BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.18263 of 2020

G.Ramamoorthy ... Petitioner

-vs-

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

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

3. The President,
   O.503, T.Karisalkulam,
   Primary Agricultural Co-operative Credit Society,
   T.Karisalkulam, Alangulam Post,
   Vembakottai Taluk, Virudhunagar District. ... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the entire records relating to the impugned Government Order passed by the 1st respondent in G.O(Ms) No.189, Co-operative, Food and Consumer Protection (CNo.1) Department, dated 17.11.2009 and quash the same in respect of fixation of Dearness Allowance of 84% in so far as the petitioner is concerned and consequently direct the respondents to fix the pay scale along with dearness allowance 97% from 01.04.2008 and pay the same to the petitioner from 01.04.2008 with interest.

For Petitioner : Mr.C.M.Arumugam

For RR1 & 2 : Mr.M.Ramesh,
Government Advocate

O R D E R

The Government Order issued in G.O.Ms.No.189, Co-operative Food and Consumer Protection Department, dated 17.11.2009, is sought to be quashed in the present writ petition, in respect of fixation of Dearness Allowance at 84% insofar as the petitioner is concerned and consequently, to direct the respondents to fix the pay scale along with D.A at 97% with effect from 01.04.2008 and pay the same to the petitioner from 01.04.2008 as arrears.

2. The learned counsel appearing for the petitioner made a submission that 97% of Dearness Allowance has been paid initially to the employees of the Co-operative Societies. However, the said Dearness Allowance is reduced to 84% in the impugned G.O.Ms.No.189. Thus, the petitioner has chosen to file this writ petition challenging the said G.O.Ms.No.189.

3. The learned counsel appearing for the petitioner reiterated that no opportunity was given to the employee, while reducing the Dearness Allowance from 97% to 84%. Thus, the decision taken is unilateral.

4. The learned counsel appearing for the petitioner submitted that this Court has earlier considered similar issue in W.P(MD) No.9140 of 2014 etc., batch dated 19.12.2018. As per the said order, 97% of Dearness Allowance has been given. Thus, the same benefit is to be granted to this petitioner also and based on the above orders, the case of the petitioner is also to be considered for grant of 97% of Dearness Allowance.

5. The learned Government Advocate appearing on behalf of respondents 1 & 2 strenuously objected the contention of the petitioner by stating that the earlier order cited by the petitioner cannot be a ground to consider the present writ petition. The Hon'ble Division Bench has passed judgment in W.A.No.452 of 2012, dated 20.07.2012. In fact, complete factual particulars were not produced by the respondents before this Hon'ble Court and the mistake committed by the respondents in this regard was admitted. Even as per the order passed by this Court, the writ petitioner is not entitled for grant of 97% of Dearness Allowance. Factual mistake occurred was that 97% of Dearness Allowance was not at all granted to the employee and when the said 97% Dearness Allowance was not granted to any employee, there is no reason to grant the said 97% of Dearness Allowance to the petitioner. The fact regarding sanctioning of 97% of Dearness Allowance to all other employees was not brought to the notice of this Court, while passing order in W.P.No.9140 of 2014 etc., batch, dated 19.12.2018.

6. To substantiate the said contention, the learned Government Advocate solicited the attention regarding the annexure to the impugned G.O.Ms.No.189, dated 17.11.2009 as well as the order of this Court in W.P.No.9391 of 2011, dated 12.07.2011 and the judgment of the Hon'ble Division Bench of this Court in W.A.No.452 of 2012 dated 20.07.2012.

7. A perusal of the impugned G.O.Ms.No.181, dated 17.11.2009 reveals that a Stream Line Committee was constituted for the purpose of fixing uniform scale of pay/salary to the employees of all the

Co-operative Societies across the State. The Steam Line Committee considered the issue and submitted its recommendation. Accordingly, the Government issued G.O.Ms.No.189, Co-operative Food and Consumer Protection Department, dated 17.11.2009. Under Section 181 of the Tamil Nadu Co-operative Societies Act, the Registrar of Co-operative Societies is empowered to issue directions in the interest of Co-operative Societies and in the public interest. Section 182 of the said Act contemplates that the Government can issue directions in the interest of public and administrate the affairs of the Co-operative Societies registered under the provisions of the Tamil Nadu Co-operative Societies Act. In the event of issuing any orders, the Registrar of Co-operative Societies has to implement the same and report to the Government.

8. The impugned G.O.Ms.No.189, cannot be construed as an order directly fixing Dearness Allowance to the employees of the Co-operative Societies. The basic fact to be understood with reference to the said G.O.Ms.No.189 is that the Government issued certain guidelines to be followed by the Registrar regarding the implementation of the uniform scale of pay and the Dearness Allowance. The very purpose and object of issuing impugned Government Order in G.O.Ms.No.189 is that the financial condition of each Co-operative Society is to be considered and in order to monitor and control the affairs of the Co-operative Society, such consistency in grant of salary to the employees is required. Thus, the Government thought fit to issue circulars containing certain instructions enabling the respective Co-operative Societies to enter into 12(3) Settlement under the Industrial Disputes Act, 1947 with the employees so as to pay such salary. In other words, the Government Order was passed enabling the Co-operative Societies to fix uniform scale of pay and enter into 12(3) Settlement under the Industrial Disputes Act. G.O.Ms.No.189 states that appropriate actions have to be initiated by the Registrar of Co-operative Societies. In this regard, paragraph Nos.5 and 6 of the impugned order read as follows:

> "5.இவ்வாணைகளின்படி தொடக்க வேளாண்மைக் கூட்டுறவு கடன் சங்கப் பணியாளர்கள் 1.4.2008 முதல் ஊதிய உயர்வு பெற தகுதி உடையவர்கள் ஆவர். இவ்வூதிய உயர்வினால் பணியாளர்களுக்கு வழங்கப்பட வேண்டிய நிலுவைத் தொகை அவர்களது வருங்கால வைப்பு நிதிக்கணக்கில் வரவு வைக்கப்பட வேண்டும்.
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> 6.புதிய சம்பளம் அளிக்கும் போது தொடக்க வேளாண்மைக் கூட்டுறவு கடன் சங்கங்கள் தமது பணியாளர்களுக்கு சம்பளம் வழங்கும் தகுதியினை (Capacity to Pay) உறுதிவ்படுத்திக் கொள்ளுமாறும் மேற்கண்ட சம்பள உயர்வினால் ஏற்படும் கூடுதல்
> கூட்டுறவு கடன் சங்கங்களுக்கும் தெரிவிக்க கூட்டுறவுச் சங்கங்களின் பதிவாளர் அறிவுறுத்தப்படுகிறார்."

9. Para 6 of the impugned Government Order stipulates that the Registrar of Co-operative Societies should initiate action for fixation of Dearness Allowance to the employees of the Co-operative Societies by considering the financial condition as well as the

capacity of the Societies to pay the Dearness Allowance to its employees. Thus, it was made clear by the Government that the financial condition of the Societies is to be considered and uniform Dearness Allowance is to be paid in consonance with the financial condition of the Societies. The Registrar has to initiate steps to implement the said guidelines to the Co-operative Societies. Thus, the impugned Government Order in G.O.Ms.No.189 dated 17.11.2009 is not an absolute order granting 97% of Dearness Allowance to all the employees of the Co-operative Societies across the State of Tamil Nadu. The scope of the impugned Government Order is to fix the uniform Dearness Allowance, as far as possible, with reference to the financial condition of each Co-operative Society. For example, if any Society is in liquidated condition and acute financial loss, then it may not be possible for the said management to pay 97% of Dearness Allowance to all the employees, depriving the rights of the members of the Society. Salary or Dearness Allowance cannot be paid to the employees so as to drive such Co-operative Societies to further financial loss.

10. Every Co-operative Society is an independent entity. The byelaws of the Co-operative Societies are approved by the competent authority under the provisions of the Tamil Nadu Co-operative Societies Act. The Co-operative Societies are not funded by the Government and it is not a 'State' within the meaning of Article 12 of the Constitution of India. The power of the Society is empowered to run the administration of the Society, under the provisions of the Tamil Nadu Co-operative Societies Act. The independent administration of the Co-operative Societies cannot be interfered with by the Registrar or by the Government without following the procedure contemplated under the provisions of the statues and rules.

11. The very nature of the administration of the Co-operative Societies registered under the provisions of the Tamil Nadu Co-operative Societies Act is autonomous. Thus, the powers of the Government and Registrar to control the affairs of the interest of the public are within the provisions of the Tamil Nadu Co-operative Societies Act and Rules. Thus, to regulate the affairs of the Co-operative Societies, the Government or Registrar are issuing instructions or Circulars. Under these circumstances, the Government issued the impugned order stating that considering the financial condition of the Society, Dearness Allowance is to be fixed by the Co-operative Societies across the State. Thus, 97% of Dearness Allowance to be paid to all the employees is not a conclusive decision contemplated in the impugned Government Order. This apart, annexure to the impugned Government Order states that 97% of Dearness Allowance granted earlier in G.O.Ms.No.131, dated 04.06.1997 is reduced to 84%. The reason for reduction was the overall financial difficulties which were faced in many number of Co-operative Societies, across the State of Tamil Nadu. Large number of Co-operative Societies are now running in acute financial

loss and considering those factors, the Government issued directions to the Registrar to regulate the payment of Dearness Allowance so as to minimize the financial loss in the interest of the members of the Co-operative Societies, who have invested their hard earned money. The public interest is the prime criteria for reduction of the Dearness Allowance. The Stream Line Committee also had recommended such reduction taking note of various factors and the prevailing situation and such a recommendation is an expert opinion and accepting the same, the Government issued the impugned G.O.Ms.No.189.

12. With this background, let us consider the order passed by this Court. The learned counsel for the petitioner relied on the order of this Court passed in W.P.No.9140 of 2014 etc., batch, dated 19.12.2018. However, the recommendation of the Stream Line Committee, which was implemented by the Government by reducing the Dearness Allowance from 97% to 84% and the order passed by this Court on earlier occasion regarding the fixation of Dearness Allowance at 84% with reference to the counter filed by the respondents, were not brought to the notice of this Court by the respondents. In view of the fact that those factors were not brought to the notice of this Court, it is not appropriate to follow the same order. The earlier order of the Division Bench of this Court unambiguously speaks about the Dearness Allowance to be paid to the employees of the Co-operative Societies. The earlier order of the Division Bench as well as the order passed in the contempt petition, unambiguously state that Dearness Allowance is to be paid as per the counter affidavit filed by the Government in the earlier writ petition filed in W.P(MD).No.9399 of 2011.

13. In the said writ petition in W.P(MD).No.9399 of 2011, the Principle Bench of Madras High Court passed an order as follows, *"In view of the said admitted factor, this Court is of the considered view that it is suffice to direct the respondents herein to maintain the fixation of Dearness Allowance stated by the first and second respondents in the counter filed before this Court in the earlier writ petition in W.P.No.4761 of 2010 as incorporated above for 'A' and 'B' class employees as well as 'C' and 'D' employees".*

14. The matter was taken before the Hon'ble Division Bench of this Court in W.A(MD).No.452 of 2012 and the Division Bench also confirmed the said order on 20.07.2012. The Hon'ble Division Bench has stated that no interference is required, particularly, when the said submission has not been so far withdrawn by the appellants. Therefore, the Hon'ble Division Bench also passed an order confirming the order passed by the learned Single Judge that Dearness Allowance is to be paid as per the counter affidavit filed by the Government/respondent.

15. Let us now consider the counter affidavit filed by the respondent/Registrar in W.P.No.4761 of 2010. The relevant paragraphs of the counter read as under:

"15.With regard to the averments made in paragraph 8 of the affidavit, it is submitted that the petitioner alleges if the impugned Government Order is implemented the salary of many of the employees may be reduced by Rs.1000/- to 8,000/-. This allegation of the petitioner is false and baseless. The petitioner has not cited any example to justify the allegation. It is true that the Primary Agricultural Co-operative Credit Societies are classified into four categories viz., A.B,C,D based on the quantum of their own resources and their profitability. It is humbly submitted that for effecting any increase in the pay and allowances, the institution should possess the capacity to pay and for that, the institution must be able to generate enough income which depends on its cost of funds and net margin in operation. If society is making profit thus, it is seen that its net margin is positive and therefore it can give more salary. Similarly, if society operates with own funds it will earn more net interest income. Thus, the quantum of Establishment and Contingence must depend on net interest income and other income and not on mere working capital. A society can have a large working capital and still make loss, if recovery of loans is poor. Therefore, it is correct in the interest of societies to fix pay scales based on own resources and profitability. Further, it is not correct that there is reduction in salary, because of the above Government order. In fact, employees in all 4 categories have been given a hike of 10% /5% as the case may be depending on the category after merging the Dearness Allowances with Basic Pay. It is given in the following lines.

For 'A' and 'B' classes	*=(Basic pay as on 1.4.08+D.A as on 1.4.08) 10% of the above =New Basic Pay.*
For C&D Classes	*=(Basic pay as on 1.4.08+D.A as on 1.4.08+5% of the above) =New Basic Pay.*

In fact totally pay increase as on 1.4.2008 stands at 26% for A and B category of 18% for C and D category. Therefore, the apprehension of the petitioner that there will be reduction of salaries of some of the members is imaginary, since the new basic pay arrived at on the above mentioned formula will have 5 to 10% increase of their *present basic pay, plus additional pay because of merger of Dearness Allowances."*

16. The counter affidavit extracted above did not admit or accept the payment of 97% of Dearness Allowance to the employees of the Co-operative Societies. Contrarily, the manner in which the Dearness Allowance is to be calculated alone is enumerated in the counter affidavit and accepting the said counter affidavit, the order was passed by this Court in W.P.No.9399 of 2011, which was confirmed by the Hon'ble Division Bench in W.A.No.452 of 2012. Thus, the Government at no point of time agreed or stated that 97% of Dearness Allowance shall be paid to the employees of the Co-operative Societies. Contrarily, the Government reiterated that it may not be possible to pay 97% of Dearness Allowance to all the employees across the State of Tamil Nadu working in Co-operative Societies and the guidelines issued by the Registrar also ensured that 84% of Dearness Allowance is paid and such payment is also subject to the financial condition prevailing in each and every Co-operative Society registered under the provisions of the Act. The Government invoking its power under Section 182 of the Act, issued such directions in the interest of public and in order to protect the interest of the Co-operative Societies across the State of Tamil Nadu.

17. The Government Order was issued in order to regulate the payment of Dearness Allowance with reference to the financial condition prevailing in each and every Co-operative Society. The Registrar has to make an assessment and considering the said factors as well as the financial conditions, approve the payment of salary to the employees. The very purpose and object for issuing such guidelines under Section 182 of the Co-operative Societies Act, is to prevent abuse or misuse of public funds by the administration of the Co-operative Societies.

18. Thus, the directions or circulars are issued in the interest of the administration of the Co-operative Societies and the public interest cannot be said to be irregular or illegal. Further, the impugned G.O.Ms.No.189 nowhere states that 97% of Dearness Allowance is to be paid to all the employees of all the Co-operative Societies across the State of Tamil Nadu. The Government orders are to be interpreted completely so as to ensure that the purpose and object set out in the orders are met with pragmatic approach as required and pick and choose a particular sentence or word cannot be a ground to grant the relief. The overall purpose and object as well as the intention of the Government to regulate the affairs of the Co-operative Societies are also to be understood so as to adopt the practical approach in the matter of fixation of salary to the employees of the Co-operative Societies.

19. These being the principles to be followed, this Court has no hesitation in arriving the conclusion that the writ

petitioner has not established any acceptable grounds for the purpose of granting the relief and accordingly, this writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

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

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

+1 CC to M/s.C.M.ARUMUGAM, Advocate (SR-14477[F] dated 25/03/2022)

+1 CC to M/s.SPL GP (SR-14831[F] dated 28/03/2022)

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