

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 14.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.19297 of 2004
and
WP.MP.No.23219 of 2004
and
WV.MP.No.35 of 2009

P.Neethimani ...Petitioner

Vs

1. The Registrar of Co-operative Societies,
No.170, N.V.N. Mansion,
Kilpauk, Chennai - 600010.
2. The Deputy Registrar of
Co-operative Societies,
Ariyalur Division, Ariyalur.Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the respondents especially the second respondent relating to his proceeding made in Na.Ka.2257/2003 (Pa-Tho-1) dated 06.05.2004 and quash the same as null and void, illegal and invalid and consequently directing the respondents to pay the petitioner's personal pay continuously as per the stipulations made in G.O.M/sNo.497, Finance (Paycell) department dated 15.09.1998 mulcting his entitlement for the non-payment period, not paid in view of the impugned order upholding his right to recover the arrears and connected payments.

For Petitioner : Ms.V.Chellammal
for A.Amalraj

For Respondents: Mr.D.Venkatachalam, AGP

O R D E R

The order dated 06.05.2004 which is under challenge in the present Writ Petition is cancellation of the 5% personal pay extended to the petitioner with effect from 01.09.1998 and ordering for recovery of the excess amount paid from 01.09.1998 to 31.05.2003.

2. The petitioner who was employed as a Senior Inspector of Co-operative Societies was sanctioned with 5% personal pay by the second respondent herein on 15.04.1999. In view of certain audit objections, the impugned order came to be passed on 06.05.2004, canceling the personal pay and ordering for recovery of a sum of Rs.15,561/- paid for the period 01.09.1998 to 31.05.2003.

3. On a perusal of the impugned order as well as the counter affidavit filed by the respondents herein, it is apparent that the respondents have not issued any prior notice for recovery. On this short ground, the Writ Petition is to be allowed for violation of principles of natural justice. It is further seen that the impugned order has been passed for recovery of the excess pay, which was being paid for more than 5 years prior to the order, i.e., the order dated 06.05.2004 seeks for recovery of the amounts paid from 01.09.1998.

4. The Hon'ble Apex Court in its decision reported in 2015 (4) SCC 334 in the case of State of Punjab and others vs Rafiq Masih (White Washter) and others, had held in Paragraph 18 Sub Clause 3 that recovery from the employees, when the excess payment for a period in excess of 5 years before the order of recovery is issued, is impermissible in law. As such, by applying this ratio held by the Hon'ble Apex Court, the Writ Petition is entitled to succeed.

5. For all the foregoing reasons, the order dated 06.05.2004 passed by the second respondent in Na.Ka.2257/2003 (Pa-Tho-1), is quashed. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

hvk

To

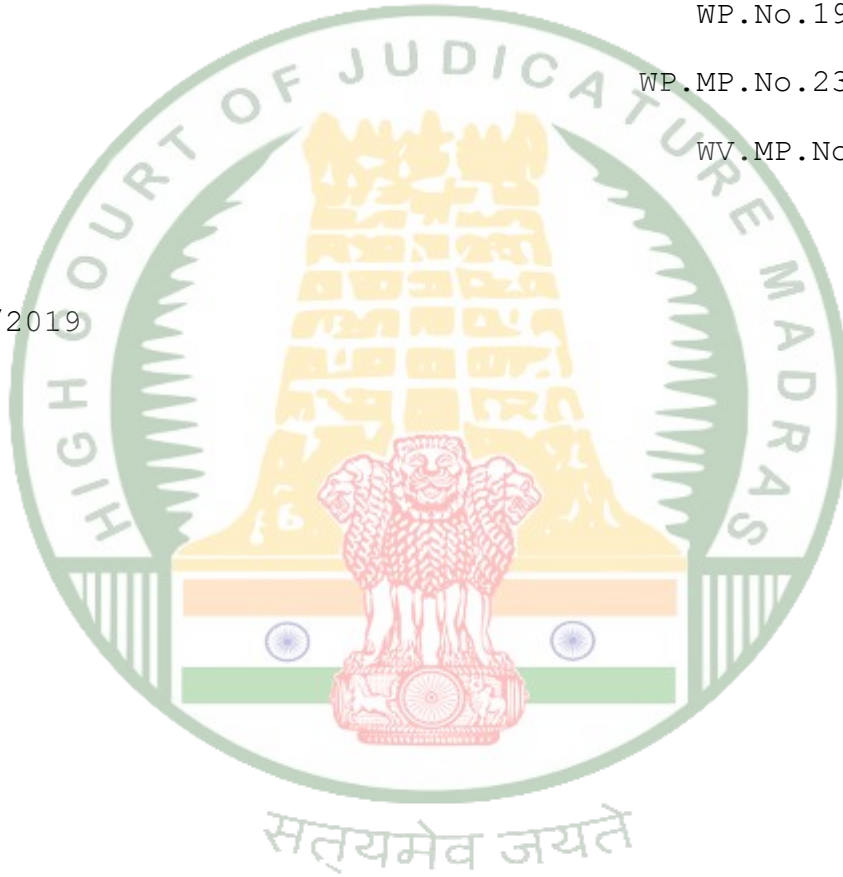
1. The Registrar of Co-operative Societies,
No.170, N.V.N. Mansion,
Kilpauk, Chennai - 600010.

2. The Deputy Registrar of
Co-operative Societies,
Ariyalur Division, Ariyalur.

+1cc to M/S.A.Amalraj, Advocate Sr.13226
+1cc to the Government Pleader Sr.14657

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