

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOs.24435 & 24176 OF 2013

and

M.P.Nos.2, 2 of 2013 & W.MP.NO.341 of 2017

A.Prakash ...Petitioner in WP.NO.24435/2013
P.Annamalai ... Petitioner in WP.No.24176/2013

Vs.

- 1.The State of Tamil Nadu
Represented by its Secretary,
Cooperation, Food & Consumer Protection
Department, Fort St. George,
Chennai 600 009.
- 2.The Registrar of Cooperative Societies,
No.170, Periyar E.V.R.High Road,
Kilpauk, Chennai 600 010.
- 3.The Deputy Registrar of Cooperative Societies,
Cheyyar Circle,
Cheyyar, Thiruvannamalai District. .. Respondents 1 to 3
in both WPs.
- 4.H.H.119. Menallur Primary Agricultural
Cooperative Credit Society,
Rep. by its Special Officer,
Menallur, Cheyyar Taluk,
Tiruvannamalai District. .. 4th respondent in
WP.NO.24435/2013
- 5.H.H.575 Vallam Primary Agricultural
Cooperative Credit Society,
Vallam Village & Post,
Vandavasi Taluk, Thiruvannamalai
District 604 505. .. 4th respondent in
WP.NO.24176/2013

Writ petitions filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified mandamus, to call for the records of the order of the 3rd respondent dated 20.03.2012 in Na.Ka.894/2012/Tho.Ve.Koo.Ka.Sa., the order of the 3rd respondent dated 29.03.2012 in Na.Ka.894/2012.Visa. and the consequential order of the 4th respondent dated 31.03.2012 and 31.7.2012 respectively and quash the same and consequently direct the respondents to pay the time scale of pay fixed to the petitioners as per G.O.Ms.NO.185, cooperation, Food & Consumer Protection Department dated 29.12.2010.

IN both WPs.

For Petitioners : Mr.K.Selvaraj

For Respondents : Mr.L.P.Shanmugasundaram ,
Spl.G.P.(Co operative) for RR1 to 4

COMMON ORDER

As the relief sought for in all the petitions are similar, they are disposed of by this common order.

2.These writ petitions have been filed by the petitioners, to call for the records of the order of the 3rd respondent dated 20.03.2012 in Na.Ka.894/2012/Tho.Ve.Koo.Ka.Sa., the order of the 3rd respondent dated 29.03.2012 in Na.Ka.894/2012.Visa. and the consequential order of the 4th respondent dated 31.07.2012 and quash the same and consequently direct the respondents to pay the time scale of pay fixed to the petitioners as per G.O.Ms.NO.185, cooperation, Food & Consumer Protection Department dated 29.12.2010.

3.The case of the petitioner is the petitioners is that in the year 1991 both the petitioners were appointed as salesman in the 4th respondent society. During the period 2000, the 1st respondent had issued G.O.Ms.No.238/2000, dated 19.10.2000 directing the respondents 2 to 4 to pay the time scale of pay to the irregular employees who have completed five years of service as on 01.04.2000. Further, on 28.09.2007 the 1st respondent has issued G.O.Ms.No.239 and enhanced the time scale of pay for the above said employees. Thereafter, on 27.11.2008 the second respondent has given an opinion that the irregular employees who have been recruited from 08.07.1980 to 12.03.2001 should also be given the benefit of G.O.Ms.No.239, Cooperation, Food and

Consumer Protection Department and thereafter on 29.12.2010 the 1st respondent has issued G.O.Ms.No.185, Cooperation, Food and Consumer Protection Department, and ordered that the employees who have completed 15 years of service in the cooperative societies should be given Selection Grade Pay and one increment. Based on the above said G.Os and the proceedings of the 2nd respondent dated 27.11.2008, the time scale of pay has been given to the petitioners and the selection grade pay has been given to the petitioners. All of a sudden the 3rd respondent by his order dated 28.03.2012, has ordered that the selection grade pay given to the employees should be cancelled. On 01.08.2012 based on the order of the 3rd respondent the 4th respondent has unilaterally re fixed the pay of the petitioner and thereby reduced the pay already given to the petitioner and on 29.03.2012 the 3rd respondent has directed the 4th respondent to recover the amounts already paid to the employees. Thereafter, on 31.03.2012 based on the order of the 3rd respondent the 4th respondent has passed the impugned order and thereby reduced the time scale of pay given to the petitioners. Aggrieved against the same, the petitioners have filed these writ petitions with the above said prayer.

4. Learned counsel appearing for the petitioners submitted that though the petitioners have entered into service in the year 1981, they were given time scale of pay only in the year 1986 after completion of 15 years of service and they were given selection grade pay in the year 2011 on the basis of G.O.Ms.No.289, dated 28.09.2007 based on the fitment table was annexed with the G.O, and as per the circular dated 14.09.2011 the selection grade was awarded. Therefore, subsequent recovery and refixation of the pay granted to the petitioners is arbitrary and unsustainable. Accordingly he prays for allowing the writ petition.

5. Per contra, learned Special Government Pleader submitted that the petitioners appointment is irregular GO.Ms.No.238/2000 dated 19.10.2000 was issued granting time scale of pay to the irregular employees viz, sales man, who have completed five years of service as on 01.04.2000 and also ordered 10% HRA and DA as applicable to Government servant. It is the further submission of the learned Special Government Pleader that G.O.Ms.No.289 dated 28.09.2007 is applicable only to regular employee and the employees whose services were regularised as per the orders of the Hon'ble Supreme Court and the pay to be fixed to employees whose service were not regularised in the minimum of time scale of pay and that irregular appointees are not eligible for Selection Grade Pay and their pay should be fixed in the minimum of time scale of pay. While so, there was a confusion in between the regular employee and the irregular employees which led to a clarification being issued by the 2nd

respondent by its letter dated 25.10.2007 from which it is clear that G.O.Ms.No.289 dated 28.07.2007 is applicable only to regular employees and irregular employees are not eligible for Selection Grade Pay and the pay should be fixed in the minimum time scale of pay. The petitioners contention that they are eligible for fixation in the selection grade scale of pay on completion of 20 years of service is totally misconceived. On the wrong fixation of the Selection grade pay in favour of the petitioner coming to the knowledge of the 2nd respondent by applying the G.O.MS.NO.289 dated 28.09.2007, instructions were issued to refix the pay properly and based on the instructions, the pay was refixed and recovery was ordered. Hence the impugned order is perfectly correct order, it cannot be interfere. Accordingly, he prays for dismissal of the petition.

6.This Court heard the rival submissions made by either side learned counsel and also perused the materials available on records.

7.The facts in the present case is not disputed. Admittedly the petitioner was appointed as sales man is a non-sanctioned post and his irregular appointment came to be regularised by applying G.O.Ms.NO.238 dated 19.10.2000 as per the said G.O. the irregular appointees were brought to the time scale of pay. Admittedly the petitioner's initial appointment is an irregular appointment in the year 1981 and he was given time scale of pay based on the Government Order above. This Court perused the fitment table, which reveals that a person who is irregularly appointed and his services came to be regularised. A perusal of G.O.Ms.No.289 and G.O. Ms. No.238 and the fitment table annexed therewith reveal that while G.O. Ms. No.238 operates in respect of the irregular appointees, the other G.O. Ms. No.289 operates in respect of regular appointees. However, a perusal of the fixation of pay reveals that the Special Officers have not applied the respective Government Orders properly while refixing the salary of the employees based on their appointment. In view of the application of wrong Government Orders, the whole confusion has arisen, which cannot be sorted out by this Court in the present writ petition. The proper Government Orders should be made applicable to the persons and in that regard, this Court is of the considered view that to secure the ends of justice, the matter has to be remanded back to the concerned Special Officer for applying the proper Government Order and refixing the correct pay payable to the petitioners.

8.In such view of the matter, the writ petition is disposed of by remanding the matter back to the authorities to fix the correct pay scales by applying the proper Government Orders applicable to the irregular employees and fix the correct pay accordingly. After proper fixation, if any excess amount is paid to the petitioners, it is open to the respondents to recover the amount, after following the due process of law. This writ petition is disposed of with the aforesaid observation and direction. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary, State of Tamil Nadu
Cooperation, Food & Consumer Protection
Department,Fort St. George,
Chennai 600 009.
- 2.The Registrar of Cooperative Societies,
No.170, Periyar E.V.R.High Road,
Kilpauk,Chennai 600 010.
- 3.The Deputy Registrar of Cooperative Societies,
Cheyyar Circle,
Cheyyar, Thiruvannamalai District
- 4.The Special Officer, H.H.119. Menallur Primary Agricultural
Cooperative Credit Society,
Menallur, Cheyyar Taluk,
Tiruvannamalai District.
- 5.H.H.575 Vallam Primary Agricultural
Cooperative Credit Society,
Vallam Village & Post,
Vandavasi Taluk, Thiruvannamalai
District 604 505.

+1 cc to M/s.Lp.Shanmugaundaram, Advocate,sr.29059
+1 cc to Special Government Pleader,sr.29231.

Mp(co)
krd 2/11

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