IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.Nos.29237 and 29238 of 2014

S. Michaelraj ...Petitioner in W.P. No.29237 of 2014

S.Loganathan ...Petitioner in W.P. No.29238 of 2014

Versus

1. The Registrar of Co-operative Societies,
No.170, E.V.R. High Road,
Kilpauk,
Chennai - 600 010.

2. Management
Indian Institute of Technology Chennai Employees' Co-operative Thrift and Credit Society Limited
Regn. No.XC-98
2nd Floor,
"Utility Building",
IIT Campus,
Chennai - 600 036. ...Respondents in both W.P.s

Common Prayer : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to quash the order of the 1st respondent dated 28.03.2014 bearing RC No.24901/2014 B1-1 and consequently direct the respondents to fix the salary of the employees of the 2nd respondent society including the petitioners on par with the employees of Indian Institute of Technology, Chennai with effect from 01.01.2006, pay arrears of salary along with interest at the rate of 12% per annum and also calculate the terminal benefits on that basis and pay arrears of terminal benefits.

For Petitioner in both W.P.s : Mr.Balan Haridas

For Respondents in both W.P.s : Mrs.T.Girija, Addl. Govt. Pleader (Co-op) for R1
: Mr.L.P.Shanmugasundaram Spl. Govt. Pleader (Co-op) for R2

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

COMMON ORDER

These Writ Petitions have been filed to quash the order of the 1st Respondent dated 28.03.2014 bearing RC No.24901/2014 B1-1 and consequently direct the respondents to fix the salary of the employees of the 2nd Respondent Society including the Petitioners on par with the employees of Indian Institute of Technology, Chennai with effect from 01.01.2006, pay arrears of salary along with interest at the rate of 12% per annum and also calculate the terminal benefits on that basis and pay arrears of terminal benefits.

2. As the issue involved in both these Writ Petitions is one and the same, the cases are taken up together for disposal by a common order.

3. According to the Petitioner in both Writ Petitions the 2nd Respondent Society was commenced in the year 1973. The employees working in the Indian Institute of Technology, Chennai are Members of the 2nd Respondent Society. The 2nd Respondent Society was registered under the Tamil Nadu Co-operative Societies Act. As such, Petitioners joined the 2nd Respondent Society on 08.02.1974 and 04.07.1973 respectively and both of them retired as Manager on 31.03.2010 and 31.07.2009 respectively. It is averred in the affidavit that from the date of commencement of the 2nd Respondent Society, the employees of the 2nd Respondent Society were paid salary on par with the employees of the Indian Institute of Technology, Chennai. Whileso, the Government issued G.O. Ms.No.89 of 2000, directing the Societies to fix salary to the employees, as directed in the said G.O. That being so, the 2nd Respondent submitted a proposal dated 04.03.2009 to the Additional Registrar of Co-operative Societies exempting their Society from G.O. Ms.No.89 of 2000 and permit to fix the salary to its employees on par with the employees of the Indian Institute of Technology, Chennai. Further, it is averred that in the said proposal, they have requested the said authority not to discontinue the fixation of pay, which had been in vogue for 35 years. The communications exchanged between either side, ultimately did not evoke any response. On attaining the age of superannuation, the petitioners retired from the service of the said Society and their terminal benefits were settled in the pre-revised salary.

4. It is further averred that though the Petitioners are eligible for revision of salary with effect from 01.01.2006 and representations were made in this regard, their terminal benefits were settled without any revision. Thereafter, they filed Writ Petition and subsequently directions were issued by this Court to consider the representation of the petitioners and

WEB COPY

to pass orders within the time limit prescribed. Subsequent to filing of the Writ Petition by the Petitioners herein, the 1st Respondent passed the impugned order dated 23.08.2014, whereby, their request was rejected. Aggrieved over the same, these Writ Petitions have been filed.

5. Learned counsel for the Petitioners submitted that, the rejection order was passed without any application of mind by placing reliance on an order passed by this Court in W.P. No.20745 of 2013 dismissing claim, which pertained to employees of Chennai Port Trust Employees Co-operative Bank. It is further submitted that the petitioners were denied the benefit by the 1st respondent on the ground that two employees who were in service at that time have agreed to receive the salary as per G.O. No.89. The mere acceptance of two persons to receive benefits in the pre-revised scale cannot be put against the petitioners to deny their legitimate claim. It is the further submission of the learned counsel that the resolution of the new Board to withdraw the proposal dated 04.03.2009 for implementing the pay scale and allowances based on G.O. Ms.No.89 is unsustainable as at the time of forwarding the proposal, request was made not to discontinue the fixation of pay, which had been in vogue for 35 years. Moreso, the 2nd respondent sent the proposal for approval to the 1st Respondent based on the Special Bye Law to the Society. Hence, he prays that the order of rejection issued by the 1st respondent may be quashed and appropriate direction may be issued to the respondents to revise the salary on par with IIT employees as well as to settle the difference in terminal benefits.

6. Per contra, Mrs.T.Girija, learned Additional Government Pleader appearing for the 1st Respondent Society vehemently opposed the contentions made by the learned counsel for the Petitioner and submits the Proposal has not yet been approved by the 1st Respondent, which is a requirement as per the Bye - Law. Further, it is the submission that G.O. Ms.No.89 was issued by the Government to regulate the scale of pay in respect of employees in Co-operative Societies. Further prior to issuance of approval for proposal sent by the 2nd respondent and on the basis of decision arrived at by the newly constituted Board to withdraw the said proposal, the impugned order was passed by the 1st Respondent, which does not call for any interference.

7. Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing for the 2nd Respondent submits that the proposal was sent for approval on 04.03.2009 and only after approval from the 1st respondent, the 2nd respondent could re-fix the pay scale on par with IIT employees, as claimed by the petitioners. Since no order has been passed on the said proposal, appropriate direction may be issued to the respondents

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

to take a decision on the said proposal within a prescribed time frame.

8. Heard the learned counsel on either side and perused the materials placed on record.

9. Admittedly, the petitioners were appointed in the 2nd Respondent Society and now retired. It is not in dispute that prior to issuance of G.O.Ms.89, the salary were paid to the employees of the 2nd Respondent Society on par with the employees of the Indian Institute of Technology, Chennai. Admittedly, the 2nd Respondent sent the proposal to the authority concerned seeking exemption from G.O. Ms.No.89. It is not in dispute that till the date of filing of these Writ Petitions, the proposal sent by the 2nd Respondent has neither been approved nor been withdrawn. The respondents are vested with a right to either approve or reject the proposal, but not to sit over the said proposal for an interminable period. Without deciding on the said proposal, the impugned order passed by the 1st respondent suffers the vice of illegality. Further, it is to be pointed out that the long years of service rendered by the employees in the society has to be borne in mind while passing orders on their terminal benefits. The terminal benefits granted to the petitioners are not a bounty, but only a way in which their hard and devoted service is being recognised. In the above backdrop, the rejection order passed by the 1st respondent is wholly unsustainable and without application of mind and, therefore, the impugned order is liable to be quashed.

10. For the reasons aforesaid, the order impugned herein is quashed and the matter is remanded to the respondents for fresh consideration. The respondents are directed to consider the representation of the petitioner in both Writ Petitions in the light of the orders passed above and pass orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

11. Accordingly, these Writ Petitions are allowed with the above observations and directions. No costs.

WEB COPY

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsi2

https://hcservices.ecourts.gov.in/hcservices/

To

1. The Registrar of Co-operative Societies,
No.170, E.V.R. High Road,
Kilpauk,
Chennai - 600 010.

2. The Management
Indian Institute of Technology Chennai Employees
Co-operative Thrift and Credit Society Limited
Regn. No.XC-98
2nd Floor,
"Utility Building",
IIT Campus,
Chennai - 600 036.

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.39600
+1cc to Special Government Pleader(co op), S.R.No.39553

W.P.Nos.29237 and 29238 of 2014

CA(CO)
KKV/08/01/2021

सत्यमेव जयते
WEB COPY