

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-10-2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14746 of 2014

And

M.P.Nos.2 and 3 of 2014

C.Madhayan

... Petitioner

-vs-

1. The Registrar of Co-operative Societies,
Dharmapuri Region,
Dharmapuri.
2. The Deputy Registrar of Co-operative Societies,
Dharmapuri Circle,
Dharmapuri.
3. K.K.350T, Kanikarahalli,
Primary Agricultural Co-operative Credit
Society Limited,
Represented by its President,
Thoppur Via,
T.Kanikarahalli Post,
Dharmapuri District.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the orders made in Na.Ka.No.1168/2014 Thoa.Sa.1 dated 16.4.2014, passed by the second respondent and the consequential order dated 17.5.2014 passed by the third respondent and quash the same and consequently, issue direction, directing the respondents 1 and 2 to fix the salary of the petitioner to the post of Assistant Secretary in terms of the scale of pay fixed by the third respondent by his order dated 28.2.2014 and pay the same with all arrears with effect from 1.7.2000 to actual payment being made.

For Petitioner - Mr.G.Ethirajulu

For Respondents-1&2- Mr.L.P.Shanmugasundaram,
Special Government Pleader (Co-op.).

For Respondent-3 - Mr.D.Venkatachalam

ORDER

The internal communication between the Deputy Registrar of Co-operative Societies to the President of the third respondent-Co-operative Society dated 16.4.2014 as well as the consequential order passed by the President of the Co-operative Society dated 17.5.2014, are under challenge in this writ petition.

2. On perusal of the order dated 16.4.2014, passed by the Deputy Registrar of Co-operative Societies, it is clear that recovery has been imposed on the writ petitioner in respect of salary paid in excess. Based on the instructions given by the Deputy Registrar of Co-operative Societies, the President of the Co-operative Society has issued an order of recovery in proceedings dated 17.5.2014.

3. At the outset, the order of recovery issued to the writ petitioner by the President of the third respondent-Society, is sought to be set aside. The internal communication was issued to the Deputy Registrar of Co-operative Societies, in his capacity as a Competent Authority, under the provisions of the Tamil Nadu Co-operative Societies Act. The Registrar is the controller of the Co-operative Societies in the State under the Act and the powers of the Registrar are delegated to the Deputy Registrar of Co-operative Societies to issue instructions to the management of the Co-operative Societies. Such instructions issued by the Competent Authorities under the Act, will not provide cause for the writ petitioner to move a writ petition under Article 226 of the Constitution of India.

4. However, an order of recovery was passed by the President of the third respondent-Society, against which a revision lies before the Joint Registrar of Co-operative Societies under Section 153 of the Tamil Nadu Co-operative Societies Act. A Co-operative Society, being not a State, within the meaning, under Article 12 of the Constitution of India, the writ petition is filed challenging the internal communication issued by the Deputy Registrar of the Co-operative Societies, to the President of the third respondent-Society, in order to circumvent the issue of maintainability of the writ petition.

5. What the writ petitioner cannot do directly by way of filing a writ petition, cannot be allowed to be carried out indirectly by challenging the internal communication. Thus, the writ petitioner is at liberty to move a revision petition under Section 153 of the Tamil Nadu Co-operative Societies Act and the same is to be entertained by the Competent Authority, if necessary, by condoning the delay in filing.

6. This being the factum of the case, the writ petition, against challenging the order of recovery, issued by the President of the third respondent-Society, cannot be entertained in view of the legal principles settled by a larger Bench of this Court in the case of K.Marappan vs. Deputy Registrar of Co-Operative Societies, Namakkal Circle, Namakkal [(2006) 4 CTC 689 (FB)].

7. Thus, no further adjudication on merits needs to be undertaken in this writ petition and accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Svn
To

1. The Registrar of Co-operative Societies,
Dharmapuri Region,
Dharmapuri.
2. The Deputy Registrar of Co-operative Societies,
Dharmapuri Circle,
Dharmapuri.
3. The President,
K.K.350T, Kanikarahalli,
Primary Agricultural Co-operative Credit
Society Limited,
Thoppur Via,
T.Kanikarahalli Post,
Dharmapuri District.

+1cc to Mr.D.Vengadachalam, Advocate, S.R.No.72083

+1cc to the Government Pleader, S.R.No.72685

W.P.No.14746 of 2014

Rmp (31/10/17)