



W.P(MD)No.10095 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.10095 of 2009

and

MP(MD) No.1 of 2009

- 1.S.Ponnusamy
- 2.Kumara Pandian
- 3.Karuppanan
- 4.Karuppiah
- 5.Palraj
- 6.Seetharaman
- 7.Kamal Pasha
- 8.Karupayee

...Petitioners

Vs.

- 1.The Principal District Judge,
(Co-operative Tribunal),
Virudhunagar District,
Srivilliputhur.

- 2.The Special Officer,
RMD 3, Tiruchuli Primary Agricultural
Co-operative Bank and Rural Development Bank Ltd,
Reddiapatti (Post),
Virudhunagar District.

- 3.The Deputy Registrar of Co-operative
Societies,
Pandalgudi Road,
Aruppukottai.

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the proceedings of the first and third respondents made in Civil Miscellaneous Appeal (Co-operative Societies) No. 25/2002, dated 20.12.2007 and S.C.No.18/2000-01, dated 06.08.2001 respectively and quash the same.

For Petitioner	: Mr.S.Mohandass
For R1 & R3	: Mr.D.Gandhiraj Special Government Pleader
For R2	: Mr.D.Shanmugaraja Sethupathi

ORDER

This Writ Petition is filed as against the order of the third respondent in SC 18 of 2000-1, dated 06.08.2001, under Section 87 of the Tamil Nadu Co-operative Societies Act and the order of the Co-operative Tribunal, Virudhunagar District in CMACS No.25 of 2002.

2.The case of the petitioners is that the first petitioner was functioning as elected President of RMD 3 Thiruchuli Primary Agricultural Co-operative Bank and Land Development Bank Ltd, Reddiapatti and the other petitioners were the elected directors of the Board of Management of the said Bank. The third respondent initiated



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surcharge proceedings as against these petitioners, under Section 87 of the Tamil Nadu Co-operative Societies Act, based on the inspection report of the Sub Registrar of Co-operative Societies that pay revision made by these petitioners by virtue of settlement is without any authority of law and it was also detected that a sum of Rs.2,98,377/- was paid in excess than the eligible amount. The order of the third respondent was challenged by the petitioners in CMACS No.25 of 2002 before the District Judge of Co-operative Tribunal, Virudhunagar District and the same was dismissed, by order dated 20.12.2007. Both the orders are impugned in this writ petition.

3.The learned counsel appearing for the petitioner submits that the surcharge proceedings initiated by the third respondent is based on the inspection report, dated 08.11.1999. But, the said report was not served upon the petitioners and the entire proceedings was conducted behind their back. He further submits that the petitioners were found fault by the third respondent that the petitioners have paid excess amount to some of the employees, under Section 18(1) settlement, which is incorrect. According to the petitioners, revision of scale of pay was made only based on the byelaw of the Society. The learned counsel has also



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relied on byelaw 25(6), which reads as follows:-

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“(vi) to prescribe from time to time the strength of the establishment of the bank and scale of pay and allowances admissible to each member thereof subject to the budget allotment sanctioned by the General Body; provided however the pay and allowances admissible to the Manager shall be as fixed by the Registrar”

4. According to the learned counsel for the petitioners, revision has been made under Section 18(1) of Industrial Dispute Act, when the work of five employees has been shared by four employees. According to him, the Secretary of the Society retired on 31.03.1998 and the existing four employees alone shared the work of the Secretary at that relevant point of time. He further submits that the salary revision given to the employees by the Management of the Organization cannot be construed as loss to the Organization. When there is no loss to the Organization, the initiation of surcharge proceedings itself is not maintainable. He further submits that 18(1) settlement, dated 05.05.1999 was also ratified by the General Body of the Society. He also relied on the following citations in order to substantiate his contentions.



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- ◆ Order of the Division Bench of this Court, Tiruchirapalli Hirudayapuram Co-operative Bank Employees Union etc., Vs The Joint Registrar of Co-operative Societies, Tiruchirapalli etc., reported in 1992 (1) LLJ 747.
- ◆ S.Jina Chandran and others Vs.The Registrar of Co-operative Societies, Madras and others, reported in 1999 MLJ Page 431
- ◆ Thamizhaga Kooturavu Veetru Vasathi Sanangalin Seyalalargal Association, Madurai Vs.Registrar of Co-operative Societies (Housing), Madras, reported in (2007) 7 MLJ 277
- ◆ H.T.Natarajn and others Vs. Joint Registrar of Co-operative Societies, Nilgiris District & another, reported in (2009) 2 MLJ 479.
- ◆ S.Venkataraman Vs The Deputy Registrar of Co-operative Societies, Thanjavur & others, reported in (1978) 1 MLJ 284.
- ◆ Ramadevi Vs The Special Officer, Ambur Co-operative Sugar Mills, Vadapudupet, Vellur District and others, reported in (2016) 4 L.W. 452.



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5.Mr.D.Shanmugaraja Sethupathi, learned counsel appearing for the second respondent submits that as per Rule 149 of the Co-operative Societies Act, any revision of pay can be made only with the approval of the Registrar of Co-operative Societies and the Registrar of Co-operative Societies has also been issued with a Government Order in G.O.Ms.No.289, Co-operative Food and Consumer Protection Department, dated 18.12.1998. As per the G.O.Ms.No.289, Co-operative Food and Consumer Protection Department, the Government has also constituted a committee for revision of pay scale and on the basis of the recommendations of the Committee, the Government passed further orders in G.O.Ms.No.186, Co-operative Food and Consumer Protection Department, dated 16.08.2000, whereby, the scale of pay has been revised w.e.f .01.07.1997 onwards. Based on the orders of the third respondent in the surcharge proceedings, the beneficiaries have also paid substantial amount, which has been received by them in excess and Rs. 90,234/- is yet to be recovered from the petitioners. He also furnished the details of the payment made by the employees as follows:-



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Sl.No	Name	Principal Amount	Interest Amount
1.	P.Elamaran	Rs.78,796/-	Rs.85,173/-
2.	P.Rajasekaran	Rs.77,965/-	Rs.10,304/-
3.	S.Muthuchamy	Rs.74,041/-	Rs.36,440/-
4.	R.Baskaran	Rs.44,764/-	Rs.23,377/-
Total		Rs.2,75,566/-	Rs.1,55,294/-

6.The learned counsel for the second respondent further submits that the then Secretary of the Society Mr.P.Baskaran had already attained the age of superannuation before passing of surcharge award and therefore, the surcharge amount of Rs.22,811/- could not be recovered by the second respondent, Mr.P.Elamaran has only paid part amount and a sum of Rs.67,423/- was not paid in respect of the liability arising out of the salary paid to Mr.P.Elamaran. As such, a sum of Rs.90,234/- is totally liable to be recovered in pursuance of the surcharge award passed by the third respondent along with interest.

7.This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.



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8.The petitioners are the then President and Board of Directors of the second respondent Co-operative Bank. The third respondent Deputy Registrar of Co-operative Societies initiated surcharge proceedings as against these petitioners on 23.10.2000, on the ground that these petitioners have misused the powers and granted pay revision in excess to some of the employees. The surcharge proceedings was initiated based on the inspection conducted under Section 82 of the Act and the third respondent passed an order arriving at the loss occurred to the Society as Rs.2,98,377/- with 14% interest. As against the order passed under Section 82 of the Act, the petitioners preferred an appeal before the Co-operative Tribunal in CMACS No.25 of 2002 and the same was also dismissed by the first respondent. Aggrieved over the above orders, the present writ petition is filed.

9.The reason for proceeding under Section 87 of the Act is that the petitioners have revised the scale of pay of certain employees of the Society without following the due process of law. According to the learned counsel appearing for the second respondent, the procedure was contemplated in G.O.Ms.No.289, Co-operative Food and Consumer



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Protection Department, dated 18.12.1998 and G.O.Ms.No.186, Co-operative Food and Consumer Protection Department, dated 16.08.2000.

However, the petitioners have revised the scale of pay unilaterally without approval of the competent authority. But, according to the petitioners, they have revised the scale of pay of some employees of the Society, only as per byelaw 18(1) of ID Act. For better appreciation, Rule 149 of the Tamil Nadu Co-operative Societies Rules, 1988 is extracted as under:-

149. Conditions of service of paid officers and servants of societies.

(1) Every society shall, taking into account its nature of business, volume of transaction and financial position, adopt, with the prior approval of the Registrar a special by-law covering the service conditions of its employees. The special by-law shall, inter- alia prescribe the following:-

- i. Cadre strength and classification of various categories of posts and the qualifications required thereof for each such post.
- ii. The method of recruitment for each such post.
- iii. The scale of pay and allowances for each such post.
- iv. Conditions of probation for each such post.
- v. Duties and responsibilities for each such post.



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- vi. Leave of various kinds admissible and, the conditions thereto for each such post.
- vii. The penalties that may be imposed upon, the procedure for taking disciplinary action and inflicting various kinds of punishments on an employee holding each such post and the authority competent to entertain and dispose of appeal made against an order of punishment imposed by the competent authority on a disciplinary proceedings .
- viii. Conditions relating to acquisition and disposal of movable and immovable property:-

Provided that in the case of the post, other than the post of manager, superintendent and above a minimum period of three years satisfactory service shall be prescribed for eligibility for promotion from one category to the immediate next higher category of post:

Provided further that no person shall be eligible for appointment to the post of manager, superintendent and above by promotion, unless he has completed atleast one year of satisfactory service in the category of post in which he is working and not less than six years of satisfactory service in the category of posts in which he is working and the feeder category of post to which he is working combined together:



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Provided also that the co-operative training at the appropriate level may be prescribed as a necessary qualification for specific categories of non-technical posts.

10. Rule 149 of the Tamil Nadu Co-operative Societies Rules, 1988 does not prescribe any approval for revision of scale of pay from the Registrar of Societies. Society has also framed byelaw and as per Clause 25(6) of the Byelaw enables the office bearers of the Society to revise the scale of pay excepting the Manager of the Society. This revision of scale of pay was made as per byelaw 25(6), which was already approved by the Registrar of Co-operative Societies under Rule 149 of the Tamil Nadu Co-operative Societies Rules, 1988.

11. Therefore, this Court finds no fault on the revision of scale of pay effected by the petitioners. Though the respondents have referred G.O.Ms.No.289, Co-operative Food and Consumer Protection Department, dated 18.12.1998 and G.O.Ms.No.186, Co-operative Food and Consumer Protection Department, dated 16.08.2000, these government orders were passed in the year 1998 and 2000 respectively,



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subsequent to the revision of scale of pay made in this case. Therefore, even though there is reference in the aforementioned Government orders, these Government Orders are applicable with effect from 1998 and the same cannot be retrospectively implemented for taking action as against these petitioners that there was no such orders at the relevant point of time.

12.In view of the foregoing discussions and reasons, the proceedings of the first and third respondents made in Civil Miscellaneous Appeal (Co-operative Societies) No.25/2002, dated 20.12.2007 and S.C.No.18/2000-01, dated 06.08.2001 are hereby quashed and this writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes
Internet:Yes
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To

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B.PUGALENDHI, J.

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ORDER MADE IN
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