



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 07.08.2019

CORAM:

THE HONOURABLE **MR. JUSTICE S.M.SUBRAMANIAM**

**W.P. (MD)Nos.857, 858 & 859 of 2013**

**and**

**M.P(MD)Nos.2,2, & 2 of 2013**

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V.Ramasubramanian ... Petitioner  
in W.P(MD)No.857 of 2013  
N.Ariramachandra Velayuthan ... Petitioner  
in W.P(MD)No.858 of 2013  
S.Mariappan ... Petitioner  
in W.P(MD)No.859 of 2013

Vs.

- 1.The Joint Registrar (Inspection Committee) (in-charge),  
Housing Society,  
Nandanam,  
Chennai-600 020.
- 2.The Deputy Registrar (Housing),  
Vannarapettai,  
Tirunelveli.
- 3.The Special Officer,  
MDAHS-2, Sankarankovil Govt. Officer  
and Public Service Co-operative Housing Society ltd.,  
121, South Car Street,  
Sankarankovil,  
Tirunelveli District. ... Respondents  
in all the writ petitions

**PRAYER IN ALL THE WRIT PETITIONS:** Writ PetitionS under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the third respondent in connection with the impugned order of recovery and re-fixation of earlier salary made in his Proceedings NO.Nil dated 1.11.2012 and quash the same as illegal and arbitrary and consequently direct the second and third respondents to pay the salary that was received by the petitioner in view of the Proceedings passed by the third respondent in Na.Ka.No.1/08.09 dated 28.5.2008 that was made in view of the settlement and pay the arrears of salary with interest which is due from June 2012.

For Petitioners : Mr.K.Gurunathan,



For R1 & R2

: Mr.D.Muruganandham,  
Additional Government Pleader

For R3

: Mr.Aayiram K.Selvakumar

**COMMON ORDER**

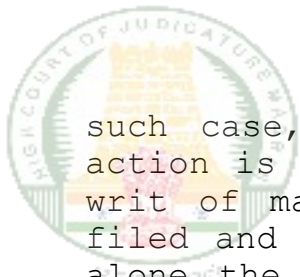
The re-fixation of pay as well as the consequential order of recovery are under challenge in these writ petitions.

2.Admittedly, the writ petitioners are working as employees in Sankarankovil Government Officer and Public Service Co-operative Housing Society Ltd., which is a co-operative Society registered under the provisions of the Tamil Nadu Co-operative Societies Act.

3.The learned counsel appearing on behalf of the writ petitioners states that the impugned order of recovery and re-fixation of pay was done without issuing any show-cause notice and by not providing any opportunity to the writ petitioners to defend their case. Even in such cases, this Court is of the considered opinion that the statutory revision contemplated under Section 153 of the Co-operative Societies Act provides an interlocutory applications to be filed for the purpose of securing interim order from the competent authority. Sub clause-3 of Section 153 contemplates and providing the powers to the revisional authority to grant interim order wherever required. When there is a provision for grant of interim order, the very argument that the surprise recovery prompted the writ petitioner to approach the High Court.

4.The basic question arose in these writ petitions is that the second respondent co-operative society is not a 'State' within the meaning of Article 12 of the Constitution of India. This apart, the statutory remedy is available under the provisions of the Act and there is a provision to grant interim order also by the competent authority, if any application is filed seeking any such relief. When a statutory remedy is available, more specifically, a provision is available for grant of interim order, the High Court should not entertain the writ petition before exhausting the statutory remedy provided under the Act. The urgency and apprehensions also can be argued before the competent revisional authority by filing revision petition under Section 153 of the Act in a prescribed format and by paying necessary fees. Institutional respects are to be protected by the High Court also. Every Institution created under the statutes are to be allowed to exercise their power in the manner provided under such statutes. In the event of bye-passing all such statutory remedies, the High Court is entertaining the claims unnecessarily. The appellate authorities or the revisional authorities under the provisions of the Act must decide the appeals or revisions on merits and in accordance with law, as expeditiously as possible.

5. The very contention of the writ petitioners that the statutory remedy is not efficacious, cannot be accepted. Even in



such case, if any statutory appeal/revision is filed and if any action is taken then only, the cause would arise for filing of the writ of mandamus and not otherwise. Thus, only if an appeal is filed and no action was initiated by the appellate authority, then alone the writ proceedings can be entertained for the purpose of issuing directions to conclude the appeal proceedings or grant necessary reliefs as the circumstances warrants. This being the principles to be followed, the High Court need not entertain all the writ petitions filed directly without exhausting the statutory remedy provided under the various statutes. The practice of filing such writ petitions are most common in service matters. As far as Income-Tax, Customs Act etc., are concerned, the appeals are filed systematically and thereafter, the writ petitions are filed. Only in co-operative institutions and in some other institutions, the writ petitions are filed directly without exhausting the appellate remedy provided under the Act. The Supreme Court has consistently ruled that the remedy provided under the statutes are to be exhausted at the first instance. Only on exceptional circumstances, the High Court can entertain the writ petition by dispensing with the appellate provisions and such an exercise cannot be done in a routine manner. This being the principles to be considered in these writ petitions, the writ petitioners are at liberty to approach the competent authority under the provisions of the Act. In respect of the time limit, the petitioners are at liberty to file a condone delay petition and in the event of filing any such petition, the period during which the writ petitions were pending also is to be considered for the purpose of condoning the delay for entertaining the revision petition, if any, filed by the writ petitioners under Section 153 of the Tamil Nadu Co-operative Societies Act.

6. With these observations, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

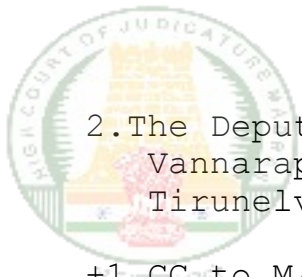
Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Joint Registrar (Inspection Committee) (in-charge),  
Housing Society,  
Nandanam,  
Chennai-600 020.



2.The Deputy Registrar (Housing),  
Vannarapettai,  
Tirunelveli.

+1 CC to M/s.SPL GP ( SR-80778[F] dated 08/08/2019 )

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