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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 1090 of 2014

N.K.R.Jothivel
S/o.Ramalingam

...Petitioner

Vs

1. The Registrar of Co-operative Societies
(Housing),
Revisional Authoirty,
Nandanam, Chennai - 35.

2. The Gangavalli Women Urban
Co-operative Housing Society Ltd.,
SLM/HSG-92 Rep. by Special Officer,
Now the Elected Board rep. by
The President of the Society,
Gangavalli 636 105,
Salem District.

...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records relating to the order dated 26.02.2013 made in Na.Ka.No.1149/ 2012/Sa.Pa.No.1 passed by the first respondent confirming the Resolution No.1 dated 01.09.2003 passed by the second respondent, quash the same and consequently, direct the respondents direct the respondents to pay the time scale of Salary at Rs.9100-275-14050 as per the Sixth Pay Commission to the petitioner.

For Petitioner : Mr.N.Manokaran

For Respondents : Ms.S.Anitha
Special Govt. Pleader (R1)
Ms. T.P.Savitha (R2)



O R D E R

The order of revision passed under Section 153 of Tamil Nadu Cooperative Societies Act, 1983, is under challenge in the present writ petition.

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2. The petitioner was appointed as Secretary in the second respondent Society, which is a registered Society under the Tamil Nadu Cooperative Societies Act, 1983. The dispute arose regarding fixation of salary to the writ petitioner and fixation of pay granted by the Special Officer of the second respondent Cooperative Society was objected by the audit party and thereafter, an action was taken to revise the scale of pay in accordance with the Government orders as well as the circular issued by the Registrar.

3. In respect of the Cooperative Societies registered under the Tamil Nadu Cooperative Societies Act 1983, in order to maintain consistency and uniformity, the Government issued orders and based on the Government orders, the Registrar also issued circular to the Management of the Cooperative Society to fix the scale of pay in accordance with the guidelines issued by the Government and the Registrar. However, in certain Societies, the Special Officer has fixed salary over and above the fixation recommended by the Government and the Registrar. Thus, excess fixation made by the Management of Cooperative Societies was objected by the Audit party and actions were taken to rectify the error and recover the excess salary already paid to the employees. In the case of the petitioner also, an audit objection was raised. The petitioner approached this Court at the initial stage by filing Writ petition in W.P.No.6816 of 2004 and this Court directed the petitioner to approach the revisional authority under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983. The petitioner approached the revisional authority, who, in turn, rejected the claim. Thus, the petitioner is constrained to move the present writ petition.

4. This Court is of the considered opinion that the Special Officers appointed to exercise the powers of the Board of Directors are bound to follow the Government orders and circulars issued by the Registrar under the provisions of the Tamil Nadu Cooperative Societies Act. All such directions issued under the provisions of the Tamil Nadu Cooperative Societies Act 1983, are binding on the Cooperative Societies and have the effect of statutory enforceability. This being the provisions of the Tamil Nadu Cooperative Societies Act, the authorities are competent to regulate the affairs of the Cooperative Societies registered under the provisions of the Act. Perusal of the order impugned reveals that based on the audit objection regarding the excess fixation of pay, actions were initiated. Accordingly, the



errors were rectified and correct pay as applicable to the writ petitioner was paid.

5. This Court is of the considered opinion that the authorities competent are tracing out an error in fixation of pay or competent to rectify such error so also violations of the Government orders in the matter of pay fixation. Once corrective actions are taken, the employee is entitled for the applicable salary as per the Government orders or pay rules in force. In the present case, audit objections were raised and accordingly, the pay of the writ petitioner was revised in accordance with the Government orders and circulars issued by the Registrar. Thus, this Court does not find any infirmity in respect of the revision of pay effected by the competent authorities pursuant to the audit objections raised by the audit party. However, the excess salary, if any paid, need not be recovered in view of the fact that the petitioner has already attained the age of superannuation on 28.02.2019. In respect of retired employees, in the event of recovery of excess salary, the same would cause hardship. Moreover, the petitioner, being an employee of Cooperative Society, which is a non-pensionable service, such recovery would affect his normal life. Thus, the excess payment, if any paid, need not be recovered. The pay fixation is to be regulated in accordance with the Government orders and circulars issued by the Registrar.

6. In view of the facts and circumstances, the fixation of pay as done by the respondents stands confirmed and the excess payment, if any, already paid to the writ petitioner cannot be recovered. The amount due to the writ petitioner, if any, towards terminal and pensionary benefits are to be settled as expeditiously as possible.

7. In view of the facts and circumstances, the impugned orders dated 26.02.2013 made in Na.Ka.No.1149/2012/Sa.Pa.No.1 passed by the first respondent, confirming the Resolution No.1 dated 01.09.2003 passed by the second respondent are quashed only in respect of recovery alone. With reference to the pay fixation done, the impugned orders are confirmed.

8. Accordingly, the writ petition stands allowed in part. No costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar



gm/nti

To

1. The Registrar of Co-operative Societies
(Housing),
Revisional Authoirty,
Nandanam,
Chennai - 35.

2. The President of the Society,
The Gangavalli Women Urban
Co-operative Housing Society Ltd.,
SLM/HSG-92, Gangavalli 636 105,
Salem District.

+1cc to Government Pleader SR. No. 33040
+1cc to M/s.T.P.Savitha, Advocate SR. No. 32450
+1cc to Mr.N.Manokaran, Advocate SR. No. 32295

W.P.No. 1090 of 2014

NK (CO)
PR (17/06/2022)