
(2014) 11 MAD CK 0236
In the Madras High Court
Case No : Writ Appeal No. 173 of 2011

S. Selvakumar

APPELLANT

Vs

State of Tamilnadu

RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Industrial Disputes Act, 1947 — Section 10(1), 33(C)(2)
Limitation Act, 1963 — Section 10, 11, 12, 12, 13, 13
Payment of Gratuity Act, 1972 — Section 7(7)
Probation of Offenders Act, 1958 — Section 4(1), 4(3)
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 25(2)
Tamil Nadu Co-operative Societies Act, 1983 — Section 12, 152, 153, 153(1), 154

Citation : (2015) LabIC 459

Hon'ble Judges : V. Dhanapalan, J;G. Chockalingam, J

Bench : Division Bench

Judgement

V. Dhanapalan, J.

1. Heard Mr.S.R.Rajagopal, learned counsel for the appellant, Ms.T.P.Savitha, learned Government Advocate appearing for respondents 1 and 3 and Mr.R.Parthiban, learned counsel appearing for the 2nd respondent.

2. Aggrieved by the order dated 08.06.2010 made in W.P.No. 6618 of 2009, whereby the relief sought to quash the order of the 1st respondent vide Letter No. 9785/CP1/2006-1, dated 14.11.2008 and the consequential direction to the 3rd respondent to take the Review of the petitioner on file and deal with the same in accordance with law, stood dismissed, the writ petitioner is once again before this Court by way of this Writ Appeal.

3. It was the case of the writ petitioner/appellant that he joined the services of the 2nd respondent ? Cooperative Bank as Peon (sub-staff) on 28.03.1969; thereafter, he undertook cooperative training to qualify himself for promotion; subsequently promoted as a Senior Assistant/Cashier on 13.02.1978 and discharged his functions and duties to the best of his abilities. While so, he was

charged for shortage of cash in the vault, which was in the joint custody of the Manager of the 2nd respondent Bank and himself. He was suspended on 27.05.1992. But, the Manager of the 2nd respondent Bank was not suspended at that point of time. Thereafter, in a departmental enquiry, both the Manager and the writ petitioner were found guilty. The writ petitioner was penalized in reduction of rank by an order dated 06.07.1993 from the post of cashier and reverted to the rank of sub-staff I. Aggrieved by the said order, he preferred a Revision before the Registrar of Co-operative Societies, the 3rd respondent herein, who, after examining the case, vide proceedings No. 1416/94 A1, dated 04.03.1995, modified the order of punishment to the extent that the reversion only could be only as a Junior Assistant and not to the rank of sub-staff I.

3.1. Pursuant thereto, the 2nd respondent posted the writ petitioner as Junior Assistant on 08.03.1995 in the time scale of pay of Rs. 565-30/3-655-35/5-830-45/4-1010-55/7-1395. Following the said proceedings, the 2nd respondent, in his Letter No. 1081/95 A1, dated 14.11.1995 fixed his basic pay at Rs. 875/- with effect from 09.07.1993. Challenging the said fixation of basic pay, the writ petitioner preferred a Revision before the 3rd respondent. The said Revision was returned in R.C.No. 190333/95, SF1, dated 09.01.1997 as defective. Being advised to represent the same, the writ petitioner represented the revision on 19.04.1997 seeking to fix the correct pay scale and fixation of seniority. In the meantime, the writ petitioner preferred a representation with the 2nd respondent seeking fixation of pay scale and seniority, to which the General Manager of the 2nd respondent issued a Letter vide Ref.No. 1371/97 A1, dated 30.06.1997 holding that there was no question of reconsidering his fixation of scale of pay and seniority.

3.2. Thereafter, under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as the "Act"), the writ petitioner preferred a petition for settlement of dispute on 26.10.1997 and the same was taken on file in Dispute No. 495 of 1997-98. On 12.12.2000, orders were reserved in the said Dispute. While so, based on the order dated 24.08.2001 of the Judicial Magistrate No. II, Kulithalai in Criminal Proceedings C.C.No. 92/99, the writ petitioner was removed from the services of the 2nd respondent on 29.10.2001 stating that he was convicted along with the Manager for the charges. Aggrieved by the same, the writ petitioner preferred an appeal before the Principal Sessions Judge, Karur in C.A.No. 42/2001, who, by an order dated 07.01.2002 confirmed the conviction, but set aside the sentence and released him under Sections 4(1) and 4(3) of the Probation of Offenders Act, 1958. However, the Principal Sessions Judge, Karur, ordered that the benefits that would accrue on the writ petitioner under Section 12 of the Probation of Offenders Act would be available to him and further, in order to enable him to get reinstated, the fine amount of Rs. 1000/- was also ordered to be refunded. Thus, by the said order of the Sessions Judge, the writ petitioner was entitled to get all the benefits contemplated under Section 12 of the Act.

3.3. After being released under the Probation of Offenders Act, the writ petitioner submitted a representation to the Special Officer of the 2nd respondent Bank on 12.01.2002 requesting him to reinstate him into service, but the same was refused by an order dated 18.05.2002 by the 2nd respondent. Aggrieved by the said reply, he preferred a Writ Petition before this Court in W.P.No. 34142 of 2002, wherein, by an order dated 31.01.2006, the learned Single Judge set aside the order of punishment of dismissal from service dated 29.10.2001 and the refusal order of the 2nd respondent dated 18.05.2002 and also directed the 2nd respondent to treat the period of suspension i.e. from 27.05.2002 till the date of reinstatement as period of continuous service.

3.4. In furtherance of the same, the writ petitioner was reinstated as Assistant on 03.05.2006 and retired from service on 29.02.2008. During the pendency of the writ petition in W.P.No. 34142 of 2002, since no orders were passed in his petition filed under Section 90 of the Act by the District Registrar, Trichy and as the writ was pending, on being advised, to seek remedy before the Labour Court, the writ petitioner submitted a petition on 16.09.2002 not pressing the relief in the petition filed before the District Registrar and the same was allowed by an order dated 19.09.2002. Thereafter, the writ petitioner preferred an application under Section 33(C)(2) of the Industrial Disputes Act, 1947 (in short "I.D. Act") in C.P.No. 64/2002 and the Labour Court vide order dated 07.06.2002 dismissed his claim petition on the ground that the remedy of the applicant is to raise an Industrial Dispute under Section 10(1) of the I.D. Act for adjudication.

3.5. In view of the directions of the Labour Court, the writ petitioner preferred a Memorandum of Revision Petition before the 3rd respondent on 17.08.2005 under Section 153 of the Act. The 3rd respondent, without considering any of the materials placed and taking into account the various proceedings, rejected the appeal by an order dated 18.11.2005. Against the same, the writ petitioner preferred a petition seeking condonation of delay, thereby narrating the entire reasons for the delay. But the same was rejected. In spite of such explanation, the impugned order dated 14.11.2008 came to be passed by the 1st respondent confirming the order dated 18.11.2005 passed by the 3rd respondent rejecting the revision petition of the writ petitioner. Being aggrieved by the same, the writ petitioner filed a Writ Petition in W.P.No. 6618 of 2009 seeking to quash the same and for a consequential direction to the 3rd respondent to take the Review filed by him on file and deal with the same in accordance with law.

4. Resisting the said submissions of the writ petitioner, the 2nd respondent/ Tiruchirappalli District Central Co-operative Bank Ltd. filed counter affidavit to the following effect.

4.1. In view of the fact that there are no real and justifiable reasons for the inordinate delay of 124 days in filing the Review Petition before the 1st respondent on 22.03.2006 on the orders of the 3rd respondent dated 18.11.2005, as against the permitted time limit of 90 days allowed under Section 154 run with Rule 170 of the Act, the 1st respondent had acted as per the

provisions of the law by rejecting the Review Petition as "time barred". In the said Act and Rules, there are no provisions also for the condonation of delay in preferring the Review Petition belatedly. The reasons adduced by the petitioner that he has approached various other Forums for his reliefs are not acceptable, as they are all flimsy grounds and ignorance of law is of no excuse. Besides, there are no new and important facts which have come to the knowledge of the petitioner after the filing of the Revision Petition to the 3rd respondent, to justify the Review Petition to the 1st respondent. Therefore, on these two scores, the 1st respondent has rightly rejected the Review Petition on 14.11.2008, which needs no necessity and justification to direct the 1st respondent to reconsider and take on file the Review Petition already rejected.

4.2. Based on the judgment passed in W.P.No. 34142/2002 to set right all the reliefs claimed by the petitioner, the 2nd respondent Bank Management entered into an 18(1) Settlement under I.D. Act with the petitioner/employee on 03.05.2006, in which his basic pay was fixed as Rs. 7,150/- in the time scale of pay of Rs. 3,050-200/4, 3850-220/8-5610-300/4, 6810-340/3-7830-370/4-9310 besides specific clauses of without back wages till he joins the service with continuity of service for gratuity payment and suspension period from 27.05.1992 to 09.07.1993 is treated as non-employment and no monetary benefit and then reinstated in service. The petitioner having agreed to all these terms and conditions stipulated under 18(1) Settlement cannot now claim for full back wages with all other monetary benefits for the past as well as in the future.

4.3. The order dated 14.11.2008 passed by the 1st respondent confirming the order dated 18.11.2005, is just, reasonable and law abiding one, as he has correctly taken note of the petitioner's grievance in challenging the 3rd respondent's order by way of appeal/review. Further, the reasons adduced for the delay in filing the Review Petition was duly considered by the 1st respondent and only then an order dated 14.01.2008 was passed. The delay in filing the review petition is willful negligence and ignorance of law and procedures on the part of the writ petitioner, to which the respondents are not to be blamed. Even in the Revision Petition to the 3rd respondent also, there was inordinate delay of 8 to 9 years (on the order No. 1081/95 A1, dated 14.11.1995 and the order dated 31.03.1997), which clearly proves the lethargic attitude and inactiveness on the part of the petitioner in such matters. Therefore, the Revision Petition was also rejected on that score.

4.4. Further, in view of 18(1) settlement arrived at between the Management and the employee/petitioner, the question of refixation of pay and other benefits will never arise. The seniority is restored for retirement benefits.

For the said reasons, the 2nd respondent sought dismissal of the Writ Petition.

5. The learned Single Judge, after hearing the learned counsel on either side, by an order dated 08.06.2010, reiterating the stand of the 2nd respondent in paragraphs 5 and 6 of the counter affidavit, holding that there is no scope to

entertain the writ petition, dismissed the same. Challenging the same, the writ petitioner is once again before this Court by way of this Appeal.

6. Mr.S.R.Rajagopal, learned counsel appearing for the appellant would contend that the learned Single Judge failed to note that the order dated 14.11.2008 passed by the 1st respondent is a non-speaking order and does not stand scrutiny to the rigors of law. He would add that the learned Single Judge failed to appreciate that the 3rd respondent had not drawn on the various materials that were placed before it, explicating the justifiable reasons for the delay, before it erroneously concluded in holding the petition filed by the appellant was barred by limitation. It is also his contention that the learned Single Judge has assiduously subscribed to paragraph 5 of the counter affidavit filed by the 2nd respondent that enumerates the settlement entered into between it and the appellant herein, whereby the appellant had allegedly forgone his right over the back wages, and failed to discern the inextricable circumstances that had made the appellant to necessarily sign the same. He would finally add that Section 5 of the Limitation Act applies to this case and hence the review petition was not time barred.

7. In support of his case, learned counsel for the appellant has relied on the following decisions :

(i) Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others,

"11. In this case the differentiation has been sought to be justified in view of the nature and the types of the work done, that is, on intelligible basis. The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less ? it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object sought for, as reiterated before a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the court unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide either in law or in fact. In the light of the averments made in the facts mentioned before, it is not possible to say that the differentiation is based on no rational nexus with the object sought for to be achieved. In that view of the matter this application must fail and it is accordingly dismissed without any order as to costs."

(ii) Union of India Vs. M/s Popular Construction Co.,

"7. There is no dispute that the 1996 Act is a "special law" and that Section 34 provides for a period of limitation different from that prescribed under the Limitation Act. The question then is ? is such exclusion expressed in Section 34 of the 1996 Act? The relevant extract of Section 34 reads:

34. Application for setting aside arbitral award.?(1)-(2) * * *

(3) An application for setting aside may not be made after three months have

elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the Arbitral Tribunal:

Provided that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

8. Had the proviso to Section 34 merely provided for a period within which the court could exercise its discretion, that would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act because "mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5.

(iii) Union of India (UOI) and Others Vs. Dineshan K.K.,

"27. Thus, the short question requiring our consideration is whether having admitted in their affidavit referred to hereinabove, the ?apparent disparity? and ? anomaly? in the pay scales of Radio Mechanics, the administrative authorities, the petitioners herein, could be permitted to perpetuate apparent discriminatory differentiation in the pay scales because of the disparity in pre revised and revised scales of the personnel of Assam Rifles prior to the recommendations of the Fourth Pay Commission, irrespective of the identity of their powers, duties and responsibilities with other paramilitary forces. In our considered opinion, in view of the total absence of any plea on the part of the Union of India that Radio Mechanics in other paramilitary forces were performing different or more onerous duties as compared to the Radio Mechanics in Assam Rifles, the impugned decision of the Government was clearly irrational and arbitrary and thus, violative of Article 14 of the Constitution."

(iv) Om Prakash Vs. Ashwani Kumar Bassi,

"24. Section 13-B is a power given to a non-resident Indian owner of a building to obtain immediate possession of a residential building or scheduled building when required for his or her use or for the use of anyone ordinarily living with and dependent on him or her. The right has been limited to one application only during the lifetime of the owner. Section 18-A(2) of the aforesaid Act provides that after an application under Section 13-B is received, the Controller shall issue summons for service on the tenant in the form specified in Schedule II. The said form indicates that within 15 days of service of the summons the tenant is required to appear before the Controller and apply for leave to contest the same. There is no specific provision to vest the Rent Controller with authority to extend the time for making of such affidavit and the application. The Rent Controller being a creature of statute can only act in terms of the powers vested in him by statute and cannot, therefore, entertain an application under Section 5 of the Limitation Act for condonation of delay since the statute does not vest him with such power."

(v) A. Aruljothi Vs. The Deputy Commissioner of Labour, Salem and Another,

7. A reading of the said provision shows that Section 29(2) of the Limitation Act apply in so far as and to the extent to which they are not expressly excluded by such special law or local law. I have already referred to the fact that though there is no provision in the Tamil Nadu Payment of Subsistence Allowance Rules for condonation of delay, there is no specific Rule excluding the invocation of Section 5 of the Limitation Act. In the case of Vidyacharan Shukla Vs. Khubchand Baghel and Others, , the Constitution Bench of the Supreme Court after referring the conclusion of Sinha, C.J., in the case of Kaushalya Rani Vs. Gopal Singh, , has held that,

Section 29(2) of the Limitation Act would apply even to a case where there is a difference between the special law and the Limitation Act arose by the omission to provide for a limitation to a particular proceeding under the Limitation Act.

(vi) Indira Devi Vs. Inspector General of Registration and Others,

7. In addition to this, as rightly pointed out by the learned counsel for the petitioner, inasmuch as there is no specific exclusion of Section 5 of the Limitation Act in the Rules, we are of the view that taking note of the fact that copy of the order passed by the second respondent dated 28.11.2002 has been served/received by the appellant only on 17.12.2002 and the appeal filed by the appellant on 10.02.2003 before the first respondent is well within time. The first respondent has committed error in dismissing the appeal stating that the same is barred by limitation. The impugned order of the first respondent dated 10.03.2003 is set aside. The first respondent is directed to hear the appeal on merits within a period of three months from the date of receipt of copy of this order after affording opportunity to all the parties concerned.

(vii) Ashok Vs. The Competent Authority and District Revenue Officer and Others,

"13. Lastly, it is to be seen whether the delay on the part of the Competent Authority in filing in the O.As. is worth condoning. In the cases on hand, admittedly, applications for making the interim attachment absolute were filed with a delay of 308 days and 276 days respectively. According to the Competent Authority, this is because, he had to examine several parties involved in the matter viz. financial establishments in default, accused, lured depositors and other Government Officers. By common sense and by looking at things from the practical point of view, it can easily be presumed how much time the competent authority may consume in fulfilling his obligations, which are primarily directed towards protecting the interest of the depositors, at large. Needless to say, without consuming the required time, the Competent Authority may not be able to do justice to his role as an officer engaged by the Government to protect the interest of the depositors which is of paramount importance. Undisputedly, the interim applications ought to have been filed by the Competent Authority within a period of thirty days as per Section 4(4) of the TNPID Act. Yet, I am of the opinion that as held by the Supreme Court in its decision reported in Hukumdev

Narain Yadav Vs. Lalit Narain Mishra, , the Court should also consider the aspects of feasibility and practicability of the matter while the Competent Authority discharges his duty which involves cumbersome and time-consuming formalities."

(viii) CDJ 2012 MHC 2583 (M.Saravanan & another Vs. The Joint Registrar of Co-operative Societies, Namakkal & another

7. In such view of the matter, I am of the considered view that the stand taken by the respondent in returning the revision filed by the petitioner only on the ground that the revision has been presented after the period of 90 days should not stand in the right of the petitioner to agitate his right on the merit of the revision. In these circumstances, the impugned order of return made by the respondent stands set aside and the Writ Petition stands allowed. However, if the revision filed by the petitioner is re-presented within a period of one week from the date of receipt of a copy of this order, the revisional authority shall take note of the reasons adduced by the petitioner for entertaining the revision beyond the period of limitation and pass appropriate orders on merits and in accordance with law, within a period of four weeks thereafter. No costs.

(ix) N.P. Palanisamy Vs. State of Tamil Nadu,

32. Nextly, 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.

(x) P. Murugesan Vs. The Joint Registrar of Co-operative Societies, Dindigul Division

"5. Further, the condonation of delay is a matter of discretion and if the reason for such delay is properly explained, the same has to be accepted. The limitation is not to destroy any right of individuals and the same has to be taken with utmost care and consideration as it was held by this Court in N. Balakrishnan Vs. M. Krishnamurthy, .

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."

(xi) R.Anandalingam Vs. The Joint Registrar Co-operative Societies (W.P.No.

19114 of 2012)

"9. On an overall assessment of the facts and circumstances of the present case and also this Court, taking note of the attendant facts and circumstances of the present case in an integral manner, is of the considered view that the 1st respondent had dismissed the Revision Petition at the threshold by passing the impugned order on 25.06.2012 based on the simple ground that the same was not filed within the prescribed time limit as per the Tamil Nadu Co-operative Societies Rules, 1988. At this stage, a perusal of the impugned order shows that there is no indication in the said order that the petitioner was provided with an opportunity to make any representation or project his case in regard to the aspect of delay. In fact, the impugned order is conspicuously silent in this regard."

(xii) S.Aruna Vs. The Registrar of Co-operative Societies (W.P.No. 18934 of 2013)

?26. From the above judgment, it is crystal clear that an employee of a Co-operative society has got remedies available both under the provisions 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 choses to file a Revision under Section 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. Where 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.

8. On the other hand, Mr.R.Parthiban, learned counsel appearing for the 2nd respondent/Bank would contend that the appellant cannot now claim full back wages with all other monetary benefits for the past as also the future, when he has agreed to all the terms and conditions stipulated under 18(1) Settlement. He would further contend that the delay in filing the review petition is willful negligence and ignorance of law and procedures on the part of the appellant, to which the respondents are not to be blamed. It is his stand that the 1st respondent, vide his order dated 14.11.2008, was justified in rejecting the review petition of the appellant on considering all the reasons adduced by the appellant and as per the provisions of law under the Co-operative Societies Act and the Rules.

9. To substantiate his stand, learned counsel for the 2nd respondent has relied

on a decision reported in *Om Prakash Vs. Ashwani Kumar Bassi*, wherein, the Honourable Supreme Court has held as under:

"22. The decision in *Mukri Gopalan* case relied upon by Mr. Ujjal Singh is distinguishable from the facts of this case. In the facts of the said case, it was the District Judges who were discharging the functions of the appellate authority and being a court, it was held that the District Judge, functioning as the appellate authority, was a court and not *persona designata* and was, therefore, entitled to resort to Section 5 of the Limitation Act. That is not so in the instant case where the Rent Controller appointed by the State Government is a member of the Punjab Civil Services and, therefore, a *persona designata* who would not be entitled to apply the provisions of Section 5 of the Limitation Act, 1963, as in the other case. The decision in *Gaya Prasad Kar* case is also of little help to the petitioner since under the West Bengal Premises Tenancy Act, 1956, powers have been vested in the Rent Controller to extend the time for making deposits of arrears of rent, which would make the provisions of the Limitation Act applicable in such specific instances.

23. The instant case stands on a different footing and, in our view, is covered by the decision of this Court in *Gaya Prasad Kar* case, wherein it was held that the competent authority had no other option but to pass an order of eviction since it had no power to condone the delay in filing an application for leave to contest."

10. In the same line, learned Government Advocate would submit that the order passed by the 1st respondent is just, reasonable and law abiding one, as he has correctly taken note of the petitioner's grievance in challenging the 3rd respondent's order by way of appeal/review. In support of her stand, learned Government Advocate appearing for respondents 1 and 3 has relied on the following decisions:

(i) *Sakuru Vs. Tanaji*,

"3. After hearing both sides we have unhesitatingly come to the conclusion that there is no substance in this appeal and that the view taken by the Division Bench in *Venkaiah* case is perfectly correct and sound. It is well settled by the decisions of this Court in *town Municipal Council v. Presiding Officer, Labour Court*², *Nityananda M. Joshi v. Life Insurance Corporation of India*³ and *Sushila Devi v. Ramanandan Prasad*⁴ that the provisions of the Limitation Act, 1963 apply only to proceedings in "courts" and not to appeals or applications before bodies other than courts such as quasi-judicial tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under the Codes of Civil or Criminal Procedure. The Collector before whom the appeal was preferred by the appellant herein under Section 90 of the Act not being a court, the Limitation Act, as such, had no applicability to the proceedings before him. But even in such a situation the relevant special statute may contain an express provision conferring on the Appellate Authority, such as the Collector, the power to extend the prescribed

period of limitation on sufficient cause being shown by laying down that the provisions of Section 5 of the Limitation Act shall be applicable to such proceedings. Hence it becomes necessary to examine whether the Act contains any such provision entitling the Collector to invoke the provisions of Section 5 of the Limitation Act for condonation of the delay in the filing of the appeal. The only provision relied on by the appellant in this connection is Section 93 of the Act which, as it stood at the relevant time, was in the following terms:

93. Limitations.—Every appeal and every application for revision under this Act shall be filed within sixty days from the date of the order against which the appeal or application is filed and the provisions of the Indian Limitation Act, 1908 shall apply for the purpose of the computation of the said period.

On a plain reading of the section it is absolutely clear that its effect is only to render applicable to the proceedings before the Collector, the provisions of the Limitation Act relating to "computation of the period of limitation". The provisions relating to computation of the period of limitation are contained in Sections 12 to 24 included in Part III of the Limitation Act, 1963. Section 5 is not a provision dealing with "computation of the period of limitation". It is only after the process of computation is completed and it is found that an appeal or application has been filed after the expiry of the prescribed period that the question of extension of the period under Section 5 can arise. We are, therefore, in complete agreement with the view expressed by the Division Bench of the High Court in Venkaiah case that Section 93 of the Act did not have the effect of rendering the provisions of Section 5 of the Limitation Act, 1963 applicable to the proceedings before the Collector.

4. Our attention was drawn to the fact that subsequent to the decision of the High Court, the State Legislature has enacted the Andhra Pradesh Tenancy Laws (Amendment) Act, 1979 ? Act 2 of 1979, whereby Section 93 of the Act has been amended and the provisions of Section 5 of the Limitation Act, 1963 have now been expressly made applicable to appeals and revisions preferred under Sections 90 and 91 of the Act. We see no force in the contention advanced on behalf of the appellant that the said amendment is clarificatory in nature. The provisions of Section 93 as they stood prior to this amendment were free from any ambiguity and called for no clarification. The legislature has also not given any indication of any intention to clarify but, on the other hand, what has been done by it is to amend the section with only prospective effect. The amended provisions of Section 93 are, therefore, of no assistance to the appellant in this case which is governed by the section as it was originally enacted."

(ii) 2012 - III- LLJ - 617 (Kant) (Karnataka State Road Transport Corporation, Bangalore Vs. Deputy Labour Commissioner and the Appellate Authority, Bangalore and others)

"23. In this background, when the limitation prescribed under Section 7(7) of the Payment of Gratuity Act, 1972 is examined, it would clearly go to show that

certified copy of the order dated March 12, 2009 was furnished to Corporation on September 15, 2009 and appeal in question was required to be filed within 60 days from the date of receipt of certified copy of the order i.e. on or before November 14, 2009 i.e., excluding copying delay (from May 25, 2009 to September 15, 2009). Admittedly, in the instant case, appeal in question has been filed on October 26, 2009, which was well within the period of limitation as prescribed under Section 7(7) of the Act."

(iii) Special Officer, Salem Co-operative Primary Land Development Bank Vs. Deputy Commissioner of Labour and Another,

"13. As I have already pointed out, S. 29 of the Limitation Act is not at all applicable to a proceeding before the authorities under the Payment of Gratuity Act, 1972. Secondly, the Proviso to S. 25(2) of Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 is in negative form, while the Proviso to S. 7(7) of the Payment of Gratuity Act has contained only a positive word. Hence, it cannot be contended that there is a prohibition in the former enactment and the same is not in the later enactment."

(iv) W.A.(MD) No. 485 of 2005 (Tmt.Muthammal Transports Vs. P.Swathanthirarajan and another)

"19. In view of Section 89 of the Tamil Nadu Motor Vehicles Act, 1988 and Rules 157(1), (2), (2-g) and (3) of the Tamil Nadu Motor Vehicle Rules, 1989 in a writ petition filed against the order of the authority after the prescribed period (in the case on 30 days), the High Court has no power to extend the period of limitation by exercising jurisdiction under Article 226 of the Constitution of India, or direct the appellate authority to consider the appeal on merits without reference to the period of limitation. In view of the above conclusion, the direction of the learned Judge in para 3 of the order dated 16.09.2005 made in W.P.No. 8572 of 2005, granting 10 days time to file an appeal before the appellate authority cannot be sustained and the same is set aside. Consequently, the writ appeal is allowed. ..."

11. We have considered the submissions made by the learned counsel and also gone through the records.

12. What was challenged in the Writ Petition was the order of the first respondent, dated 14.11.2008, dismissing the review petition filed by the appellant, as not maintainable. The said review petition was filed by the appellant against the order of the third respondent, dated 18.11.2005, passed in the revision petition. The relief sought for in the revision petition before the third respondent was for payment of arrears with all consequential benefits from 27.05.1992 to the date of his services and for proper fixation of seniority. The third respondent rejected the revision petition filed by the appellant, stating that the said revision petition was time barred. While rejecting the petition, he also gave a reason that the proceedings challenged in the revision petition were dated 14.11.1995 and the review petition was filed on 17.08.2005, which was after a lapse of more than nine years.

13. The history behind the above developments was that the appellant joined the services of the second respondent ? Cooperative Bank as Peon (sub-staff) on 28.03.1969 and, thereafter, was promoted as a Senior Assistant/Cashier on 13.02.1978. He was charged for shortage of cash in the vault and suspended on 27.05.1992. He was found guilty in the departmental enquiry. He was penalised by reduction of rank from the post of cashier and reverted to the rank of sub-staff-I. Aggrieved by the said order, he preferred a Revision Petition before the Registrar of Co-operative Societies, the third respondent, who, after examining the case, vide proceedings No. 1416/94 A1, dated 04.03.1995, modified the order of punishment to the extent that the reversion only could be only as a Junior Assistant and not to the rank of sub-staff-I. Pursuant thereto, the second respondent, by his proceedings, dated 14.11.1995, posted the appellant as Junior Assistant in the time scale of pay of Rs. 565-30/3-655-35/5-830-45/4-1010-55/7-1395, thereby fixing the basic pay at Rs. 875/- with effect from 09.07.1993. It was those proceedings, which led to the filing of the revision petition before the third respondent.

14. In this context, the relevant provisions that are necessary for consideration are : Sections 153 and 154 of the Tamil Nadu Co-operative Societies Act, 1983. The said Sections read as under :

14. 1. Section 153 :

"153.Revision.- (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 by-laws 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 appellant.

(2) No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representations.

(3) The Registrar or the Government, as the case may be, may suspend the execution of the decision or order pending the exercise of his or their power under sub-section (1) in respect thereof.

(4) The Registrar or the Government may award costs in any proceedings under this section to be paid either out of the funds of the society or by such party to the application for revision as the Registrar or the Government may deem fit."

14. 2. Section 154 :

"154. Review.- (1) The appellant or the applicant for revision or the respondent may apply for the review of any order passed under section 152 or section 153 on the basis of the discovery of new important facts which, after the exercise of due diligence, were not then within his knowledge or could not be produced by him when the order was made or on the basis of some mistake or error apparent on the face of the record or for any other sufficient reasons :

Provided that no application for review shall be preferred more than once in respect of the same order.

(2) Every application for review shall be preferred within such time and in such manner as may be prescribed.

(3) The decision or order passed on the application in review shall be final.

(4) The authority competent to pass orders on an application for review may pass such interlocutory orders pending the decision on the application for review as that authority may deem fit.

(5) The authority referred to in sub-section (4) may award costs in any proceedings for review to be paid either out of the funds of the registered society or by such party to the application, for review as it may deem fit."

15. Keeping the above provisions in mind, if we see the present case, not satisfied with the order of the second respondent, dated 14.11.1995, posting the appellant as Junior Assistant in the time scale of pay of Rs. 565-30/3-655-35/5-830-45/4-1010-55/7-1395, and fixing the basic pay at Rs. 875/- with effect from 09.07.1993, the appellant had preferred a revision petition before the third respondent on 17.08.2005 after nearly a decade, whereupon, the third respondent passed an order, rejecting the said revision petition, as time barred. As per Section 153, the revision petition has to be preferred within ninety days from the date on which the proceeding to the revision was communicated. Therefore, the said rejection of the revision petition, in our considered opinion, is perfectly justified. Subsequently, the appellant, as against the said rejection of the revision petition, preferred a review before the first respondent/Government. Under Section 154, the aggrieved party may file an application for review of any order passed under Section 152 or Section 153 on the basis of the discovery of new important facts which, after the exercise of due diligence, were not then within his knowledge or could not be produced by him when the order was made or on the basis of some mistake or error apparent on the face of the record or for any other sufficient reasons.

16. In this context, it is important to mention that review of any proceedings,

decision or order shall only be made by the authority, who passed the order under review, but not any other authority. However, in this case, the appellant, as against the order of the third respondent, dated 14.11.2005, had preferred the review petition, dated 22.03.2006, before the first respondent, which also, in our view, is not permissible. Section 154 does not provide for preferring a review petition as against the order of one authority before another authority. The above position was also made clear by the first respondent in his proceedings, dated 14.11.2008, which were impugned in the writ petition.

17. It is also not out of place to state that the appellant, having agreed to all the terms and conditions stipulated under 18(1) Settlement with the management, cannot cross his limits and claim for full back wages with all other monetary benefits for the past as well as the future period.

18. Coming to the contention of the learned counsel for the appellant that Section 5 of the Limitation Act will apply to the case of the appellant and hence the review petition was not time barred, it is necessary to extract Section 5, which reads as under :

Section 5 :

"5. Extension of prescribed period in certain cases. Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation. The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

19. Though the above provision provides for admission of any appeal or application after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within the period, the explanation clause would make it clear that in order for admission of appeal or application, the appellant or the applicant has to establish that he was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period. In this case, the appellant has neither satisfied the court that he had sufficient cause for not preferring the appeal in time nor is it his case that he was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period. Therefore, there is no merit in this contention as well.

20. The above being the factual and legal position, the order of the first respondent, dated 14.11.2008, rejecting the review petition, is in accordance with law. As such, the order of the learned single Judge, dismissing the Writ Petition, does not suffer from any infirmity.

21. At this stage, we feel it a must to say, that the appellant was convicted by

the judgment of the learned Judicial Magistrate No. II, Kulithalai, in C.C.No. 92 of 1999 and the said conviction was confirmed in appeal by the learned Principal Sessions Judge, Karur, in C.A.No. 42 of 2001. However, the Principal Sessions Judge, though confirmed the conviction, was gracious enough to set aside the sentence and release the appellant under the Probation of Offenders Act, so as to enable him to get the benefits of the employment and also, to facilitate reinstatement, the fine amount was ordered to be refunded. Following the same, he was reinstated into service and had retired from service. Not even being satisfied with that, he kept on initiating the proceedings before various fora, including this Court by way of Writ Petitions and thereafter Writ Appeal, to achieve his target at any cost, thereby wasting much of valuable time. Such an attitude of the appellant is highly condemned. Under the circumstances, this appeal deserves not only simple dismissal, but with costs.

22. Accordingly, this Writ Appeal is dismissed with costs of Rs. 5,000/- (Rupees Five Thousand only), to be payable by the appellant to the Prime Minister's National Relief Fund.