

THE HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.18707 of 2009

ORDER:

Petitioners pray for Mandamus declaring the memo Rc.No.18674/2006/PACS/General dated 19.06.2009 and the Circular Rc.No.3293/Spl.cat/2009-10 dated 29.07.2009 of respondents 2 and 4 respectively as illegal, violative of principles of natural justice and unconstitutional.

2. The petitioners are paid secretaries working in societies under the jurisdiction of respondents 2 to 6. The subject matter of the circulars is recovery of excess drawals made to paid secretaries by the societies. The operative portion of memo dated 19.06.2009 reads as follows:

“5) In view of the above circumstances, the officers noted in the address entry are requested to see that the excess salaries if any drawn by the Secretaries of PACSs in violation of Government orders in the reference 1st and 2nd cited are recovered from the concerned immediately and report compliance.”

Likewise the consequential circular dated 29.07.2009 reads as follows:

“The particulars regarding the excess amounts drawn as well as recovery shall be informed immediately. The particulars of excess amounts drawn over the salary shall be sent in the following proforma along with the concerned Nodal Officer Signature without delay failing which action will be taken against you.

Sl. No.	Name of the Secretary/ Employee	Name of PACS	Eligible Salary	Excess amounts drawn and the period	Difference of amounts	Other particulars

3. This Court, on 08.09.2009, granted interim direction as prayed for. The interim direction is subsisting as on date.

4. Smt. Bobba Vijayalakshmi, appearing for petitioners, contends that the recovery of alleged surplus drawal of salaries by the paid secretaries basing on impugned memo and circular is illegal, arbitrary and violative of principles of natural justice. It is further contended that all the petitioners have retired from service and terminal benefits are not settled by the fourth respondent. Learned

counsel, therefore, submits that the alleged excess drawal of salaries cannot be a matter of presumption but with the rejection of challenge to Rule 2(o) of the A.P. Cooperative Societies Rules, the recovery ought to be by putting on notice each one of the paid secretaries by the respondents.

Learned counsel prays that the circulars may be set aside and individual notices may be directed to be issued to the petitioners.

5. Ms. A. Supriya, learned Assistant Government Pleader for Cooperation, contends that the challenge to the memo and the circular is misconceived. According to her, the memo and the circular are interdepartmental correspondence. Any decision in the matter of recovery and excess drawals can and could be taken by the competent authority after issuing notice to the petitioners. She further contends that the petitioners having obtained interim order cannot now complain that the retirement benefits are not settled and paid by the competent authority. She has drawn the attention of the Court to the order of the Division Bench in WP.No.28433 of 2007 and batch dated 02.12.2008 and relies upon the following paras:

“Sri Polisetty Radha Krishna, learned counsel for the petitioners in Writ Petition Nos.8864 of 2006, 7884 of 2006 and 4542 of 2006 and Sri Dadi Radha Krishna, learned counsel for the petitioners in Writ Petition Nos.18333 of 2006 and 25075 of 2007 submitted that the petitioners had been paid salaries in pursuance of the interim orders passed by this Court in these writ petitions, permitting salaries to be paid as per the amended provisions of Rule 2(o) of the Rules of 1964. They urged the Societies may be interdicted from attempting recoveries of salaries so paid. It is also urged that the actual calculations of the working capital even in term of the amended provisions of Rule 2(o) were not correct and that this Court should interfere on that ground.

Having given our consideration to this argument, we are not inclined to agree. In these writ petitions, this Court is only concerned with the *vires* of Rule 2(o) of the Rules of 1964.

The interim direction granted by this Court was to the effect that the salaries should be paid in terms of the amended Rule 2(o). In such a situation it is not clear as to why and how the Societies would attempt recoveries of the salaries already paid, if the same was done in accordance with the amended Rule.

In any event, the consequences which flow from this adjudication are not of concern to this Court while deciding the validity of the impugned Rule. The actual computation of working capital basing on the amended Rule is not the subject matter in these writ petitions.”

6. The first respondent through memo dated 19.06.2009 has requested for taking appropriate action against the officers, who have drawn excess salaries. Petitioners are also not disputing that the excess drawal of salary is a fact in all the cases and the same is required to be determined on case to case basis. Likewise, the circular merely calls upon furnishing the details of excess drawal of salary.

I have perused the memo and the circular. The apprehension expressed by petitioners on the recovery by reference to the circulars is unfounded. It is now settled that the salaries ought to have been drawn in accordance with Rule 2(o) of the Rules read with Section 115(c) of the A.P. Cooperative Societies Act, 1964. Therefore, it is left open to respondents to issue notices to petitioners, receive explanation and pass appropriate orders on the recoverable amount towards excess drawals of salary from petitioners in accordance with law.

The writ petition is disposed of with the above direction.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

There shall be no order as to costs.

S.V. BHATT, J

July 4, 2016
DSK