



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 08.03.2023

Delivered On : 06.04.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP.No.825 of 2020

and

C.M.P.No.4377 of 2020

Mr.A.Dhananchezian

... Petitioner/Appellant

Vs.

1. The President,
H.H.484 Alaganandal Primary Agriculture
Co-operative Credit Society,
Thiruvannamalai Taluk and District.

2. The Deputy Registrar,
Office of Regional Co-operative Societies,
Venkikal Village,
Thiruvannamalai Taluk & District. ... Respondents/Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal Order passed in CTA.No.10/2015 dated 14.12.2019 by the learned Principal District Court/Appellate Tribunal under the Co-operative Societies Act, Thiruvannamalai, consequently set aside the Order dated 01.06.2015 passed by the second Respondent in Na.Ka.No.5569/2014 Sa.Pa.



For Petitioner : Mr.G.Krishna Kumar
for Mr.R.Bhagawat Krishna

For Respondent : Mr.C.Jayaprakash
Government Advocate (CS)

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal Order passed in CTA.No.10/2015 dated 14.12.2019 by the learned Principal District Court/Appellate Tribunal under the Co-operative Societies Act, Thiruvannamalai and consequently set aside the Order dated 01.06.2015 passed by the second Respondent in Na.Ka.No.5569/2014 Sa.Pa.

2.The brief facts which are relevant for better appreciation of the case are as follows:

2.1.The Petitioner was appointed as Office Assistant on compassionate ground in H.H.484 Alaganandal Primary Agricultural Co-operative Bank as per G.O.Ms.No.131, Cooperation, Food and Consumer Protection Department, dated 04.06.1999 by proceedings dated 15.03.2007 of the Special Officer, H.H.484 Alaganandal Primary Agricultural Co-



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operative Bank. His salary was fixed at Rs.1500/-. Subsequently, his appointment was approved by the Deputy Registrar of Cooperatives, Thiruvannamalai *vide* proceedings bearing Na.Ka.7843/06, dated 06.10.2008 as per G.O.Ms.No.131, Co-operation, Food and Consumer Protection Department, dated 04.06.1999. The Petitioner was a Graduate on the date of appointment. He had acquired degree in B.Sc., (Computer Science) from Thiruvalluvar University as on 28th November, 2007. Subsequently, he had acquired Diploma in Co-operative Management from the Institute of Cooperative Management, Thiruvannamalai, in the year 2008-2009. Subsequently, he had obtained M.Com., (Co-operative Management) from Annamalai University. The Special Officer of H.H.484 Alaganandal Primary Agriculture Co-operative Bank in its Board Meeting decided to promote the Petitioner Dhananchezhian as Clerk by a resolution of the Board Meeting through the proceedings of the Special Officer of H.H.484 Alaganandal Primary Agricultural Co-operative Bank Mr.Annamalai, as per G.O.Ms.189, Co-operation, Food and Consumer Protection Department, dated 17.11.2009 and Section 18 (1) by the bye-laws of Society specifically stating that even though the Petitioner was appointed as Office Assistant, he had been continuously working for three



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years and he having qualified as Diploma in Co-operative Management and B.Sc., in Computer Science, he is eligible for promotion as Clerk and considering the work burden and the financial position of H.H.484 AAlaganandal Primary Agricultural Co-operative Bank. The Special Officer having the power to consider all relevant materials had promoted him along with two other staff members viz., A.Devasenathipathi and Krishnamurthy as Secretary and Fertilizer Salesmen respectively. Subsequently, the Deputy Registrar of Co-operative Societies of Thiruvannamalai had on inspection found out that the staff concerned viz., Krishnamurthy and Devasenathipathy and the Petitioner herein viz., A.Dhananchezhian having been granted increase in pay by the proceedings of the Special Officer, H.H.484 Alaganandal Primary Agricultural Cooperative Bank thereby caused loss to the tune of Rs.3,10,704/- to H.H.484 Alaganandal Primary Agricultural Co-operative Bank thereby ordered enquiry under Section 81 of the Cooperative Societies Act. On the basis of the enquiry report, the Deputy Registrar issued surcharge proceedings under Section 87(1) of the Tamil Nadu Co-operative Societies Act vide proceedings bearing Tha.Thee.09/2014-15/Na.Ka.5569/2014 Sa.Pa., dated 04.12.2014. The Petitioner was issued with a show-cause



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memo seeking explanation for his role in causing loss to H.H.484 Alaganandal Primary Agricultural Co-operative Bank. The Petitioner had offered his explanation. As per explanation dated 21.01.2015 stating that he had carried out the work of the Clerk in H.H.484 Alaganandal Primary Agricultural Co-operative Bank as per the order of the Special Officer. He had not caused any loss to H.H.484 Alaganandal Primary Agricultural Co-operative Bank. His explanation was not accepted and he was imposed with penalty of surcharge proceedings directing him to pay back a sum of Rs.61,727/- received by him towards salary as Clerk beyond his salary as Office Assistant. Aggrieved by the same, the Petitioner herein had preferred appeal before the learned Principal District Judge, Thiruvannamalai as Appellate Tribunal under the Co-operative Societies Act. The Petitioner had filed CTA No.10 of 2015 before the Principal District Judge, Thiruvannamalai agitating his grievance by way of appeal under the Cooperatives Societies Act. The learned Principal District Judge had dismissed the appeal in CTA No.10 of 2015 as per the judgment dated 14.12.2019. Therefore, the Petitioner had approached this Court under Article 227 of the Constitution of India to set aside the surcharge proceedings.



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3. Mr.R.Bhagawat Krishna, learned Counsel appearing for the Petitioner submitted his arguments. As per his submissions, the Revision Petitioner was appointed as O.A on 06.10.2008. Thereafter, he has to be promoted as Clerk as per the meeting of the Board of Management, H484, Alaganandal Primary Agricultural Co-operative Society. The Special Officer of the said co-operative society, by his proceedings, had promoted him as Clerk with effect from 01.01.2011. The Revision Petitioner/A.Dhananchezhian, who was appointed as O.A on 16.03.2007, based on his qualification, as he had acquired Diploma in Co-operative Management and had completed B.Sc., Computer Science and in addition to that, in his continuous service of O.A citing the Government Order No.189, dated 17.11.2009, was promoted as Clerk of the same Society. As per Rule 18 (1) of the said G.O, the salary was fixed at Rs.4375-125-5500-150-7000-175-7700. Subsequently, the surcharge proceedings were initiated by the Second Respondent under Section 87(1) of the Tamil Nadu Co-operative Societies Act. The Petitioner had already completed M.Com in co-operative Management. The surcharge proceedings were initiated against the Petitioner by the second Respondent stating that the promotion



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was granted without following Rules and Bye-laws. Therefore, the said co-operative Society had suffered loss. The Petitioner had caused loss of Rs.61,727/- to the Society. The Petitioner was issued with show cause notice by the second Respondent dated 04.12.2014, the relevant portion is extracted hereunder:

“அவ்வாறு ஏற்படுத்திக்கொண்ட ஒப்பந்தத்திற்கு முரணாகவும் முறையற்ற வகையிலும் சங்கப் பணியாளர்களுக்கு ஊதியம் மறுநிர்ணயம் செய்தும், ஊதிய உயர்வுகளை அளித்தும், புதிதாக தேர்ந்தெடுக்கப்பட்ட நிர்வாக குழுவால் கீழ்க்கண்ட பணியாளர்களுக்கு வழங்கப்பட்டதன் மூலம் சங்கத்திற்கு ரூ.3,10,704/- அளவுக்கு நிதியழிப்பு ஏற்படுத்தப்பட்டுள்ளது.”

4. The Petitioner had sent reply to the show cause notice of the second Respondent dated 21.01.2015, the relevant portion reads as follows:

4. சங்கத்தில் எழுத்தர் பணியிடம் காலியாக இருந்தாலும், சங்கத்தில் அதிக வேளை பளுவின் காரணமாகவும், சங்கத்தில் நிதிநிலை உயர்ந்துள்ளதின் அடிப்படையிலும் கூட்டுறவு சங்கங்களின் மாநில பதிவாளர் அவர்களின் சுற்றறிக்கையின் வழியும், சங்க நிர்வாகம் எனக்கு 01.01.2011 முதல் எழுத்தராக பதவி உயர்வு வழங்கப்பட்டது சரியான நடவடிக்கையாகும்.

5. எனது எழுத்தர் பதவி உயர்வு அளிக்கப்பட்டு, கடமைகளும், பொறுப்புகளும் நிர்ணயிக்கப்பட்ட பணிகள் அனைத்தும் செவ்வனே செய்து வருகிறேன். மேலும் தற்போது சங்கத்தின் மிக முக்கிய பணியான கடன்



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பட்டுவாடா செய்தல் ..., அறிக்கை தயார் செய்தல், பொது சேவை மையம் பயன்பாடு, கணினி கையால்வது, சரக்கரை ஆலை மூலம் வரப்பெறும் கரும்பு கிரயத்தொகையை கடன் கணக்கிற்கு வரவு, செலவு செய்தும், உறுப்பினர்களுக்கு பட்டுவாடா பணிகள் போன்றவற்றை சிறப்பாக செய்து வருகிறேன். எனக்கு பதவி உயர்வு வழங்கப்பட்ட காலத்தில் உறுப்பினர் கடன் நிலுவை 7.00 கோடியாக இருந்த நிலையில் தற்போது 12.00 கோடி அளவிற்கு உயர்ந்துள்ளது.

5. Also sent a reply on 13.02.2015, the relevant portion is extracted hereunder:

“சங்க தனி அலுவலர் அவர்களின் 02.04.2012 தேதியிட்ட செயல்முறை ஆணை மற்றும் சங்க தலைவர் அவர்களின் 16.06.2014ம் தேதியிட்ட செயல்முறை ஆணை ஆகியவற்றின்படி எழுத்தர் பணிநிலைக்கான கடமைகள் மற்றும் பொறுப்புகள் நிர்ணயித்து ஆணையிடப்பட்டதற்கிணங்க அப்பணிப்பொறுப்புகளை ஏற்று தொடர்ந்து செய்து வருகிறேன். எனவே மேற்கூறப்பட்டவைகளிலிருந்து

1. இச்சங்கத்தின் கருணை அடிப்படையில் அலுவலக உதவியாளராக 16.03.2007 முதல் முறையாக பணியமர்த்தம் செய்யப்பட்டு அடுத்த பதவி உயர்வுக்கு தகுதியான கூட்டுறவு பட்டய பயிற்சியில் 2009ம் ஆண்டில் தேர்ச்சி பெற்றதாலும்,

2. பதிவாளர் அவர்களின் கடிதம் ந.க.5237.2012 தொவேச1, நாள் 03.08.2012ன் வழி அலுவலக உதவியாளர் பணியினை விற்பனையாளர் பணிக்கு



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சமமாக கருதி சிற்றெழுத்தர் உர விற்பனையாளர் மற்றும் எழுத்தர் பணிநிலைக்கு பதவி உயர்வு வழங்க அனுமதிக்கப்பட்டுள்ளதின்படி உர விற்பனையாளர் பணியிடத்தில் பணிவரன்முறைப்படுத்தப்படாத பணியாளர் திரு.க.கிருஷ்ணமூர்த்தி இருப்பதால் அப்பணியிடம் அவர் ஓய்வுபெறும் வரையில் காலியாகும் நிலை இல்லை என்பதாலும்,

3. பதவி உயர்வு வழங்கப்பட்ட நாளில் பணிநிலைத்திறனில் எழுத்தர் பணியிடம் இரண்டு உள்ள நிலையில் எழுத்தர் பணிநிலைக்கான தகுதிகளுடன் 01.01.2011 முதல் எழுத்தராக பணிபுரிந்துவருவதாலும்,

4. சங்கம் கடந்த 4 ஆண்டுகளாக நிகர இலாபத்தில் செயல்பட்டுவருவதாலும்.

5. சங்க உறுப்பினர்களின் கடன் நிலுவையின் அடிப்படையில் அனுமதிக்கப்பட்ட பணிநிலைத்திறன்படி 7 பணியாளர்களுக்கு பதிலாக 5 பணியாளர்கள் மட்டுமே பணி சுமையுடன் பணியாற்றிவருவதுடன், இதிலும் தற்போது எழுத்தர் காசளராக பணிபுரிந்து வரும் திரு.கிரங்கநாதன் வயது முதிர்வின் காரணமாக இன்னும் 5 மாத காலத்தில் 31.07.2015 பிற்பகல் ஓய்வு பெற உள்ள நிலையில் மேலும் பணிகுமை கூடிவிடும் என்பதுடன் அவரது பணியிடமும் காலியாகிவிடும் என்பதாலும்.....”

6. It is the contention of the learned Counsel for the Petitioner that the Petitioner was promoted by the then Special Officer considering the Petitioner's educational qualifications, work load of the co-operative



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society, the financial stability of the co-operative society which were taken into consideration by the Special Officer of the co-operative society to promote the staff of the co-operative society to enable the co-operative society function effectively and to reduce the work load.

7. The Special Officer of the Society is empowered to take administrative action as per the Co-operative Societies Act. According to the financial stability of the society and work load of the society, the Petitioner having been promoted as Clerk from 01.01.2011, was qualified for that Post and that was also taken into consideration by the Special Officer concerned. He had performed the duties allotted to him to the satisfaction of the superiors. He was paid the scale of pay payable to the Post of Clerk. The Petitioner herein had not canvassed for the promotion. The Petitioner herein had not mis-represented or played fraud with the Society by producing false certificate or fraudulent certificate. He had obtained degree by his hard work and he had furnished those degrees as his qualifications at the time of joining the Post. The Special Officer had taken into consideration the work load of the society, man power shortage of the society and financial stability of the society, the person who was in service



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of the Society can take up the responsibilities when they are promoted. The Special Officer has power to do so. The Original Authority was pleased to pass the surcharge proceedings against the Petitioner for recovery of a sum of Rs.40,889/-. The Appellate Authority/learned Principal District Judge, Thiruvannamalai, on appeal by the Petitioner, has confirmed the Order of the Original Authority and dismissed the Appeal in CTA.No.10/2015. Aggrieved by the same, the Petitioner had approached this Court under Article 227 of Constitution of India seeking to set aside the Order passed by the learned Principal District Judge, Thiruvannamalai as Appellate Authority under the Tamil Nadu Co-operative Societies Act, Thiruvannamalai in CTA.No.10/2005 dated 14.12.2019 and also to set aside the Order passed by the Original Authority in Na.Ka.No.5569/2014 Sa.Pa dated 01.06.2015.

8. The learned Counsel for the Revision Petitioner invited the attention of this Court to Section 87(1) of the Co-operative Societies Act, reads thus:

87-Surcharge – (1) Where in the course of an audit under Section 80 or an inquiry under Section 81 or an inspection or investigation under Section 82 or inspection of books under Section 83



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or the winding-up of a society, it appears that any person who is or was entrusted with the organisation or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has made any payment which is not in accordance with this Act, the rules or the by-laws, the Registrar himself or any person specially authorised by him in his behalf, of his own motion or on the application of the board, Liquidator or any creditor or contributory may frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned and in the case of a deceased person, to the representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or wilful negligence or payments which are not in accordance with this Act, the rules or the by-laws as the Registrar or the person authorised as aforesaid thinks just:

Provided that no action shall be commenced under this sub-section after the expiry of seven years from the date of any act or omission referred to in this sub-section:

[Provided further that the action commenced under this sub-section shall be completed within a period of three months from the date of such commencement or such further period or periods not exceeding one month at a time as the next higher authority may permit but such extended periods shall not exceed three months in the aggregate.]

9. By any stretch of imagination or any stretch of interpretation, the definition of Section 87(1) of the Co-operative Societies Act is not at all



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attracted as far as this Petitioner is concerned. It is to be noted that the Petitioner was appointed as O.A on compassionate ground. Subsequently, he was promoted as Clerk of the Co-operative Society. He had sufficient qualification for that Post also. He had acquired qualification and he had not played fraud. The Petitioner had received salary as per law for the job he performed in the Society as Clerk. He was promoted as Clerk by the proceedings of the Special Officer under the Co-operative Societies Act. Therefore, there is no willful negligence, there is no deficiency of service, there is no fraudulent retention of any money or property on the part of the Petitioner. There is no breach of trust involved and there is no violation of Rules thereby causing loss to the Society. The show cause notice already issued by the second Respondent on the Petitioner herein was duly replied by the Petitioner herein. That he had not violated the Rules and he was not promoted on the basis of any fraudulent act committed by the Petitioner or furnishing fraudulent document. Therefore, the finding of the Original Authority that the conduct of the Petitioner resulted in loss to the Society at Rs.40,889/-, is without reason. The Original Authority has not quoted any of the Rule as per the Co-operative Societies Act, manually attracting the surcharge proceedings under Section 87(1) of the Co-operative Societies



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Act against the Petitioner herein who was duly promoted as per law by the Authority empowered to promote him, the Special Officer of the Society.

10. The Original Authority was unable to pinpoint the alleged violation of the Rules as per the Co-operative Societies Act and Rules or bye-laws. The Petitioner had received the salary for the Post of Clerk for which he had worked. Therefore, there is no allegation of negligence or dereliction of duty. The question of dereliction of duty or negligence does not arise.

11. It is the further contention of the learned Counsel for the Petitioner that the Original Authority who had passed surcharge proceedings was unable to pinpoint the violation of the Rules, bye-laws of the Society to attract the surcharge proceedings under Section 87(1) of the Co-operative Societies Act. The finding of the Original Authority is without any legal basis.

12. The impugned Order of the Original Authority is based on mere presumption and assumption. That cannot be sustained in law. The



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Appellate Authority, the learned Principal District Judge as Appellate Authority, Thiruvannamalai had failed to consider the said aspect and dismissed the Appeal in CTA.No.10/2015. The Hon'ble Supreme Court had held in various reported rulings that for no fault on the part of the staff/employees of the Co-operative Societies and it was not just and proper to recover any amount under the surcharge proceedings.

13. The learned Counsel for the Petitioner further submitted that the cumulative reading of the facts and circumstances would show that it is crystal clear that there is no mis-representation and fraudulent intention to obtain permission. At the time of admission of Civil Revision Petition, the then learned Single Judge of this Court had ordered the Revision Petitioner herein to deposit Rs.25,000/- into account of the Co-operative Society. Therefore, on compliance of the same, the Petitioner herein had deposited Rs.25,000/- to the second Respondent in order to grant interim stay of all the proceedings in continuation of the surcharge proceedings.

14. In support of his contention, the learned Counsel for the Revision Petitioner relied on the reported ruling of the Hon'ble Supreme Court in



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(2013) 16 SCC 482 in the case of ***Premlata Joshi Vs. Chief Secretary, State of Uttarakhand and Others*** wherein it has been held as under:

“19. Insofar as the present case is concerned, as we have found that the DPC did not follow the procedure as laid down even in the said OM dated 16-4-2003, the promotion of the appellant on the basis of the exercise undertaken by the DPC was clearly unwarranted and rightly set aside by the High Court. It would be pertinent to mention that at the time of hearing of SLP filed by the appellant herein, this Court issued notice on 11-2-2011(Premalata Joshi V. State of Uttarakhand, SLP(C).No.2236 of 2011, Order dated 11-2-2011(SC) on limited aspect in the following words:

“Issue notice on the limited question regarding recovery of amount already paid to be petitioner on account of promotion to the post of Director, Medical Health. Since Respondent 5 is present on caveat, service of notice on the said Respondent is dispensed with.”

It is clear from the above that even at the time of issuing notice, this Court did not consider it proper to interfere with the directions of the High Court and the only question on which notice was issued regarding recovery of the amount already paid to the appellant on promotional post.

20. Thus, we do not find any fault with the direction of the High Court keeping in view of the facts of the present case. The appellants are not correct in their arguments that the High Court has assumed the role of the DPC. In fact the High Court only referred to the exercise undertaken by the DPC itself which had awarded marks to both the appellant as well as the private Respondent and rightly concluded that the criterion of merit was violated by giving promotion to the appellant on such a comparative assessment where the Respondent was rated more meritorious than the appellant. Insofar as payment of excess salary made to the appellant in promotional post is concerned, we are of the opinion that since the appellant has already retired and the promotion is given to her is because of the wrong exercise of the Department in not applying the Rules/OM correctly



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and it was not because of any misrepresentation or suppression by the appellant, no recovery of the excess amount paid to her is called for. Subject to the aforesaid, both the appeals are dismissed. The private respondent shall also be entitled to the cost of Rs.15,000 (Rupees fifteen thousand) which shall be paid by the Government.”

15. He has also relied on the decision of the Hon'ble Supreme Court in **(2015) 4 SCC 334** in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others*** wherein it has been held as follows:

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the Order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.”*

16. Yet another decision of the Hon'ble Supreme Court in **(1994) 2 SCC 521** in the case of ***Shyam Babu Verma and Others Vs. Union of India and others*** in which the Hon'ble Supreme Court has held as follows:

“B.Service Law – Relief – Higher pay scale erroneously given



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to petitioners since 1973 – Pay scale of Petitioners reduced in 1984 – Held, since Petitioners received the higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them.”

17. In the light of the above rulings, the learned Counsel for the Revision Petitioner sought to set aside the finding of the Appellate Authority/learned Principal District Judge, Thiruvannamalai dismissing CTA.No.10/2015 by an Order dated 14.12.2019 and confirming the finding of the Original Authority in Na.Ka.No.5569/2014 Sa.Pa.

18. The learned Special Government Pleader for the Respondent had furnished written submissions and submitted that as per the Tamil Nadu Co-operative Society Rules, 1988, promotions should be made under the prior approval of the Co-operative Society Registrar, the Rule 149 of the Tamil Nadu Co-operative Society Rule, reads thus:

“Every Society shall taking into account its nature of business, volume of transaction and financial position, adopt, (with the prior approval of the Government), a special Bylaw covering the service conditions of its Employees. The Special Bylaw shall, inter alia prescribe the following:

- (I) Cadre Strength and classification of various categories of posts and the qualification required thereof for each such post.*
- (ii) The method of recruitment for each such post.*
- (iii) The scale of pay and allowances for each such post.*



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- (iv) Conditions of probation for each such post.*
- (v) Duties and responsibilities for each such post.*
- (vi) Leave of various kinds admissible and the conditions thereto for each such post.*
- (vii) The penalties that may be imposed upon, the procedure for taking disciplinary action and inflicting various kinds of punishments on an Employee holding such post and the Authority Competent to entertain and dispose appeals made against an order of punishment imposed by the competent Authority on a disciplinary proceedings.*
- (viii) Conditions relating to acquisition and disposal of movable and immovable property”*

19. Also, he would submit that against the Government Order, the promotion ought to have been given as per G.O.Ms.No.373, Co-operation Food and Consumers Protection, dated 01.10.2022 and published in Part III Section 1 (a) of the Tamil Nadu Government Gazette dated 06.11.2022.

20. The learned Special Government Pleader also submitted that the Appellate Tribunal had rightly pointed out that the above promotion and pay scale is against the G.O.Ms.No.189 of Co-operative Food and Consumer Protection Department. The circular of the Registrar of Co-operative Societies and its resolution dated 01.01.2011 was passed by the Administration Officers of the Alaganandal Society was against the existing agreement. Even though the Resolution passed, the same ought to have been sent to the Registrar, Co-operative Society. It was not done, hence all



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are collectively responsible for the loss caused to the society.

21. Further contention of the learned Special Government Pleader that the Revision Petitioner had sufficient opportunity to repay the unlawful salary paid to him. However, the Revision Petitioner never turned up to repay the same. Once, it is in the knowledge of the Revision Petitioner that he having been received promotion and salary hike which is against the Act. Therefore, it is the duty of the servant to repay the same and he failed to repay the amount which caused loss to the Society and then the enquiry under Section 81 of the Act is maintainable in law.

22. In the above circumstances, the proceedings under Section 87 (1) of Co-operative Societies Act against the Petitioner along with the other staffs. On behalf of the Petitioner a sum of Rs.20,838/- was paid. The balance amount of Rs.40,889/- had to be paid. However, the Petitioner had challenged the said proceedings as if he had not committed fraud, misrepresentation or whatsoever but for the reason to maintain financial stability of each and every Co-operative Society, this kind of action is required to be taken in order to avoid huge financial loss.



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23. He further submitted on behalf of the Respondents 1 and 2 that as on today in Tamil Nadu many Co-operative Societies are running huge financial loss. If such kind of irregularities is continued by the Staff and Workers, then the whole public, who are getting benefits under the Co-operative Societies, will be affected and the entire Co-operative structures will collapse.

24. The grounds raised by the Revision Petitioner are not maintainable in law and as already submitted by the learned Counsel for the Respondent, this Revision has no merit and is to be dismissed.

25. Point for Consideration

Whether the Orders passed by the learned Principal District Judge, Thiruvannamalai in CTA.No.10/2015 dated 14.12.2019 confirming the order of the Original Authority in Na.Ka.5569/2014 Sa. Pa is to be set aside?

26. On consideration of the rival submissions and on perusal of the typed set, wherein the appointment Order of the Petitioner as O.A and the



Resolution passed by the Special Officer of the Co-operative Society on 31.01.2011 promoting the Petitioner as Clerk from 01.01.2011. The show cause notice issued by the second Respondent to the Petitioner dated 04.12.2014. The reply sent by the Petitioner to the second Respondent dated 21.01.2015 and 13.02.2015. The Order passed by the second Respondent/Original Authority dated 01.06.2015 in Na.Ka.5569/2014 Sa. Pa. The grounds of Appeal preferred by the Petitioner herein in C.T.A.No.10/2015, the Counter filed in CTA.No.10/2015, the Judgment and decree passed by the learned Principal District Judge, Thiruvannamalai in CTA.No.10/2015 as Co-operative Appellate Tribunal and memorandum of grounds raised in this Appeal and the Rulings cited in support of the submission of the learned Counsel for the Revision Petitioner in (i) **(2013) 16 SCC 482 in the case of Premlata Joshi Vs. Chief Secretary, State of Uttarakhand and Others**, (ii) **(2015) 4 SCC 334** in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others** and (iii) **(1994) 2 SCC 521** in the case of **Shyam Babu Verma and Others Vs. Union of India and others** and the written arguments furnished by the learned Special Government Pleader for the Respondents, on perusal of



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Section 87(1) of the Co-operative Societies Act, it does not attract the alleged act of the Petitioner herein who was a servant of the Society. He has to obey the Orders of his Superior. Accordingly, when he is promoted as Clerk, he had executed the work expected from him.

27. The Special Officer who had passed the proceedings in Na.Ka.5569/2014 Sa. Pa. Dated 01.06.2015 is the Officer of the Co-operative Societies Department of the Government of Tamil Nadu who is aware of the Rules and procedure and his discretion. Therefore, the Authority who had claimed that the promotion had been granted without power, cannot find fault with the power of the Special Officer. The Only fault is that after promotions were granted, it was not sent for approval to the Authority concerned. Granting approval is the discretion of the Authority concerned as per ***G.O.Ms.No.189 dated 17.11.2009***

28. As rightly pointed out by the learned Counsel for the Revision Petitioner, by any stretch of imagination, the definition of Section 87(1) of the Co-operative Societies Act cannot be invoked in this particular case. None of the wording in Section 87 (1) of the Act attracts the conduct of the



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Petitioner attracting the surcharge proceedings. Also, as rightly pointed out by the learned Counsel for the Revision Petitioner, the memo issued is not found acceptable as it is silent about which Rule was violated . The vague definition, “that the Society suffered loss”, will not be acceptable in any Court of law in the light of the rulings cited by the learned Counsel for the Petitioner in (i) **(1994) 2 SCC 521** in the case of ***Shyam Babu Verma and Others Vs. Union of India and others***, (ii) **(2013) 16 SCC 482** in the case of ***Premlata Joshi Vs. Chief Secretary, State of Uttarakhand and Others*** and (iii) **(2015) 4 SCC 334** in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others***.

29.As per the reported ruling of the Hon'ble Supreme Court in **(1994) 2 SCC 521** in the case of ***Shyam Babu Verma and Others Vs. Union of India and others***, it was held that the higher pay scale was erroneously given to the Petitioners since 1973. The pay scale of the Petitioners reduced in 1984. Since the Petitioner received higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them. Here also, the facts of the case before



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this Court attracts the same ratio as laid down by the Hon'ble Supreme Court for no fault of his the Petitioner had works as Clerk of the H.H.484 Alaganandal Primary Agricultural Co-operative Bank. Based on the promotion granted to him by the authority empowered to grant promotion namely the Special Officer of H.H.484 Alaganandal Primary Agricultural Co-operative Bank. It was not sent for approval is not the fault of the Petitioner herein. Merely stating that the society suffered loss cannot at all be accepted in the light of the previous inspection in which loss was not found out, except the salary paid to the Petitioner as Clerk for the work done by him, that cannot be recovered.

30.As per the reported ruling in **(2013) 16 SCC 482** in the case of ***Premlata Joshi Vs. Chief Secretary, State of Uttarakhand and Others***, as far as payment of excess salary made to the appellant in promotional post is concerned, we are of the opinion that the promotion given to her is because of the wrong exercise of the department in not applying Rules correctly and it is not because of any misrepresentation or suppression by the appellant, no recovery amount is called for. This ratio squarely applies to the facts of the case before this Court.



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31.As per the reported ruling of the Hon'ble Supreme Court in **(2015) 4 SCC 334** in the case of ***State of Punjab and others Vs. Rafiq Masih (White Washer) and others***, the recovery of amount paid in excess without fault of recipient, benefit of non-recovery, recoveries would be impermissible in the following circumstances: (i) Recovery from employees belonging to Class III and IV (Group C and D); (ii) Recovery from retired employees, or employees who are due to retire within one year of order of recovery; (iii) Recovery from employees to whom excess payment have been made for a period in excess of five years, before order of recovery is issued; (iv) Recovery where employee is wrongfully required to discharge duties of higher post and has been paid accordingly and (v) In any other case, where Court concludes that the recovery if effected from an employee would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh equitable balance of employer's right to recover. The observation of the Hon'ble Supreme Court is applicable to the facts of the case as the Petitioner was appointed as Office Assistant on compassionate ground, subsequently, considering the financial status of H.H.484 Alaganandal Primary Agricultural Co-operative Bank and the fact that the



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clerical posts are vacant and qualified person is available as Office Assistant, the Special Officer of the H.H.484 Alaganandal Primary Agricultural Co-operative Bank had by the board proceedings promoted him as Clerk which was not sent for approval by inadvertence, there cannot be any recovery from the Petitioner as he had worked as Clerk of H.H.484 Alaganandal Primary Agricultural Co-operative Bank.

32. In the light of the above rulings and the wordings under Section 87(1) of the Act do not indicate any wrongful act committed by the Petitioner, it is a fact that he had worked as a Clerk based on the promotion granted to him and drawn salary as Clerk of the Co-operative Bank which cannot be faulted. Therefore, the surcharge proceedings passed by the original authority is found to be non-application of mind of the original authority. The Appellate Authority also had not applied its mind to the grounds of appeal preferred by the Petitioner. Therefore, the order of the learned Principal District Judge/Appellate Tribunal under the Co-operative Societies Act, Thiruvannamalai confirming the surcharge proceedings is also to be set aside.



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33. In the light of the above discussion, the finding of the Original Authority was not acceptable and sustainable in law under Section 87(1) of the Act. The Point for Consideration is answered in favour of the Petitioner and against the Respondent. The order passed by the learned Principal District Judge, Thiruvannamalai in CTA No.10 of 2015 dated 14.12.2019 confirming the order of the Original Authority in Na.Ka.No.5569/2014 Sa.Pa. is to be set aside.

In the result, this ***Civil Revision Petition is allowed*** by invoking powers of this Court under Article 227 of Constitution of India, it warrants interference in the finding of the learned Principal District Judge, Thiruvannamalai as Appellate Authority under the Co-operative Societies Act. Therefore, the Order passed by the learned Principal District Judge, Thiruvannamalai dismissing the Appeal of the Petitioner herein is set aside. The amount of Rs.25,000/- (Rupees Twenty Five Thousand only) already deposited by the Revision Petitioner in the light of the direction of this Court at the time of admission of Civil Revision Petition is to be returned to the Petitioner by the Respondents 1 and 2 within a period of one month from the date of receipt of a copy of this order. No Order as to costs.



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Consequently, connected Miscellaneous Petition is closed. No costs.

06.04.2023

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The Principal District Court/
Appellate Tribunal under the Co-operative Societies Act,
Thiruvannamalai,
2. The President,
H.H.484 Alaganandal Primary Agriculture
Co-operative Credit Society,
Thiruvannamalai Taluk and District.
3. The Deputy Registrar,
Office of Regional Co-operative Societies,
Venkikal Village,
Thiruvannamalai Taluk & District.
4. Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Pre-delivery Order made in
CRP.No.825 of 2020

06.04.2023