

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12-12-2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.25887 of 2014

And

M.P.Nos.1 and 2 of 2014 and 1 of 2015

1.D.Ethiraj
2.R.Devakannu

.. Petitioners

-vs-

1.The Deputy Registrar of Co-op. Societies,
Villupuram Circle,
Villupuram District.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the impugned order passed by the first respondent in his proceedings Na.Ka.No.2375/2013 Tho.Vae.Sa.(5) dated 17.3.2014 and quash the same.

For Petitioners - Mr.C.Prakasam

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

ORDER

The internal communication issued by the Deputy Registrar of Co-operative Societies to the President of the second respondent-Co-operative Society in proceedings dated 17.3.2014, is under challenge in this writ petition.

2. The learned counsel, appearing on behalf of the writ petitioners, states that the first writ petitioner was appointed as a Salesman in the second respondent-Society in the year 1987 through the District Employment Exchange and further the first writ petitioner was promoted to the post of Clerk and then to the post of Secretary. The second writ petitioner was also appointed as a Salesman in the second respondent-Society in the

year 1990 and promoted to the post of Clerk in the year 2008.

3. The learned counsel, appearing on behalf of the writ petitioners, states that the then Special Officer/Administrator revised the scale of pay of the writ petitioners and accordingly, the writ petitioners are receiving their monthly salary from February 2013 onwards.

4. However, the first respondent-Deputy Registrar of Co-operative Societies, issued an order to the President of the second respondent-Co-operative Society, in proceedings dated 17.3.2014, stating that the revision of scale of pay granted to the writ petitioners was contrary to the Government guidelines issued in respect of the employees of the Co-operative Societies and therefore, directed the President to initiate appropriate action to revise the scale of pay of the writ petitioners and recover the excess amount and inform the same to the Deputy Registrar of Co-operative Societies. Challenging the same, the present writ petition is filed.

5. Undoubtedly, the internal communication issued by the Deputy Registrar of Co-operative Societies to the President of the second respondent-Co-operative Society, is under challenge. 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)], held that no writ can be entertained against the Co-operative Societies and the Co-operative Societies are not a State, within the meaning of Article 12 of the Constitution of India. When a Co-operative Society is not a State, within the meaning of Article 12 of the Constitution of India, the remedy left open to the aggrieved employees of the Co-operative Society is to approach the Competent Authorities under the provisions of the Tamil Nadu Co-operative Societies Act. However, in order to overcome the ban on maintainability, the present writ petition is filed challenging the internal communication.

6. The power of the Registrars under the Act, has been delegated to the Joint Registrars and the power of the Registrars by way of notification by the Government. Under the delegation of powers, the authorities are exercising the powers of the Registrars conferred under the Act.

7. More-so, the Registrar of the Co-operative Societies is empowered to issue suitable directions in order to control the administration of Co-operative Societies registered under the Tamil Nadu Co-operative Societies Act. Such directions are issued to the management of a Co-operative Society and in turn the management has to implement lawful orders issued by the

competent authorities under the Act and communicate the same to the authorities concerned.

8. Thus, on receipt of the impugned order in this writ petition dated 17.3.2014, the management of the Co-operative Society has to initiate appropriate action by issuing the show cause notice and by providing opportunity to the writ petitioners and take a decision, after passing the final orders.

9. The grievance of the writ petitioners is that even without following the procedures contemplated under the Act and the Rules, the management is directly imposing recovery and that is the reason why they are constrained to file this writ petition.

10. May that it be, this Court cannot entertain the writ in view of the legal impediment enumerated by the larger Bench judgement of this Court, cited supra. However, it is needless to state that the management of a Co-operative Society on receipt of any such directions from the Registrar or competent authorities, have to issue show cause notice to the employees in respect of the allegation of excess pay and after receiving the explanations/objections from such employees and thereafter, considering the claims and counter claims and take a decision and pass final orders and thereafter impose recovery if a decision is taken in this regard.

11. Thus, this Court make it clear that the second respondent has to obey the orders of the first respondent by following the principles of natural justice and by providing reasonable opportunity to the writ petitioners.

12. With these observations, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

Sd/-

Assistant Registrar (CS VI)

//True copy//

Sub Assistant Registrar

Svn

To

1.The Deputy Registrar of Co-op. Societies,

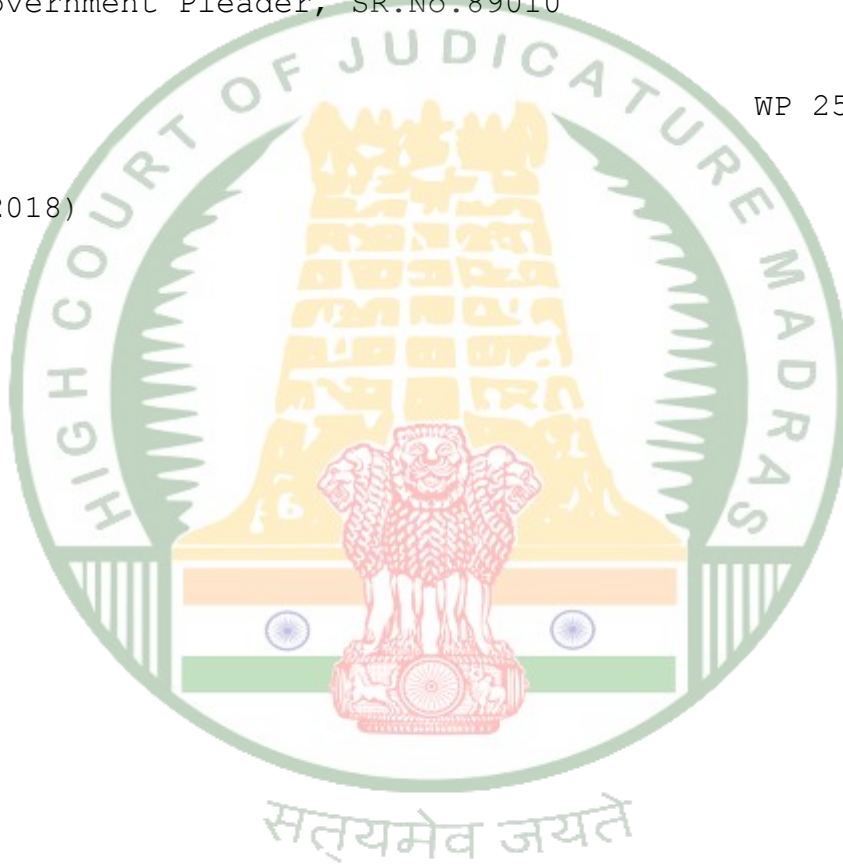
Villupuram Circle,
Villupuram District.

2.The President,
CLSPL 266, Eraiyur Primary Agricultural Co-op.
Credit Society Limited, Eraiyur,
Vanur Taluk,
Villupuram District.

+lcc to Mr.C.Prakasam, Advocate SR.No.88623
+lcc to Mr.L.P.Shanmugasundaram, Advocate SR.No.88435
+lcc to Government Pleader, SR.No.89010

WP 25887 of 2014

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