

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated : 09.02.2018****CORAM :****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****W.P (MD) Nos.4021, 4029 and 4031 of 2015****and****W.M.P. (MD) Nos.1,1,1,2,2 and 2 of 2015**

K.K.R.Shelvam ... Petitioner in W.P.(MD).No.4021/2015
B.Sundaresan ... Petitioner in W.P.(MD).No.4029/2015
K.R.Murugesan ... Petitioner in W.P.(MD).No.4031/2015

Vs.

1. The Deputy Registrar/Managing Director,
The Karur Agricultural Producers
Co-operative Marketing Society
Ltd., R.378
145, Jawahar Bazaar,
Karur - 639 001.
2. The Deputy Registrar of Co-operative Societies,
Karur Circle, Anna Nagar, Thanthonimalai,
Karur - 639 005.
3. The Joint Director of Cooperative Audit,
Madurai Region, Madurai - 625 020. ... Respondents in all
petitions

Common Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned notices dated 04.03.2015 of the 1st respondent and quash the same and consequently direct the 3rd respondent to release the objected item of the Dearness Allowance and other allowances given to the petitioner under the settlement under Section 18(1) of the Industrial Disputes Act, 1947.

In all petitions
For Petitioner

: Mr.V.Sitharanjandas

For Respondent

: Mr.D.Sadiq Raja for R1

Mr.K.Saravanan, G.A. For RR2 and 3

COMMON ORDER

The petitioners are employed as Salesmen in Karur Agricultural Producers Co-operative Marketing Society Ltd., R.378. In the said Co-operative society, salesmen were categorized into two. One was called salesman (PDS) and the other was called as salesman (Fair Price Shops). The petitioners entered service only through employment exchange. The Board entered a settlement under Section 18(1) of I.D.Act, 1947. As regards the salesman (Fair Price shop), the said settlement did not apply. The society is getting subsidy from the government and their pay and allowances are fixed by the Government. Since the petitioners come under the category of salesman (PDS), their pay and allowances stood covered by the settlement.

2.Subsequently, on account of objection raised by the audit department, an attempt was made to nullify the said settlement. That gave rise to more than one writ proceedings before this Court also. While so, the impugned notices dated 04.03.2015 were served by the first respondent calling upon the petitioners to remit the dearness allowance amounts received by them. It was made clear that if the amount mentioned in the notices was not remitted, coercive measures will be taken. Aggrieved by the same, these writ petitions have been filed.

3.The learned counsel for the Management would contend that dearness allowance was wrongly paid to the petitioners and that therefore, the impugned order cannot be faulted.

4.These facts are not in dispute. The petitioners were paid the aforesaid amounts only pursuant to the terms of the settlement entered into under Section 18(1) of the Act. The petitioners have not indulged in any misrepresentation. There is also considerable force in the submission of the learned counsel for the petitioner that the management is erroneously grouping the petitioners with salesmen (Fair Price Shop). More than anything else, effecting recovery from employees, who belong to the category of salesmen when they cannot be found to have been guilty of misrepresentation will only cause enormous hardship, as held by the Hon'ble Supreme Court in the decision reported in **(2015) 3 SCC 354 - State of Punjab Vs. Rafiq Masih**. In view of the conclusion arrived at by this Court that recovery if made from the employee would be iniquitous and harsh, this Court quashes the impugned notices.

5.These writ petitions stand allowed as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T&P)

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Sub Assistant Registrar



To

1. The Deputy Registrar/Managing Director,
The Karur Agricultural Producers
Co-operative Marketing Society
Ltd., R.378
145, Jawahar Bazaar,
Karur - 639 001.

2. The Deputy Registrar of Co-operative Societies,
Karur Circle, Anna Nagar, Thanthonimalai,
Karur - 639 005.

3. The Joint Director of Cooperative Audit,
Madurai Region, Madurai - 625 020.

+ 3 ccs TO Mr.V.Sitharanjandas , Advocate in SR Nos. 47604,47606,
47605

+ 3 ccs TO Mr.D.Sadiq Raja , Advocate in SR No. 47625,47624,47623

+ 1 cc TO The Special Government Pleader in SR No. 47832,47826,
47831

Arul

AE/SV MMS/SAR4/20.06.2018/3P/11C

W.P (MD) Nos.4021, 4029 and 4031 of 2015
and
W.M.P. (MD) Nos.1,1,1,2,2 and 2 of 2015
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