learned Counsel for the Fourth Respondent would

oppose this Writ Petition. According to the learned Additional Government Pleader appearing for the First Respondent, the time limit prescribed in

Section 153(1) of the Act, is mandatory and the same should be equated to limitation provided for preferring a Revision. The learned Additional

Government Pleader would further submit that in the absence of any specific provision, empowering the Revisional authority to condone the delay,

in the event, the Revision is filed beyond the time prescribed, it will not be permissible or legal for the authority to entertain the Revision.

6. The Learned Counsel for the Fourth Respondent would submit that when the legislature had thought it fit to make a provision enabling the

Appellate Authority to condone the delay, in the event, the Appeal is filed belatedly, the same legislature had not thought it fit to make a provision

for condonation of delay, in filing a Revision. This would clearly go to show that the intention of the legislature is not to empower the Revisional

Authority to entertain any Revision which is filed beyond the time prescribed in Section 153(1) of the Act, he contended.

7. The Learned Counsel for the Fourth Respondent would further submit that Section 5 of the Limitation Act, is not at all applicable to a Revision

to be preferred u/s 153(1) of the Act, as the Revisional Authority is not a Court and the Revision preferred u/s 153 of the Act cannot be equated

to a Revision preferred under the Code of Civil Procedure. The Learned Counsel would further submit that unless there is a specific provision in

the Act itself making Section 5 of the Limitation Act applicable, it is not permissible to invoke Section 5 of the Limitation Act, so as to condone the

delay in preferring the Revision. The crux of the contention of the Learned Counsel for the Fourth Respondent is that what is provided in Section

153(1) of the Act, is the period of limitation stricto sensu and therefore, in the present case, since the Revision was filed far beyond the period of

limitation, it was rightly rejected by the Second Respondent which, according to the Learned Counsel does not require any interference at all at the

hands of this Court. The Learned Counsel for the Fourth Respondent has also placed reliance of some of the judgments of the Hon"ble Supreme

Court as well as this Court about which also, I would make reference at the appropriate stages of this order.

8. Before going into the factual matrix of the case, let us have a look into the relevant provisions of the Act. Section 153(1) deals with Revision,

which reads as follows:

153(1) The Registrar may of his own motion or on Application, call for and examine the record of any officer subordinate to him or of the Board

or any officer of a registered Society or of the Competent Authority constituted under sub-section (3) of Section 75 and the Government may, of

their own motion or on Application, call for and examine the record of the Registrar, in respect of any proceedings under this Act or the Rules or

the Bylaws not being a proceeding in respect of which an Appeal to the Tribunal is provided by sub-section (1) of Section 152 to satisfy himself or

themselves as to the regularity of such proceedings, or the correctness, legality or propriety of any decision passed or order made therein; and, if in

any case, it appears to the Registrar or the Government that any such decision or order should be modified, annulled, reversed or remitted for

reconsideration, he or they may pass orders accordingly:

Provided that every Application to the Registrar or the Government for the exercise of the powers under this section shall be preferred within

ninety days from the date on which the proceedings, decision or order to which the Application relates was communicated to the Applicant.

(Emphasis supplied)

Sub-section (2), (3) & (4) of Section 153 of the Act are not extracted as they are not relevant for the purpose of this case.

9. The controversy before this Court now among the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents is in

respect of interpretation of Section 153(1) of the Act. As I have already narrated, according to the Learned Counsel for the Petitioner, this

provision is simply directory and not mandatory, whereas, it is the contention of the Learned Counsel for the Respondents that it is mandatory

which is explicit from the expression ""shall"" employed in the said provision.

10. In this regard, we may usefully refer to the judgment of the Privy Council in *Monterial Street Railway Company v. Normandin*, AIR 1917 P.C.

142 : LR 1917 AC 170. In the said case, the question before the privy Council was whether the word ""shall"" is a decisive matter to decide

whether the provision is mandatory or not. In the said judgment, the Privy Council has held as follows:

....the question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no

general rule can be laid down, and that in every case the object of the statute must be looked at.

In the same judgment, the Privy Council has referred to the ""Maxwell on interpretation of Statutes"", which states as follows:

When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of

this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, and at the same

time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them,

though punishable not affecting the validity of the acts done.

11. The said judgment of the Privy Council came to be approved by the Federal Court in *Biswanath Khemka v. the King Emperor*, 1945 FCR

99. In the said case, the Federal Court had to consider the effect of non Compliance of the provisions of Section 256 of the Government of India

Act, 1935 requiring consultation between public authorities before the conferment of Magisterial powers or of enhanced Magisterial powers, etc.

While rejecting the contention that the said provision is mandatory in nature, the Federal Court has held as follows:

..that non-compliance with that Section would not render the appointment otherwise regularly and validly made, invalid or inoperative.

12. The above judgments of the Privy Council and that of the Federal Court came to be considered by a Constitution Bench of the Hon"ble

Supreme Court in *State of Uttar Pradesh v. Manbodhan Lal Srivastava*, 1958 (2)

LLJ 273. In that case, the Hon"ble Supreme Court was invited to consider Article 320 of the Constitution of India and to declare as to whether it is mandatory or only directory. After referring to the above two judgments of the Privy Council and the Federal Court, in the said judgment, the Hon"ble Supreme Court has held as follows:

An examination of the terms of Article 320 shows that the word ""shall"" appears in almost every paragraph and every clause or sub-clause of that article. If it were held that the provisions of Article 320(3)(c) are mandatory in terms, the other clauses or sub-clauses of that Article, will have to be equally held to be mandatory. If they are so held, any appointments made to the public services of the Union or a State, without observing strictly, the terms of these sub-clauses in Cl.(3) of Art. 320, would adversely affect the person so appointed to a public service, without any fault on his part and without his having any say in the matter.

At the end, in the said judgment, the Hon"ble Supreme Court, emphatically has held as follows:

The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other....

13. In a subsequent judgment of the Constitution Bench of the Hon"ble Supreme Court in *The State of Uttar Pradesh and Others Vs. Babu Ram*

Upadhyaya, , the Hon"ble Supreme Court has held as follows:

The relevant rules of interpretation may be briefly stated thus: When a statute uses the word ""shall"", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with

the provisions is or is not visited by some penalty, the serious or trivial consequences that flow there from, and, above all, whether the object of the legislation will be defeated or furthered.

14. In yet another judgment of the Hon"ble Supreme Court in T.V. Usman Vs. Food Inspector, Tellicherry Municipality, Tellicherry, the same principles have been reiterated.

15. From the above judgments, it is crystal clear that the Hon"ble Supreme Court has taken the consistent view that in order to find out as to

whether a particular provision which contains the expression ""shall"" is mandatory or directory, one should not go by the use of the said expression

alone. There are several other factors which are also to be taken into account by the Court to decide about the same. Admittedly, the expression

used in the proviso to Section 153 of the Act is ""shall"". As has been held by the Hon"ble Supreme Court, one should not be swayed by the mere

use of the said expression in the said provision so as to rush to the conclusion that the said provision is mandatory. If a Revision is not filed within

the time prescribed u/s 153 of the Act, what follows thereafter is a relevant factor to be taken into account to know the nature of the said

provision.

16. Section 153 of the Act empowers the Registrar of the Co-operative Societies to entertain a Revision on an Application not only from an

aggrieved person but from anyone. It further empowers the Registrar to revise an order on his own motion. If we incidentally compare Section 152

of the Act with Section 153 of the Act, it comes to light that an Appeal as against any award or order can made to the Appellate Authority only by

an aggrieved person.

17. As I have already stated, a Revision need not be filed only by an aggrieved person. Per contra, it can be filed by any person. In a given case,

suppose, a person who is not aggrieved by the order prefers a Revision, one may not expect him to adhere to the time prescribed in the Proviso. It

may happen that because of some collusion between the authority and the person interested in the case, both of them may not think of filing a

Revision to the Registrar. If the Proviso is construed as mandatory so as to disable a third party to file a Revision as against the said order after the

time prescribed, then ultimately, an illegal order may get perpetuated and that

would not have been the intention of the legislature. A statute requires to be interpreted so as to advance the cause of justice and to achieve the very object of the Act. Any interruption which will cause damage to the very cause of justice or object of the Act shall be opposed to the rule of law.

18. Further, as per Section 153 of the Act, a Revision can be taken suo moto by the Registrar. If we look into the Proviso, the time prescribed is

only for making an Application to the Registrar and it does not speak of suo moto Revision. Thus, the time prescribed in the Proviso is not with

reference to a suo moto Revision to be initiated by the Registrar. When the Registrar has been empowered to initiate Revision suo moto, not

circumscribed by any period of limitation, it cannot be said that the legislature would have intended to impose an impediment either on a third party

or on the aggrieved person to prefer a Revision strictly within ninety days of time as provided in the proviso. Therefore, I am of the view that the

obvious intention of the legislature is to make it directory so as to encourage the parties to file Revision within 90 days. It cannot be therefore, held

that if a Revision is filed beyond 90 days, the same shall not be entertained.

19. The issue can also be looked into in a different angle. As has been pointed out by the Learned Counsel for the Petitioner, in so far as an

Appeal is concerned, there is a provision for condonation of delay. That means the time limit prescribed in Section 152 of the Act is mandatory.

The reason for making the time limit as provided in Section 152(2) of the Act, as mandatory is understandable. Any Appeal or Revision is a

creature of statute. It is too well settled that an Appeal which is a creature of a statute is the right of an aggrieved party whereas, the Revision is not

a right of the aggrieved party. It is because of this basic difference between the Appeal and the Revision, the legislature has thought it fit to make it

mandatory to provide for limitation for Appeal by making the same as mandatory whereas, making the time prescribed in the Proviso to Section

153(1) of the Act pure and simple as directory.

20. The Learned Counsel for the Petitioner would also refer to Rule 169(5) of the Tamil Nadu Co-operative Societies Rules, 1988 which reads as

follows:

169(5) On receipt of the appeal or the Application for Revision, the Appellate or

Revisional Authority shall, as soon as possible, examine it and ensure that.--

(a) the person presenting the Appeal or the Application has the locus standi to do so;

(b) it is made within the specified time limit in the case of an Appeal, or is accompanied by a Petition referred to in sub-rule (4), as the case may be; and

(c) it conforms to all the provisions of the Act and these Rules.

21. Referring to clause 5(b) of the Rules, the Learned Counsel would submit that if an Appeal is not preferred within the time limit or if the Appeal is not accompanied by a Delay Condonation Petition, the Appeal shall be rejected summarily. The Learned Counsel would point out that there is no analogous provision in respect of Revision.

22. According to the Learned Counsel, this is also a factor which would indicate the intention of the legislature. I find some force in the said

argument. Had it been the intention of the legislature, as rightly pointed out by the Learned Counsel, to make the time limit provided in Section

153(1) as mandatory, surely, the legislature would have made a provision analogous to Rule 169(5)(b) of the Rules thereby mandating the

Revisional Authority to reject an Application, if the same has not been made within the time limit. This, in my considered opinion, clearly goes to

establish that the legislature would not have intended to make the time limit as provided in Section 153(1) of the Act, as mandatory.

23. At this juncture, we may refer to the judgment of a Division Bench of this Court in *P. Eswaramoorthy v. R.J.B. Leoraj*, 2008 (6) CTC 770

(DB): 2008 (3) LLN 244. That was a case where the Division Bench had to answer the following two questions:

1. In matters relating to service conditions of employees of co-operative societies, whether the Industrial Disputes Act (Special Law) or the Co-operative Societies Act (General Law) is applicable ?

2. Whether an employee of a Co-operative Society can invoke the provisions of Section 90 and/or Sections 152/ 153 (Appeal/Revision) for redressal of his service grievances ?

24. After having elaborately dealt with number of judgments of the Hon''ble

Supreme Court and various High Courts, the Division Bench ultimately answered the questions as follows:

24. Section 153 of 1983 Act is a departure from S.97 of the 1961 Act and it is wider in nature. Power has been specifically conferred on the

Revisional Authority under 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 under

S.75(3) of the 1983 Act. Therefore, the employees of a co-operative society can approach the Registrar or any competent Authority under 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 for

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.

25. From the above judgment, it is crystal clear that an employee of a co-operative society has got remedies available both under the provision of

the Tamil Nadu Co-operative Societies Act as well as under the Industrial Disputes Act. In a given case, suppose, an employee who has got both

remedies available for him approaches the Labour Court by raising an industrial dispute regarding his termination from service, under the Industrial

Disputes Act, there is no limitation and therefore, he can raise the dispute within a reasonable time. If for any reason, he chooses to file a Revision

u/s 153 of the Act, belatedly, it cannot be said that his remedy is barred by limitation. It cannot be said that while enacting Section 153 of the Act,

the legislature was unaware of the provisions of the Industrial Disputes Act. When there is no period of limitation for an employee to raise an

industrial dispute, I am firm in my view that there shall be no such period of limitation for him to file a Revision under the Co-operative Societies

Act. Therefore, if we read Section 153 of the Act, in the context of the remedies available under the Industrial Disputes Act, it will surely give the

impression that what is contained in the proviso to Section 153 of the Act, is not at all mandatory and it is only directory.

26. The Learned Counsel for the Petitioner has placed reliance on an unreported judgment of a learned Single Judge of this Court (Hon''ble Mr.

Justice P. Jyothimani) in W.P (MD) No. 4903 of 2010 dated 15.4.2010. In that case, precisely, the question before the learned Single Judge was

as to whether the time prescribed in Section 153(1) of the Act is mandatory or directory. In paragraph No. 6 of the said judgment, the learned

Judge has held as follows:

6. On the present factual matrix, by entertaining the statutory Revision beyond the period of limitation, no gross injustice is going to be caused

either to the department or to any other individuals in the sense that by entertaining the Revision, the Revisional authority is going to decide the

validity or otherwise of the order of dismissal passed against the Petitioner. Therefore, by foreclosing the right of the Petitioner on the ground of

limitation, certainly an injustice would be caused to the Petitioner's case.

27. At this juncture, I may once again refer to the judgment of the Hon''ble Supreme Court in The State of Uttar Pradesh and Others Vs. Babu

Ram Upadhyaya,). As I have already extracted in the said judgment, the Hon''ble Supreme Court has held that it is a matter to be looked into as to

what are the serious or trivial consequences that flow there from, and, above all, whether the object of the legislation will be defeated or furthered.

28. In this case, as has been held by the Hon''ble Mr. Justice P. Jyothimani, in W.P (MD) No. 4903 of 2010 dated 15.4.2010, by entertaining a

Revision beyond 90 days time prescribed in the proviso, there is going to be no serious adverse consequences. Per contra, entertaining the

Revision though belatedly filed will only lead to correcting either an illegality or irregularity or an injustice caused to the party, if any. Thus, it will

only further the cause of justice.

29. The Learned Counsel for the Respondents would point out that the legislature has made a provision in Section 152 of the Act empowering the

Appellate Authority to condone the delay whereas, such provision has not been made in Section 153 of the Act. From this, the Learned Counsel

would contend that the legislature has consciously intended to make the Proviso to Section 153 as mandatory. Though attractive, in my considered

opinion, the said argument cannot be countenanced. As I have already held, the intention of the legislature in omitting to make a provision for

condonation of delay is only to indicate that the time prescribed in Section 153(1) of the Act is only directory and not mandatory. That is the

reason why, as I have already concluded, in Rule 169 of the Rules also, there is no provision enabling the Revisional Authority to reject a Revision

on the ground that the same has been filed beyond the period of 90 days as provided in Proviso to Section 153(1) of the Act.

30. Next, the Learned Counsel for the Respondents would submit that there is no power vested with the Revisional Authority to condone the

delay. Therefore, according to the Learned Counsel, the delay cannot be condoned by the Revisional Authority so as to entertain a Revision which

is filed beyond the period of time prescribed. This argument deserves to be rejected, because, as I have also held, the time prescribed in Section

153(1) of the Act cannot be equated to limitation as it is only directory.

31. Next, the Learned Counsel for the Respondents would submit that Section 5 of the Limitation Act is not applicable because there is no

specific provision made in the Act, making the provisions of the Limitation Act applicable. To substantiate this contention, the Learned Counsel has

relied on some of the judgments of the Hon'ble Supreme Court, which, I feel unnecessary to refer to in this order, because I have held that the

time prescribed in Section 153(1) of the Act is only directory and not mandatory and therefore, the question of applicability of Section 5 of the

Limitation Act does not arise at all. Since there is no limitation for preferring Revision, there is no question of condonation of delay.

32. Next, the Learned Counsel would submit that assuming that what is contained in Section 153(1) of the Act is only directory, even then, such

Revision should be filed within a reasonable time. There can be no controversy over this legal proposition. In the case on hand, according to the

Learned Counsel, the Revision was filed after two years of the impugned order and therefore, at least on facts, it should be held that the Revisional

Authority was right in rejecting the Revision. I cannot have any second opinion that a Revision is to be filed within a reasonable time. What is

reasonable depends upon the facts and circumstances of each case and the same cannot be put in any strait-jacket formula.

33. In this case, according to the Petitioner, on a wrong advice given, he approached the Labour Officer for conciliation. The matter was pending

before the Labour Officer for quite a long time. At last, the conciliation failed. It was thereafter only, he was advised to file Revision. Though the

Revision was filed nearly after two years of the passing of the impugned order, there are justifiable reasons to accept the explanation by the

Petitioner for the said delay. Therefore, going by the facts and circumstances of the case, I am of the view that it cannot be said that the Revision

has not been filed within the reasonable time. Thus, factually also, the Respondent has got no case.

34. Since, I am inclined to set aside the impugned order of the Second Respondent on the above ground alone, I do not want to go into the other

merits of the matter. I leave them all open for the Revisional Authority to consider. In the result, the Writ Petition is allowed, the impugned order of

the Second Respondent is set aside and the Revision is remanded back to the file of the Second Respondent who shall entertain the Revision,

afford sufficient opportunity to both parties including personal hearing and then, pass final order within a period of three months from the date of

receipt of a copy of this order. No costs.