

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.02.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1204 of 2019

and

W.M.P.Nos.1361 & 1362 of 2019

V.Gunasekaran

..Petitioner

--vs--

- 1.The State of Tamil Nadu,
Rep.by its Secretary to Government,
Co-operation, Food and Consumer Protection Department,
Secretariat, Fort St.George,
Chennai - 600 009.
- 2.The Registrar of Co-operative Societies,
Kilpauk,
Chennai - 600 010.
- 3.The Joint Registrar of Co-operative Societies,
Vellore Region,
Vellore.
- 4.The Deputy Registrar of Co-operative Societies,
Tirupattur Circle,
Vellore District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the 4th respondent in Na.Ka.2223/2016 PaTho dated 01.11.2018 and the subsequent impugned orders issued by the 4th respondent in Na.Ka.2223/2016 Pa.Tho dated 07.11.2018 and the 4th respondent in Na.Ka.2223/2016 Pa.Tho dated 07.11.2018 and to quash the same and consequently directing the respondents to restore the order of 4th respondent in Na.Ka.2461/2016 Pa.Tho(2) dated 20.03.2014 with all consequential and other attendant benefits.

For Petitioner : Mr.G.Sankaran

For Respondents: Mr.L.P.Shanmuga Sundaram
Special Government Pleader (Co-op)

O R D E R

The order of recovery, in respect of the excess scale of pay fixed and the salary paid is under challenge in the present writ petition.

2.The writ petitioner is working as Junior Inspector of Co-operative Societies and the impugned order passed by the Deputy Registrar of Co-operative Societies states that the Scale of Pay fixed for the writ petitioner was erroneous and accordingly, the excess salary paid is to be recovered and challenging the said order the present writ petition has been filed.

3.The learned counsel appearing on behalf of the writ petitioner states that the Scale of Pay initially fixed and the revision scale of pay granted to the writ petitioner was in accordance with the Government Orders in force and as per the Pay Rules and there is no irregularity and consequently the impugned order is liable to be scraped. This apart, no opportunity was given to the writ petitioner enabling to submit his representations/objections in respect of the fixation of scale of pay as per the Government Orders. Therefore, the impugned order is in violation of the principles of natural justice.

4.The learned Special Government Pleader appearing on behalf of the respondents states that the revision scale of pay granted to the writ petitioner was found in violation of the revised scales of pay. In view of the fact that the establishment had fixed the scale of pay of the writ petitioner in violation of the Government Orders and the Pay Rules in force. An objection was raised and accordingly, the impugned order was passed revising the scale of pay based on the Pay Rules and accordingly, the recovery was imposed in order to recover the excess salary granted to the writ petitioner.

5.However, the learned Special Government Pleader is unable to establish that such a decision was taken after providing an opportunity to the writ petitioner and by issuing a show-cause notice. In the absence of providing an opportunity, this Court is of an opinion that the principles of natural justice has been violated. Accordingly, the impugned order passed by the 4th respondent in proceedings Na.Ka2223/2016Pa.Tho dated 07.11.2018 is quashed. The 4th respondent is directed to issue a show cause notice, setting out all the details to the writ petitioner within a period of 4 weeks from the date of receipt of a copy of this order. On receipt of the show cause notice, the petitioner is directed to submit his explanations/objections along with the relevant Government Orders and Pay Rules within a period of 2 weeks from the date of receipt of a copy of the show cause

notice. On receipt of the representation, the 4th respondent shall consider the issues on merits including the explanation if any submitted by the writ petitioner and pass orders within 12 weeks from the date of receipt of a copy of this order.

6. With these directions, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

Pns

To

1. The Secretary to Government,
Co-operation, Food and Consumer Protection Department,
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Chennai - 600 009.
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VD(CO)
GN(14/03/2019)