



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2021

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)Nos.8691 of 2016 and 1513 of 2017

and

W.M.P. (MD)Nos.6940 and 6941 of 2016, 1230 and 9416 of 2017

W.P. (MD)No.8691 of 2016:-

A.Iyadurai

... Petitioner

vs.

- 1.The State of Tamil Nadu,
represented by its Principal Secretary to Government,
Cooperation, Food & Consumer Production Department,
Secretariat, Chennai - 9.
- 2.The Registrar of Co-Operative Societies,
No.170, Periyar E.V.R. High Road,
Kelpauk, Chennai - 10.
- 3.The Personal Assistant to Registrar and Personnel Officer,
Office of the Registrar of Cooperative Societies,
No.170, Periyar E.V.R. High Road,
Kelpauk, Chennai - 10.
- 4.The Joint Registrar of Cooperative Societies
(Finance & Banking),
No.170, Periyar E.V.R. High Road,
Kelpauk, Chennai - 10.
- 5.The Accountant General (A&E),
Pension 27 Section,
Office of the Principal Accountant General (A&E),
No.61, Anna Salai, Thenapet,
Chennai-600 018.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned order passed by the first respondent in his proceedings in Letter No.15296/CL2/2015 3, dated 03.02.2016 and the consequential revised and re-fixation order issued by the third respondent in his proceedings in Rc.No1033/2013/OE1 dated 24.03.2016 and the consequential recovery order passed by the fourth respondent in his proceedings in Rc.No.98452/2014/P1 dated 11.04.2016 and to quash the same as illegal.



For Petitioner : Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates
For R-1 to R-4 : Mr.M.Linga Durai
Government Advocate
For R-5 : Mr.P.Gunasekaran

W.P. (MD)No.1513 of 2017:-

A.Iyadurai

... Petitioner

vs.

- 1.The Registrar of Co-Operative Societies,
No.170, Periyar E.V.R. High Road,
Kelpauk, Chennai - 10.
- 2.The Financial Advisor/Chief Accounts Officer,
Office of the Registrar of Co-Operative Societies,
No.170, Periyar E.V.R. High Road,
Kelpauk, Chennai - 10.
- 3.The Accountant General (A&E),
Pension 27 Section,
Office of Principal Accountant General (A&E),
No.61, Anna Salai, Thenapet,
Chennai-600 018.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent in his proceedings in Na.Ka.No.42564/2013/Ka.4 dated 22.11.2016 and to quash the same as illegal and consequently to direct the respondents to release the Death Cum Retirement Gratuity (DCRG) a sum of Rs.3,30,867/- with interest of 12% in terms of Rule 45-A of the Tamil Nadu Pension Rules, 1978 within the period that may be stipulated by this Court.

For Petitioner : Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates
For R-1 and R-2 : Mr.M.Linga Durai
Government Advocate
For R-3 : Mr.P.Gunasekaran

COMMON ORDER

W.P(MD)No.8691 of 2016 is filed for issuance of a Writ of Certiorari, to quash the impugned order vide letter, dated 03.02.2016, and the consequential revised and re-fixation order issued by the third respondent, dated 24.03.2016, and the consequential order of recovery passed by the fourth respondent in the proceedings, dated 11.04.2016.



2.W.P(MD)No.1513 of 2017 is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the first respondent, dated 22.11.2016, whereby, Death Cum Retirement Gratuity (DCRG) was withheld on account of the pendency of the first Writ Petition in W.P.(MD)No.8691 of 2016. The prayer is also for a direction to release the Death Cum Retirement Gratuity (DCRG), namely, a sum of Rs.3,30,867/- with interest at 12% in terms of Rule 45-A of the Tamil Nadu Pension Rules, 1978, within a period that may be stipulated by this Court.

3.Heard Mr.C.Venkatesh Kumar, learned Counsel appearing for the petitioner and Mr.M.Linga Durai, learned Government Advocate appearing for the State and Mr.P.Gunasekaran, learned Counsel for the 5th and 3rd respondent in both Writ Petition respectively.

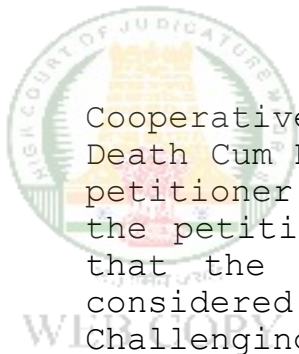
4.Since the issues involved in these Writ Petitions are one and the same, these Writ Petitions are taken up together and disposed of by this common order.

5.Brief facts, that are necessary for the purpose of disposal of these Writ Petitions, are as follows:

5.1.The petitioner was originally appointed as Junior Assistant in the office of Deputy Registrar of Cooperative Society, Pollachi, by a process of recruitment through Tamil Nadu Public Service Commission and his pay was fixed at Rs.9,860/- in the scale of pay of Rs.5,200-20,200+Grade Pay-2,000/- in the cadre of Junior Assistant with effect from 01.01.2006. It is stated that the petitioner's pay was fixed at Rs.10,790/- with effect from 19.05.2007 in the cadre of Selection Grade Junior Assistant in the same scale of pay. The petitioner was later appointed by transfer, as Junior Inspector of Cooperative Societies, on 09.04.2008. The petitioner was also promoted, as Senior Inspector of Cooperative Societies, on 13.06.2011 and he retired on 31.01.2015 after attaining the age of superannuation.

5.2.By the order impugned in W.P.(MD)No.8691 of 2016, a clarification was issued by the Government, by which the petitioner's pay during which he served as Junior Assistant was grossly reduced. Following the clarification issued by the Government, the order of recovery was passed by the second respondent. Again, there was a direction to the Accountant General by the Joint Registrar of Cooperative Societies to calculate the pensionary benefits based on the revised pay scale. Challenging the order of clarification issued by the first respondent and the consequential order of recovery and other proceedings, the first Writ Petition in W.P.(MD)No.8691 of 2016 is filed.

5.3.During the pendency of W.P.(MD)No.8691 of 2016, the first
<https://hcservices.mca.gov.in/hcservices> W.P.(MD)No.1513 of 2017, namely, the Registrar of



Cooperative Societies considered the petitioner's representation for Death Cum Retirement Gratuity (DCRG) and rejected the request of the petitioner for DCRG on the ground that the Writ Petition filed by the petitioner challenging the order of re-fixation is pending and that the petitioner's request for disbursement of DCRG will be considered after the disposal of the first Writ Petition. Challenging the same, the second Writ Petition in W.P. (MD) No. 1513 of 2017 is filed with the consequential prayer.

6. The learned Counsel for the petitioner raised several grounds challenging the impugned orders, particularly, with reference to the clarificatory order issued earlier on the basis of which the petitioner's salary was then fixed. The learned Counsel for the petitioner also submitted that no opportunity was given to the petitioner before passing the order of clarification or before issuing a direction for recovery.

7. With reference to the consequence of the impugned orders, the learned Counsel for the petitioner submitted that the recovery proceedings cannot stand, as the same was passed without giving an opportunity of hearing to the petitioner. Admittedly, no show cause notice was issued to the petitioner. The learned Counsel for the petitioner submitted that the recovery order passed by the respondents is not only violative of principles of natural justice, but also contrary to the several precedents of Honourable Supreme Court.

8. The Honourable Supreme Court in the case of ***State of Punjab and others vs Rafiq Masih and others***, reported in ***(2015) 4 SCC 334***, held as follows:

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.



(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

9. Referring to the above judgment, the learned Counsel for the petitioner submitted that the petitioner being belong to Class-3 (Group C) and retired, there cannot be any recovery. Following the judgment of the Honourable Supreme Court cited above, this Court has rendered several judgments.

10. The learned Counsel for the petitioner submitted that the recovery order and the order re-fixing the petitioner's pay may be quashed for being violative of principles of natural justice and that the matter may be remitted for fresh consideration to pass orders regarding re-fixation of petitioner's pay and monetary benefits after giving opportunity of being heard to the petitioner to put forth his objection in full before the third respondent.

11. The learned Government Advocate produced before this Court, a judgment of Honourable Supreme Court in the case of **High Court of Punjab and Haryana and others vs Jagdev Singh** reported in (2016) 14 SCC 267. After referring to the earlier judgment of the Honourable Supreme Court in case of **State of Punjab vs Rafiq Msih**, the Honourable Supreme Court pointed out that the proposition of earlier judgment regarding recovery from retired employees cannot be applied to a situation, where the Officer, to whom the payment was made in the first instance, was clearly put on notice that any payment found to have made in excess can be recovered in future. The Officer in that case furnished an undertaking while opting for the revised pay scale. That judgment has no application in the present case.

12. This Court is unable to consider the issue relating to re-fixation in the absence of several orders and clarifications issued by the Government from time to time. In the absence of materials, that are relevant to decide, as to how the petitioner's pay should be refixed after this length of time, this Court is of the view that it could be appropriate to remit the matter to the third respondent to pass appropriate orders. Since the recovery is based on the clarification issued by the first respondent, particularly, with reference to the petitioner, the same is certainly in violation of principles of natural justice, as no show cause notice or opportunity was given to the petitioner, who is likely to be affected by such re-fixation.



13.The clarification order was based on a letter of Assistant Registrar, citing the anomaly in the pay of the petitioner. Hence, this Court is fully convinced that the impugned orders in W.P.(MD) No.8691 of 2016 are liable to be set aside on the short ground that no opportunity was given to the petitioner to raise his objections before passing the orders. Hence, the impugned order passed by the first respondent, dated 03.02.2016 and the consequential revision or re-fixation order issued by the third respondent by his proceedings, dated 24.03.2016 are quashed. The recovery order passed by the fourth respondent dated 11.04.2016 is also quashed, as a consequence. However, the first respondent in W.P.(MD)No.8691 of 2016 is permitted to pass an order afresh after hearing the petitioner and giving an opportunity to putforth his objection. In case a clarification, which may result in placing the petitioner in a scale to his disadvantage, the first respondent shall issue a show cause notice and may pass appropriate orders after hearing the petitioner. In case a fresh clarificatory order is issued with reference to the petitioner's pay, it is open to the third respondent to refix the pay and proceed accordingly.

14.Though the learned Government Advocate relied upon an undertaking stated to have been submitted by the petitioner at the time of retirement, the undertaking, which was given by the petitioner is usual given at the time of submitting pension proposal and the same will not have any relevance in the present context. The respondents are permitted to proceed for recovery in case revision or re-fixation of pay of petitioner warrants such recovery in future from the pension.

15.Regarding W.P.(MD)No.1513 of 2017, this Court is of the view that the impugned order withholding the entire DCRG is illegal and arbitrary. Withholding of DCRG is due to the pendency of W.P.(MD) No.8691 of 2016. Even if the re-fixation, as per the impugned orders in the first Writ Petition, is to be confirmed by this Court, the petitioner will not loose the entire DCRG, as the re-fixation is for a limited period and the difference will not be much, so as to deny the entire DCRG to the petitioner. It is also open to the respondents to deduct any portion of amount payable by way of pension, in case, the amount, that is now claimed by the petitioner should be reduced, as per the re-fixation of his pay in future. Hence, the impugned order of first respondent, dated 22.11.2016 is quashed. Consequently, the respondents are directed to release the Death Cum Retirement Gratuity (DCRG) with interest in terms of Section 45-A of Tamil Nadu Pension Rules, 1978, within a period of eight weeks from the date of receipt of a copy of this order. It is open to the respondents to deduct or recover the amount, in case, the quantum of DCRG is reduced on account of re-fixation of pay of petitioner, as per the direction issued by this Court in W.P.(MD) No.8691 of 2016.



16. Accordingly, these Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (A.D I)

// True Copy //

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Sub Assistant Registrar (CS)

tmg/cmr

To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
Cooperation, Food & Consumer Production Department,
Secretariat, Chennai - 9.
 2. The Registrar of Co-Operative Societies,
No.170, Periyar E.V.R. High Road,
Kilpauk, Chennai - 10.
 3. The Personal Assistant to Registrar and Personnel Officer,
Office of the Registrar of Cooperative Societies,
No.170, Periyar E.V.R. High Road,
Kilpauk, Chennai - 10.06.2013
 4. The Joint Registrar of Cooperative Societies
(Finance & Banking),
No.170, Periyar E.V.R. High Road,
Kilpauk, Chennai - 10.
 5. The Accountant General (A&E),
Pension 27 Section,
Office of the Principal Accountant General (A&E),
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 6. The Financial Advisor/Chief Accounts Officer,
Office of the Registrar of Co-Operative Societies,
No.170, Periyar E.V.R. High Road,
Kilpauk, Chennai - 10.
- +2 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-31460, SR-31459 dated 07/10/2021)
- +1 CC to M/s.SPL.GP (SR-31546[F] dated 07/10/2021)

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