

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.10.2016

Coram

The Hon'ble Mr.Justice R.SUBBIAH

W.P.No.7286 of 2015

and

M.P.No.1 of 2015

Mrs.Saraswathi

...Petitioner

Versus

- 1.The Managing Director,
Tamil Nadu Co-operative Milk Producers
Federation Ltd.,
Aavin Illam, Madhavaram Milk Colony,
Madhavaram, Chennai.
- 2.The General Manager,
Erode District Co-Operative Milk Producers Union Ltd.,
Chithode, Vasavi College Post,
Erode District.Respondents

Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a writ of Mandamus, to direct the respondents to consider the petitioner's representation dated 11.12.2014 and to refund the excess salary amount collected by them, at the earliest.

For Petitioner : Mr.V.S.Kesavan

For Respondents : ***Mr.K.N. Pandian**

O R D E R

The petitioner has filed this Writ Petition, praying for issuance of a writ of Mandamus, to direct the respondents to consider the petitioner's representation dated 11.12.2014 and to refund the excess salary amount collected by them.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows_

2-1.The petitioner's husband Periyasamy had joined the service in the Erode District Milk Producers Co-Op Union Ltd

on 11.07.1978 and after holding several positions, he retired on 31.03.2004 as an Assistant Manager (Procurement/Security). The petitioner's husband died on 13.07.2008.

2-2.Earlier, the petitioner's husband was promoted as Junior Manager long prior to 01.10.1984. Subsequently, the post of Junior Manager was re-designated as Assistant Manager. Hence, both the posts are one and the same cadre. After the completion of ten year, the petitioner's husband was eligible for selection grade benefits and accordingly, he was given selection grade. Subsequently, it appears that it was clarified that the service period spent as Junior Manager should not be counted for awarding selection grade on the basis of the Government Letter No.9922/MPII/2000-7, by Animal Husbandry & Fisheries Department, dated 16.11.2001. Hence, a show cause notice was issued to the petitioner's husband and several other similarly placed employees calling upon them to give explanation as to why the selection grade benefits should not be revised and consequently, the excess salary paid should not be recovered.

2-3.The said show cause notice was challenged before this Court by the five other similarly placed employees by way of W.P.No.37702 of 2002. At the time of final hearing of the said writ petition, as all the petitioners therein retired from service, they limited their prayer only with respect to recovery of the salary allegedly paid excessively. After hearing both sides, this Court has set aside the show cause notice in respect of the portion regarding the recovery of excess salary paid and held the recovery is not maintainable.

2-4.It is stated by the petitioner that the 2nd respondent has already recovered certain amount from the salary of her husband every month based on the above said Government Letter daed 16.11.2001. Since the said recovery itself was declared as not maintainable as per the order of this Court in W.P.No.37702/2002, the petitioner made representations to the 2nd respondent to refund the amount recovered from her husband's salary. The petitioner has made representation lastly on 11.12.2014 for refund of the amount recovered from her husband's salary. Since the representations were not considered by the respondents, the petitioner has come forward with the present writ petition.

3.When the matter is taken up consideration, the learned counsel for the petitioner made a detailed argument by adverting to the contentions raised in the affidavit filed in support of this writ petition and sought for a direction to the respondents to consider her representation dated 11.12.2014.

4.The learned Special Public Prosecutor appearing for the respondents, by filing a detailed counter, would contend that the respondent, being Co-operative Society, if the employees aggrieved by any decision of the Society, they can prefer a revision petition under Sections 153 and 154 of the

TNCS Act, to the Registrar of Milk Co-operatives for redressal of their grievance. Thus, he sought for dismissal of the writ petition.

5. Heard both sides and perused the materials available on record.

6. I am of the opinion that when this Court has already set aside the show cause and held that the recovery is not maintainable, it is not necessary to direct the petitioner to invoke the revisional provisions under Sections 153 and 154 of the TNCS Act. Moreover, the prayer made by the petitioner in this writ petition is only to give direction to the respondents to consider her representation and to refund the amount recovered from her husband's salary. Hence, I am of the opinion that a suitable direction could be given to the respondents.

7. Accordingly, this Court directs the petitioner to give a fresh representation to the 2nd respondent with regard to refund of the amount, along with a copy of this order, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation, the 2nd respondent is directed to consider the same and to pass orders on merits and in accordance with law within four weeks thereafter. It is made clear that this Court has not expressed any opinion on the merits of the claim made by the petitioner and it is for the 2nd respondent to pass orders wholly on the merit and in accordance with law.

With the above directions, the writ petition is disposed of.

No costs.

Sd/-

Assistant Registrar (CCC)

Dated: 17.11.2016

*Corrected as per letter dated 29.11.2016 and made herein.

Sd/

Assistant Registrar

Dated: 21.12.2016

//True Copy//

Sub Assistant Registrar

ssv

To

1.The Managing Director,
Tamil Nadu Co-operative Milk Producers
Federation Ltd.,
Aavin Illam, Madhavaram Milk Colony,
Madhavaram, Chennai.

2.The General Manager,
Erode District Co-Operative Milk
Producers Union Ltd.,
Chithode, Vasavi College Post,
Erode District.

+1cc to Mr.K.N. Pandian, Advocate, S.R.No.59886
+1cc to Mr.V.S. Kesavan, Advocate, S.R.No.59878

nr(CO)
md(25/11/2016)

kk 23/12

To be
substituted to
the order
already
despatched on
20.12.2016



W.P.No.7286 of 2015 and
M.P.No.1 of 2015

WEB COPY