

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 27.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.7024 of 2018
and
W.M.P.No.8672 of 2018

K.Mathivanan

...Petitioner

Vs

1.The Deputy Registrar of Co-operative
Societies,
Gopi Circle, Gopi,
Erode District.

2.K.531 Maranur Primary
Agricultural Co-Operative Credit Society,
Rep by its President,
Maranur, Senbagapudur Post,
Sathiyamangalam Tk,
Erode District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the first respondent in his direction in Na.Ka.No.4080/Tho.Ve.Sa, dated 16.08.2017 and 14.11.2017 and consequential order of recovery passed by the second respondent dated 02.03.2018 quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents: Mr.T.Girija, GA

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O R D E R

By consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner herein, who was appointed as a Salesman on 01.04.1996 in the second respondent Society, was promoted as a Junior Assistant on 01.07.2014. The criminal case against the petitioner ended in acquittal on 02.02.2016. By an order dated 16.08.2017, the first respondent herein had directed the second respondent to recover excess salary of Rs.1,08,754/- from the petitioner, claiming that the petitioner was wrongfully paid salaries through an irregular promotion. The

second respondent herein had given an explanation to the said letter of the first respondent, stating that there was no excess salary paid, but during the interregnum period, when the petitioner was facing the prosecution, he was paid the salaries of Salesman alone. However, without consideration of the explanation rendered, the first respondent had directed the second respondent to recover the excess amount, through their letter dated 14.11.2017. Consequently, the second respondent had passed an order for recovery on 02.03.2018. The letters of the first respondent dated 16.08.2017 and 14.11.2017 and the recovery order of the second respondent dated 02.03.2018 are put under challenge in the present writ petition.

3. Before addressing the contentions raised by both the counsels, it would be appropriate to refer to the decision of the Hon'ble Supreme Court in the case of State of Punjab Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334, wherein, the Hon'ble Supreme Court had clearly held that the recovery of excess payments made mistakenly by the employer is impermissible in law, with regard to the employees belonging to Group 'C' and Group 'D' Services. Admittedly, the petitioner herein belongs to Group 'C' services and by applying the ratio in White Washer case (supra), the orders of the respondent herein for recovering the excess payment made, which were put under challenge by the petitioner, cannot be sustained.

4. That apart, the writ petition requires to be allowed on yet another ground. While the first respondent, in his letter dated 16.08.2017, had directed the second respondent to recover the excess salary, the second respondent had attempted to substantiate that there was no excess payment at all and that the petitioner was properly paid the salaries. However, ignoring such objections, the first respondent herein, through his letter dated 14.11.2017, had threatened with consequences, if the recovery is not made from the petitioner. The letter dated 14.11.2017 has not considered any of the explanation rendered by the second respondent herein and as such can be termed as a 'non-speaking order'. As a matter of fact, the second respondent herein had categorically explained that there was no excess salary at any point of time. If at all the first respondent was of the view that there exists an excess payment, there was a duty cast on the first respondent to overrule the objections given by the second respondent and thereafter take a final decision, which exercise has not been done in the instant case. On this short ground also, the petitioner is entitled to succeed.

5. For all the foregoing reasons, the orders dated 16.08.2017 and 14.11.2017 passed by the first respondent and the recovery order dated 02.03.2018 passed by the second respondent are quashed. The writ petition stands allowed

accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

hvk

To

- 1.The Deputy Registrar of Co-operative Societies,
Gopi Circle, Gopi,
Erode District.
- 2.The President,
K.531 Maranur Primary
Agricultural Co-Operative Credit Society,
Maranur, Senbagapudur Post,
Sathiyamangalam Tk,
Erode District.

+1cc to Mr.M.S.Palaniswamy, Advocate SR.No.26215

+1cc to Special Government Pleader SR.No.25964

W.P.No.7024 of 2018
and
W.M.P.No.8672 of 2018

LN (CO)
GMY (02/07/2021)

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