

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.12503 of 2004

W.P.M.P.No.14627 of 2004

Tamilnadu State Primary Co-op Bank all
Employees Union SAT No.383 rep. by its
General Secretary C.Kuppusamy
Thennilai Post, Arvakurichi,
Karur District.

...Petitioner

Vs.

1. The Registrar of Coop. Societies,
Kilpauk, Madras - 10.
2. The Joint Registrar of Coop. Societies,
Namakkal Region, Namakkal.
3. The Deputy Registrar of Coop. Societies,
Namakkal Circle, Namakkal.
4. The Deputy Registrar of Coop. Societies,
Trichengode Circlem Trichengode,
Namakkal District.

...Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the entire records of the third respondent in his proceedings Na.Ka.No.7371/2003 Ve.Se.Sa. dated 20.04.2004 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents: Mr.L.Shanmugasundaram
Special Government Pleader for R1

Ms.T.Girija,
Government Advocate for R2 to R4.

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O R D E R

The writ petition is for a writ of certiorari to call for the entire records of the third respondent in his proceedings in Na.Ka.No.7371/2003 Ve.Se.Sa., dated 20.04.2004, and quash the same.

2. In the impugned order, dated 20.04.2004, passed by the third respondent, the respondent department wants to recover the salary excessively paid to its employees other than what has been fixed under G.O.Ms.131, Co-operative Department, dated 04.06.1999. Challenging the said order, dated 20.04.2004, the petitioner Tamil Nadu State Primary Co-operative Society All Employees' Union has come out with this writ petition on the ground that since the employees of the Primary Co-operative Society have already entered into a settlement with the said department and on that basis, salary has already been fixed and paid to the employees and therefore, the question of excess payment, as noted in the impugned order, does not arise.

3. The learned counsel appearing for the petitioner submits that the settlement reached between the parties is pursuant to the Industrial Dispute, which arose between them and thereafter, based upon the said settlement, several orders have been passed, fixing the salaries of the employees. Therefore, the learned counsel would submit that unless the settlement already arrived at between the parties has been modified by way of subsequent settlement, there is no question of payment of any excess salary to the employees, as stated in the impugned order.

4. Per contra, the learned counsel for the respondents would submit that in G.O.No.189 dated 17.11.2009, the Government has examined the salaries of the employees of Primary Agricultural Co-operative Societies, subsequent to Section.18(1) and 12(3) settlement and advised the respective co-operative societies to refix the salaries of its employees and accordingly in respect of 103 primary co-operative society employees, their salaries have been refixed.

5. The learned counsel for the respondents would also submit that in pursuant to the impugned order, no recovery has been made, in view of the subsequent development by way of government order in G.O.Ms.No.189, dated 17.11.2009, and the further settlement under Section 18(1) of the Act. The new revised salary is being paid from the date of the said settlement or fixation and there is no dispute with regard to that point on both sides and they have not raised any issue on that.

6. The learned counsel for the petitioner would submit that in view of the fixation of salary, subsequent to the settlement between the employees and the society, salary has been fixed from time to time and paid to the employees and no excess payment has been made. Further, he has submitted that recovery of any excess payment, as indicated in the impugned order, would be a myth and need not be given effect to.

7. As rightly pointed out by the learned counsel for the petitioner the salary for the employees are fixed from time to time and the guideline is given by the respondent department as well as the Central government by way of G.O. and proceedings. More over, the salary for the employees are fixed under the settlement between the employees and the management and therefore, the same need not be disturbed unless the situation warrants.

8. In this connection, the learned counsel for the petitioner has relied upon the order in W.P.No. 25135 of 2005, dated 31.08.2007, wherein an identical issue has been considered by this Court. The operative portion of the said order reads as follows:

"4. The only grievance ventilated by the petitioners in this writ petition is that once settlement has been arrived at and salary has been paid all along, revising the pay scale pursuant to the Government Order, without even any notice, is violative of the principle of natural justice and hence the order of the second respondent has got to be set aside.

5. After hearing the submissions made by either side, the Court is of the considered opinion that the impugned order has got to be set aside. Once salary was fixed pursuant to the settlement under the provisions of the Industrial Disputes Act and it was actually implemented by paying salary, without issuing any notice, revising the scale of pay is nothing but prejudicial to the principles of natural justice. On this short ground, the order under challenge has got to be set aside and the same is set aside accordingly. There may not be any impediment to the Authorities concerned to follow the procedural formalities and thereafter, take an appropriate decision in this matter.

6. In view of stay granted by this Court at the time of initiation of proceedings, salary has been paid as per Section 12(3) of the Industrial Disputes Act. It is made clear that this has not been disturbed till the decision is taken in this matter. With this observations, the writ petition is disposed of. Consequently the connected W.P.M.P. is closed. No costs."

9. In view of the above stated factual position, this Court is of the view that the impugned order issued by the third respondent is totally mis-conceived and therefore, the same need not be given effect to. It is also submitted by the learned counsel for the parties that the salaries of the employees have been fixed and to that effect the learned counsel for the respondent has also produced a letter dated 06.10.2016, issued by the Joint Registrar of Co-operative Societies.

10. In the light of the above, the writ petition is ordered on the following terms:-

(i) The impugned order dated 20.04.2004 need not be given effect to, as the same has been issued under total mis-conception of the issue without taking into consideration of the earlier settlement between the employees and the management.

(ii) Since salaries have been paid to the employees based on the subsequent G.O. and the settlement between the parties, the said position shall continue, until further settlement, if any, reached between the parties, in accordance with law.

11. With the above observations and directions the writ petition is ordered and there shall be no order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Registrar of Coop. Societies,
Kilpauk, Madras - 10.
2. The Joint Registrar of Coop. Societies,
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Namakkal Circle, Namakkal.
4. The Deputy Registrar of Coop. Societies,
Trichengode Circlem Trichengode,
Namakkal District.

+1 cc to M/s.C.Prakasam Advocate sr 58248

+1 cc to Government Pleader sr 58166

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aa09/11/2016