



WP.(MD).No.18877 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.09.2023

PRONOUNCED ON : 08.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.18877 of 2023

and

W.M.P.(MD)Nos.15681 and 15682 of 2023

A.Ramasamy

... Petitioner

Vs.

- 1.The Registrar of Cooperative Societies,
No.170, E.V.R.High Road,
Kilpauk,
Chennai – 600 010.
- 2.The Joint Registrar of Cooperative Societies,
Office of the Joint Registrar of Cooperative Societies,
Virudhunagar Region,
Virudhunagar.
- 3.The Deputy Registrar of Cooperative Societies,
Office of the Deputy Registrar of Cooperative Societies,
Aruppukkottai,
Virudhunagar District.



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4. The President,
SP.SPL 91 Tamilpadi Primary Agricultural
Cooperative Credit Society Limited,
Virudhunagar District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 4th respondent dated 03.07.2023 and quash the same and consequently direct the respondents to continue to pay the salary as per the direction passed by this Court passed in W.P.(MD)No.6504 of 2016.

For Petitioner	: Mr.D.Shanmugaraja Sethupathi
For R1 to R3	: Mr.P.Thambidurai Government Advocate
For R4	: Mr.V.O.S.Kalaiselvan

ORDER

The prayer in the writ petition reads as follows:-

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the 4th respondent dated 03.07.2023 and to consequently direct the respondents to continue to pay the salary as per the direction passed by this Court passed in W.P.(MD)No.6504 of 2016.



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2. Heard Mr. Shanmugaraja Sethupathi, learned counsel appearing for the petitioner, Mr. P. Thambidurai, learned Government Advocate appearing for the respondents 1 to 3, Mr. V. O. S. Kalaiselvan, learned counsel appearing for the 4th respondent and perused the entire materials available on record.

3. The case of the petitioner in nutshell is as follows:-

3.1. The petitioner is a Salesman in SP. SPL, 91 Tamilpadi Primary Agricultural Cooperative Credit Society Limited. The petitioner was appointed as a Salesman in a fair price shop under the said Society on 02.01.1990. The petitioner is working in the said shop for the past 33 years without any promotion. The Government has been issuing orders periodically fixing the revision of scale to the Salesmen and packers working in the fair price shops. The Government has issued G.O. Ms. No. 185, Cooperation, Food and Consumer Protection Department for revising the scale of pay to Salesmen and packers working in the various fair price shops. The Societies have been following the Government order since 29.12.2010. While so, the revised order re-fixing the scale of pay applicable to Salesmen and packers, came to be issued by the



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Government vide G.O.Ms.No.137 dated 09.11.2015. The Government had revised the Basic Pay, Grade Pay, Dearness Allowance, Annual Increment, Stagnation Increment, House Rent Allowance, City Compensatory Allowance and Medical Allowance vide revised G.O.Ms.No.137 dated 09.11.2015. The Government has issued annexure fixing basic pay applicable to Salesmen and packers on the basis of length of service and the basic pay of the Salesman, who have completed 25 years of service has been fixed as Rs.9,220/- in the said G.O. But the petitioner has completed more than 25 years of service and hence, the fourth respondent had re-fixed the basic pay as Rs.9220/- on the basis of G.O.Ms.No.137 in terms of annexure appended therein. The fourth respondent had passed a resolution to that effect on 09.12.2015 re-fixing the basic pay of the petitioner as per the said G.O. and the petitioner was paid with revised pay by the fourth respondent Society since November 2015. In the meanwhile, the first respondent has cancelled the benefit extended to the petitioner by the fourth respondent in the guise of G.O.Ms.No.137 dated 09.11.2015 and thereby, entirely nullifying the above said G.O.



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3.2.Assailing the same, W.P.(MD)6504 of 2016 came to be filed before this Court. This Court was pleased to dispose of the said Writ Petition vide order dated 14.06.2022, directing the fourth respondent to pay a sum of Rs.9,220/- as salary subject to the clarification from the Government. In the meanwhile, the fourth respondent had stopped the revised pay, which was paid as per G.O.Ms.No.137 dated 09.11.2015. But pursuant to the order passed in W.P.(MD)No.6504 of 2016, the fourth respondent has been continuously paying the revised pay scale as per G.O.Ms.No.137. But the fourth respondent has issued proceeding stating that the arrears of the salary would be paid in two equal instalments. The first instalment was also paid. However, the payment of the second instalment is pending till this date. In the meanwhile, the Government has passed another Government Order vide G.O.Ms.No.24, Cooperation, Food and Consumer Protection (CA1) Department dated 22.02.2021 revising the scale of pay and other allowance payable to the Salesmen and packers throughout the State. Since the Writ Petition filed by the petitioner implementing the revision of pay scale in accordance with the earlier G.O.Ms.No.137 dated 09.11.2015, was not fully implemented and the arrears of salary were only paid in part, whenever the petitioner



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approached the second and third respondents to pay the revised pay scale and allowance as per G.O.Ms.No.137, he was informed that the same would be done after the disposal of the Writ Petition filed by the petitioner. Since the benefit of G.O.Ms.No.137 dated 09.11.2015 was given to the petitioner only in part, the respondents did not give the benefit of subsequent G.O.Ms.No.24 dated 22.02.2021 to the petitioner. Despite the fourth respondent having implemented the said G.O. and paid the revised salary and allowance to all the other employees, the petitioner alone was excluded and discriminated for not following G.O.Ms.No.24 dated 24.02.2021 in this case. In view of that situation, the petitioner filed another Writ Petition in W.P.(MD)No.14701 of 2023 before this Court seeking implementation of G.O.Ms.No.24 dated 22.02.2021 in his case and the same is pending. While so, the fourth respondent has passed the impugned order dated 03.07.2023 stating that the petitioner was appointed only on 19.10.1995 and therefore, he is not entitled to get the benefit of G.O.Ms.No.137 dated 09.11.2015. Assailing the same, this Writ Petition came to be filed.



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4.Submission :-

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4.1.The fourth respondent has filed a counter affidavit and Mr.V.O.S.Kalai Selvan, learned Standing Counsel appearing for the fourth respondent submitted that the proceedings impugned by the petitioner is not at all an order passed by the fourth respondent but the same is only a show cause notice directing the petitioner to submit his explanation. The petitioner submitted a letter dated 14.07.2023 to the said show cause notice for extension of further period of 15 days time to submit his explanation and on appreciating the same, the time for explanation has also been duly extended by the fourth respondent. However, even after the lapse of extended period, the petitioner did not submit his representation and instead he has chosen to file this Writ Petition.

4.2.The petitioner has not approached this Court with clean hands. It is only in compliance with the order of this Court in W.P.(MD)No.6504 of 2016 dated 04.06.2022, the petitioner is continuously paid with monthly basic salary of Rs.9,220/-. In the meanwhile, the fourth respondent has filed a Review Application in Rev.Aplc.(MD)No.119 of



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2023 as against W.P.(MD)No.6504 of 2016 and the same is pending. That apart the petitioner had joined into service of fourth respondent Society as Salesman on daily wage basis on 19.10.1995, but he was regularized into his service only on 22.04.2021. Prior to 19.10.1995, he worked less than 10 days in the year 1990. Therefore, the petitioner's period of service commenced from 19.10.1995. However, in the year 1998, colluding with the then President of the Society, the petitioner prepared a Service Register manipulating the entries of Service Register made entries as if the petitioner had joined in the year 1990. Since the Service Register was not verified either by the Auditor or other Officer, it went unnoticed. Resolution dated 19.10.1995 was passed for his entry into the service of the fourth respondent Society dated 19.10.1995. However, there are no entries for his date of entry in his Service Register and the Service Register is fabricated as if his service commenced from 02.01.1990. But the said Entry was made on 10.02.1999 by the then one President Thiru.K.Karunakaran. That apart in the Audit reports, the date of entry of the petitioner into service in the fourth respondent Society is referred only as 1995 and not prior to that. Hence, it is pretty clear that the petitioner has colluded with erstwhile President of the Society by



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manipulating the service records as if he commenced his actual service as early as in the year 1990 but the petitioner has completed only 20 years of service from 09.11.2015.

4.3. In view of the same, he is not entitled to the benefit G.O.Ms.No.137 Cooperation, Food and Consumer Protection Department dated 09.11.2015. As such, he is eligible to receive the basic pay of Rs.7130/- only and not Rs.9,220/-. Thus the petitioner has been fixed with the wrong scale of pay and since the same has been objected in the audit report during Audit year 2015 – 2016, the excess wages paid to the petitioner is referred to as due from the petitioner. Despite the same, the President of the Society continues to pay the same scale of pay. As a result of which, the fourth respondent Society has incurred huge loss. Only on this background, the fourth respondent has issued a show cause notice with the details of his activities seeking explanation. The petitioner instead of submitting his explanation, has filed this Writ Petition and the same is not maintainable and pressed for dismissal of the Writ Petition.



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5. Analysis:-

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5.1. This Writ Petition had been filed by assailing the show cause notice dated 03.07.2023 issued by the fourth respondent on the petitioner. The petitioner has challenged the same and has sought for quashment of the same. The only question of dispute involved in the case in hand is as to whether the petitioner is entitled to benefit of G.O.Ms.No.137 Cooperation, Food and Consumer Protection Department dated 09.11.2015 and to receive a Basic Pay Rs.9,220/- in terms of the said G.O., having completed 25 years of service.

5.2. The case of the petitioner is that he has joined service as Salesman in SP. SPL, 91 Tamilpadi Primary Agricultural Cooperative Credit Society Limited on 02.01.1990. However, the respondents claimed that he was appointed to the said post only on 19.10.1995 and hence, he is not entitled to the basis pay of Rs.9,220/- but only Rs.7,130/-.

5.3. The claim of the respondents is that the petitioner served only for a brief period of 10 days in the year 1990 prior to 19.10.1995 and the learned Standing counsel categorically contended that the petitioner has



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manipulated the entries in the service record in collusion with the then President of the Society, Thiru.K.Karunakaran and has managed to make entries as if he had served from 02.09.1990 as Salesman in the said Society. But a clear perusal of the same would reveal that such an enquiry was made only on 10.02.1999. The said entry has been made on the basis of resolution of SP. SPL, 91 Tamilpadi Primary Agricultural Cooperative Bank dated 03.02.1999.

5.4.A clear perusal of the said resolution would reveal that the said Primary Agricultural Bank namely SP. SPL, 91 Tamilpadi Primary Agricultural Cooperative Bank has brought several agendas. Among which, Agenda No.1 is with respect to the fixation of the petitioner's salary on the basis of G.O.Ms.No.63 Cooperation, Food and Consumer Protection Department dated 14.03.1996 and the same has been resolved recording the fact that the petitioner has been working as Salesman in the fair price shop under the said Bank since 02.01.1990 for the past more than five years, on daily wages and in view of the same, on the basis of G.O.Ms.No.63 dated 14.03.1996, the petitioner had been brought under regular time scale of pay of Rs.430-10-450-15-585/- with effect from



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01.01.1999. Hence, the claim of the respondents that the petitioner has been serving in the fair price shop from 19.10.1995 cannot be accepted.

5.5. In the meanwhile, the Government issued G.O.Ms.No.137 dated 09.11.2015 refixing the scale of pay applicable to Salesmen and packers and on the basis of which, the fourth respondent had passed a resolution dated 19.11.2015 refixing the Basis Pay of the petitioner as per the said Government Order and the petitioner was paid with revised scale of pay by the fourth respondent since November 2015. However, the first respondent cancelled the benefit extended to the petitioner in terms of G.O.Ms.No.137 dated 09.11.2015 vide proceedings dated 07.01.2016. Challenging the same, W.P.(MD)No.6504 of 2016 was filed before this Court by the petitioner. This Court has elaborately dealt with the petitioner's case and the operative portion of the same is extracted as follows:-

“7. The contention of the learned counsel for the petitioner is that the fitment table is given in the annexure to the said Government Order. The said Government Order clearly gives unambiguous instructions, whereby, the fitment table states that the petitioner is entitled to Rs.9220/-. The



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said annexure is extracted hereunder :

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இணைப்பு

(அரசாணை (நிலை) எண்.137 நாள் 09.11.2015)

கட்டுறவு நியாயவிலைக் கடை பணியாளர்களுக்கு வழங்கப்படும் திருத்திய ஊதிய

விகிதங்களில் அடிப்படை ஊதியம் நிர்ணயம் செய்யும் விவரம்

விபரம்	விற்பனையாளர் பணிக்காலம்			கட்டுநர் பணிக்காலம்		
	தொடக்க நிலை ரூ.	15 ஆண்டுகள் ரூ.	25 ஆண்டுகள் ரூ.	தொடக்க நிலை ரூ.	15 ஆண்டுகள் ரூ.	25 ஆண்டுகள் ரூ.
அடிப்படை ஊதியம்	3300	4870	6300	3000	4440	5760
அகவிலைப்படி (113 %)	3729	5503	7119	3390	5017	6509
கூடுதல்	7029	10373	13419	6390	9457	12269
சேர்க்கை கூடுதலில் 12%	843	1245	1610	767	1135	1472
ஆக கூடுதல்	7872	11618	15029	7157	10592	13741
புதிய அடிப்படை ஊதியம் (ஆக கூடுதல்/163 x 100)	4829	7128	9220	4391	6498	8430
அடுத்த பத்தின் மடங்கு	4830	7130	9220	4400	6500	8430

குறிப்பு ° இவ்வாறு நிர்ணயம் செய்யப்படும் திருத்திய அடிப்படை ஊதியம் ரூ.10-இன் மடங்கிற்கு அதிகமாகும் பட்சத்தில் அடுத்த ரூ.10-இன் மடங்கிற்கு எடுத்துச்செல்ல வேண்டும். (Rounded to the next Rs.10/-)

8. A separate fitment table was given for the Salesman and Packers who have completed 15 years and for persons who have completed 25 years service of service. If the respondent is of the opinion that the fitment table is not stated in the Government Order and it has been misinterpreted by the petitioner or the Societies, the Government should have issued an order through one administration or Executive Orders or circulars. The plea of the respondent that the table is not exhaustive but only illustrative cannot be agreed, since any clarification to the Government Order can be made



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through another Government Order and not through any circulars.

9. On perusing the Government Order and Circulars, this Court is of the considered opinion that Circulars cannot be issued under the guise of clarification. Therefore, the impugned clarification is set aside and the matter is remitted back to the Government to clarify G.O.Ms.No.137 and issue a fresh Government Order. Until the Government issue clarification, the fourth respondent is directed to pay a sum of Rs.9,220/- (Rupees Nine Thousand Two Hundred and Twenty only). This payment is subject to the clarification by the Government. If the Government clarify that the petitioner is not entitled to, then the amount is liable for recovery, from the date of clarification.”

5.6.It is categorically held by this Court directing the respondents to issue clarification of G.O.Ms.No.137 by means of a fresh G.O. Until issuance of such clarification vide Government order, this Court further directed the fourth respondent to pay a sum of Rs.9,220/- to the petitioner, making it clear that such payment would be subject to the clarification by the Government. It is further observed by this Court that if the Government clarifies that the petitioner is not entitled to Rs.9,220/-



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as Basic Pay, then the said amount is liable for recovery from the date of clarification.

5.7.In view of the same, the fourth respondent is continuing to pay a Basic Pay Rs.9,220/- to the petitioner since November 2015 on the basis of the resolution dated 19.12.2015 passed by the fourth respondent. Despite this Court in W.P.(MD)No.6504 of 2016 categorically directed the Government to issue clarification vide another G.O., negating the clarification given by the Registrar of Cooperation Societies vide proceedings dated 07.01.2016 and quashing the same, the fourth respondent has issued the impugned show cause notice dated 03.07.2023 even before the Government has passed clarification Government Order, in compliance with the order passed by this Court in W.P.(MD)No.6504 of 2016, which is clearly in violation of the directions made by this Court in the said Writ Petition.

5.8.In view of the same, the impugned show cause notice of the fourth respondent dated 03.07.2023 is hereby quashed and consequently the respondents are directed to continue to pay the salary as per the



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direction passed by this Court in W.P.(MD)No.6504 of 2016 till the first respondent issues a clarified Government Order in terms of order passed in W.P.(MD)No.6504 of 2016 and thereafter, proceed in accordance with law in terms of the order passed by this Court in the aforesaid Writ Petition.

5.9. Accordingly, the Writ Petition stands allowed. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



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To

- 1.The Registrar of Cooperative Societies,
No.170, E.V.R.High Road,
Kilpauk,
Chennai – 600 010.
- 2.The Joint Registrar of Cooperative Societies,
Office of the Joint Registrar of Cooperative Societies,
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L.VICTORIA GOWRI, J.

Mrn

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