



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.09.2020**

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

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W.P. (MD) No.12288 of 2020
(Through Video conferencing)

R.Selvam

... Petitioner

-Vs-

1. Secretary to Government,
Co-operation, Food and Consumer Protection Department,
Fort St. George,
Chennai - 600 009.

2. The Registrar of Co-operative Societies,
N.V.N.Natarajan Maligai,
Kilpauk, Chennai - 600 010.

3. The President,
N.N.625, V.Pudur Primary Agricultural
Co-operative Credit Society Ltd.,
V.Pudur, Ulampatti Via,
Sivagangai District - 630 410.

... Respondents

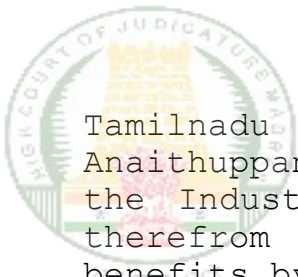
Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a writ of Mandamus, directing the respondents 1 and 2 to revise the portion of the G.O.(Nilai) No.189, Co-operation, Food and Consumer Protection (CN-1) Department Dt:17.11.2009, for fixing the revised scale of pay on the basis of Dearness Allowance at 97% instead of 84% from 01.04.2008 and to implement the wage settlement entered between Tamilnadu Primary Co-operative Agricultural Bank Employees' Anaithuppaniyalargal Sangam and the 3rd respondent under Sec.18(1) of the Industrial Disputes Act on 26.02.2010 with such modification therefrom and to pay the difference of salary and other service benefits by fixing a time frame.

For Petitioner : Mr.M.Ganesan

For Respondents : Mr.A.Thiyagarajan, G.A.

ORDER

The Prayer sought for in this writ petition is for a writ of Mandamus, directing the respondents 1 and 2 to revise the portion of the G.O.(Nilai) No.189, Co-operation, Food and Consumer Protection (CN-1) Department Dt:17.11.2009, for fixing the revised scale of pay on the basis of Dearness Allowance at 97% instead of 84% from 01.04.2008 and to implement the wage settlement entered between



Tamilnadu Primary Co-operative Agricultural Bank Employees' Anaithuppaniyalargal Sangam and the 3rd respondent under Sec.18(1) of the Industrial Disputes Act on 26.02.2010 with such modification therefrom and to pay the difference of salary and other service benefits by fixing a time frame.

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2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

3. The issue raised in this writ petition is that, the petitioner as that of the similarly placed persons, who are the employees of the Cooperative Societies, is entitled to get the revised scale of pay at the rate of merging 97% of dearness allowance instead of 84% of dearness as allowed by the Government through the impugned Government Order viz., G.O.Ms.No.189, Co-operation, Food and Consumer Protection Department, dated 17.11.2209. In this context, the issue raised in this writ petition is no more res-integra as a Division Bench of this Court in W.A.(MD) No.452 of 2012 has clarified the position of the impugned order by saying that instead of 97% of dearness allowance as allowed in respect of other category of employees since lesser percentage of dearness is allowed in the impugned order, those employees working in Co-operative Societies would be entitled to merger of higher dearness allowance at the rate of 97%.

4. Pursuant to the said Division Bench order passed, several writ petitions were filed and the same were allowed by this Court and in this regard, the learned counsel appearing for the petitioner has relied upon an order dated 01.07.2020 passed by the learned Judge of this Court in W.P.(MD) No.5921 of 2020 and etc. batch, where the learned Judge has passed the following order:

"3. The issue in the present Writ Petition is whether the petitioners are entitled to for Dearness Allowance at 97% of the basic pay. The issue is no more res integra and is squarely covered by a decision of Honourable Division Bench of this Court in W.A.(MD) No.452 of 2012. The said decision was taken note of by this Court on an earlier occasion in a batch of Writ Petitions in W.P.(MD) Nos.9140, 9186 and 14636 of 2014, dated 19.12.2018. After extracting the counter filed by the respondents in the said Writ Petitions, this Court has observed as follows:

"5. The petitioners are demanding existing Dearness Allowance of 97% be fixed to their last pay drawn salary and be given to them as the new basic pay. If the above formula is applied the petitioners are given only a marginal increase in the basic pay.



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Following illustrations based on the above formula will demonstrate the grievance of the petitioners are legitimate. If Rs.100/- was the basic pay and 97% DA was paid, till the issue of G.O.Ms.189, dated 17.11.2009, the pay + DA would be Rs.197 (100 + 97). If the formula as per G.O is applied New Basic Pay will be as follows:

$$\begin{aligned}\text{Basic Pay} + 50\% \text{ DA Merger} &= X \\ \text{i.e., Rs.100 (BP) + 50\% of 97} &= X\end{aligned}$$

$$\text{Therefore, } X = 100 + 48.5 = 148.5$$

$$\begin{aligned}\text{New Basic Pay} &= X + (X \times 15\%) \\ &= 148.5 + (15\% \text{ of } 148.5) \\ &= 148.5 + 22.275 \\ &= 170.775.\end{aligned}$$

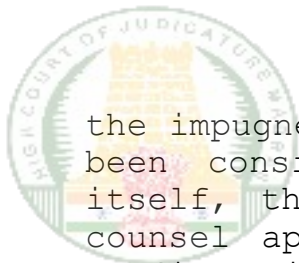
Thus, the petitioners loose out even if the revision is on 50% of existing Dearness Allowance. If 50% of 84% of the Dearness Allowance was applied the petitioners will further loose and there will be a further reduction in the Basic Pay.

6. In view of the decision of the Division Bench Judgment of this Court and the above discussion these Writ Petitions are to be allowed. Consequently, the respondents are directed to calculate the arrears and pay the amount to the petitioners together with interest at 7.5% per annum within a period of six weeks from the date of receipt of a copy of this order and also to pay the revised salary as per the orders of this Court."

4. In the light of above, these Writ Petition are allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

5. I had some occasions to consider similar issues and I had also passed order, of course, following the Division Bench order referred to above as well as the earlier order passed by the Writ Court.

6. In this context, since the petitioner has given request on 03.07.2020 to the respondents to revise his pay by taking into account the dearness allowance at 97% instead of 84% as allowed in



the impugned Government Order, the said representation since has not been considered, challenging the G.O.Ms.No.189 dated 17.11.2009 itself, this writ petition has been filed. However, the learned counsel appearing for the petitioner would submit that, he would confine with the prayer that, pursuant to the order referred to above passed by the Division Bench as well as the writ Court in number of cases, similar order can be passed in this writ petition giving direction to the respondents to revise the pay scale of the petitioner by taking into account the judgment of the Division Bench.

7.I have heard the learned Government Advocate appearing for the respondents, who would fairly submit that, similar order can be passed.

8.In view of the said factual matrix of this case and having considered the submission made by both sides and taking into account the earlier orders passed by this Court, there shall be a similar order to that effect in this writ petition also.

9.Accordingly, the respondents are directed to consider the request of the petitioner dated 03.07.2020 and to revise the pay scale of the petitioner in tune with the aforesaid judgments quoted in this order and needful accordingly shall be undertaken by the respondents within a period of six weeks from the date of receipt of a copy of this order.

10.With the above direction, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Secretary to Government,
Co-operation, Food and Consumer
Protection Department, Fort St. George, Chennai - 600 009.

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



2.The Registrar of Co-operative Societies,
N.V.N.Natarajan Maligai,
Kilpauk, Chennai - 600 010.

+1 CC to M/s S.SEENIVASAGAM, Advocate, in SR.No.17771.

Order made in
W.P. (MD) No.12288 of 2020
22.09.2020

(CK) CO

AP (07/01/2021) 5P 4C