



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:19.04.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD) Nos.18641, 18644, 18646, 18651, 18654, 18657 and 18659 of 2020 and WMP(MD) Nos. 15604, 15606, 15608, 15610, 15612, 15614, 15615, 16235, 16237,16238, 16240, 16244, 16246 and 16392 of 2020

D.Karuppiah	... Petitioner	in WP(MD) . 18641/ 2020
S.Gnanasekaran	... Petitioner	in WP(MD) . 18644/ 2020
R.Gunaseelan	... Petitioner	in WP(MD) . 18646/ 2020
T.Kaliyappan	... Petitioner	in WP(MD) . 18651/ 2020
P.V.Murugan	... Petitioner	in WP(MD) . 18654/ 2020
P.Ramachandran	... Petitioner	in WP(MD) . 18657/ 2020
R.Chinniah	... Petitioner	in WP(MD) . 18659/ 2020

Vs.

- 1.The Principal Secretary to Government
Cooperate, Food & Consumer
Protection Department
Fort St. George, Chennai 600 009.
- 2.The Registrar of Cooperative societies,
NVN Natarajan Maligai
Kilpauk, Chennai. ...1st&2nd Respondent in all WP's
- 3.The President,
DD 605 S.Vadipatti Primary
Agricultural Cooperative Credit society
Thadikompu (via)
Dindigul District. ...3rd Respondents in WP(MD) . 18641/ 2020
3. The President,
A 1423 K.Pudukottai Primary ,
Agricultural Cooperative Credit Society ,
K.Pudukottai (Post) ,
Reddiarchathram (Via) ,
Dindigul District - 624220
...3rd Respondents in WP(MD) . 18644/ 2020



3. The President
Dd 603, Sullerumbu Primary Agricultural
Cooperative Credit Society ,
Reddiyarchatram, Dindigul District - 624710

...3rd Respondents in WP(MD) . 18646/ 2020

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3. The President
A 1423 K.Pudukottai Primary Agricultural
Cooperative Credit Society
K.Pudukottai (Post) ,
Reddiarchathram (Via) ,
Dindigul District - 624220

...3rd Respondents in WP(MD) . 18651/ 2020

3. The President
Dd 602 Dharmathupati Primary Agricultural
Cooperative Credit Society
Dharmathuppatti (Post) ,
Kannivadi (Via) ,
Dindigul District - 624705

...3rd Respondents in WP(MD) . 18654/ 2020

3. The President,
Dd 550 Muthanampatti Primary Agricultural
Cooperative Credit Society
Palam Rajakkapatti ,
Pappanampatti (Post) ,
Reddiyarchatram (Via) ,Dindigul

...3rd Respondents in WP(MD) . 18657/ 2020

3. The President,
DD 602 Dharmathupati Primary
Agricultural Cooperative Credit Society
Dharmathupatti(Post),
Kannivadi(via),
Dindigul District -624705

...3rd Respondent in WP(MD).18659/ 2020

PRAYER in WP(MD).No.18641/2020:- Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the entire records relating to the impugned G.O. passed by the 1st respondent in G.O.Ms.No.189, Cooperative, food and Consumer Protection (C.No.1) Department, dated 17.11.2009 and quash the same in respect of fixation of dearness allowance of 84%

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insofar as the petitioner is concerned and consequently direct the respondents to fix the pay scales along with dA 97% from 01.04.2008 and pay the same to the petitioner from 01.04.2008 with 7.5% interest, and pass such.

Prayer in WP(MD) . 18644/ 2020 :

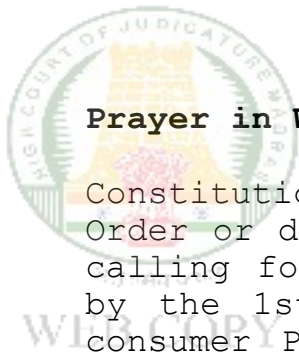
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court (S-7)To issue a Writ or Order or direction in the nature of writ of Certiorarified Mandamus calling for the entire records relating to the impugned G.O.passed by the 1st respondent in G.O.Ms.No. 189, Cooperative , Food and consumer Protection (CNo. 1) Department , dated 17/11/2009 and quash the same in respect of fixation of Dearness allowance of 84 percentage in so far as the petitioner is concerned and consequently direct the respondents to fix the pay scales along with DA 97 percentage from 01/04/2008 and pay the same to the petitioner from 01/04/2008 with 7.5 percentage interest and pass such further order or other orders as this Honble Court may deem fit and proper in the circumstances of the case.

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In all Writ Petitions

For Petitioners : Mr.V.O.S.Kalaiselvam

For Respondents : Mr.M.Ramesh
Government Advocate



COMMON ORDER

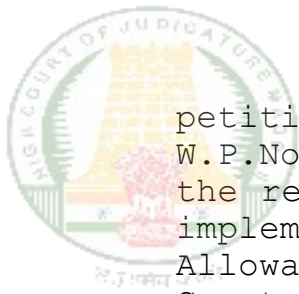
The writ on hand is filed to call for the records relating to the impugned G.O. passed by the 1st respondent in G.O.Ms.No.189, Cooperative, food and Consumer Protection (C.No.1) Department, dated 17.11.2009 and quash the same in respect of fixation of dearness allowance of 84% insofar as the petitioners are concerned and consequently direct the respondents to fix the pay scales along with DA 97% from 01.04.2008 and pay the same to the petitioner from 01.04.2008 with 7.5% interest.

2. The issues raised in these writ petitions are no more res integra and elaborately considered by this Court in W.P.(MD) No.9540 of 2015 etc. batch and a judgment was delivered on 24.11.2020. The relevant portions of the judgment are extracted hereunder:

"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 is 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, the 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

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petitioners relied on the order of this Court passed in W.P.Nos.9140 ...etc., of 2014, 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 respondent were not brought to the notice of this Court by the respondent. 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. In view of the fact that 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 Division Bench Order as well as the order passed in the contempt petition, unambiguously states that the 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 the 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.471 of 2010, which reads 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



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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
$$=(\text{Basic pay as on } 1.4.08 + \text{D.A as on } 1.4.08)$$

10% of the above =New Basic Pay.

For C&D Classes
$$=(\text{Basic pay as on } 1.4.08 + \text{D.A as on } 1.4.08 + 5\% \text{ of the above})$$

=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 approved 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, in the impugned G.O.Ms.No.189, no where 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 the purpose and object set out in the orders are met with pragmatic approach is required, pick and choose of 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



19.This being the principles to be followed, this Court has no hesitation in arriving the conclusion that the writ petitioners have not established any acceptable grounds for the purpose of granting the relief and accordingly, these writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

3. In view of the above, these writ petitions stand dismissed. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

RR

To

1.The Principal Secretary to Government
Cooperate, Food & Consumer
Protection Department
Fort St. George, Chennai 600 009.

2.The Registrar of Cooperative societies,
NVN Natarajan Maligai
Kilpauk, Chennai.

+1 CC to M/s.SPL.GP (SR-19925[F] dated 20/04/2022)

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RK(05/05/2022) 9P 4C