



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 25.04.2022**

**CORAM**

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

W.P. (MD) Nos.20314, 20321, 20324 and 20327 of 2019

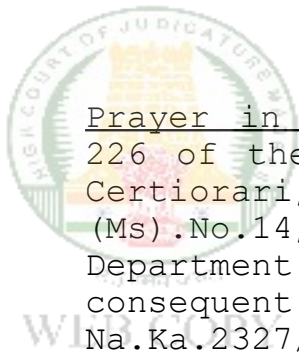
and

W.M.P. (MD) No.16928, 16929, 16936, 16938, 16939, 16942, 16946, 16947  
of 2019

V.Periyasamy ... Petitioner in W.P(MD).No.20314 of 2019  
D.Kamaraj ... Petitioner in W.P(MD).No.20321 of 2019  
R.Sakthivel ... Petitioner in W.P(MD).No.20324 of 2019  
D.Karuppiyah ... Petitioner in W.P(MD).No.20327 of 2019

-vs-

1. The Principal Secretary to Government,  
Co-operation, Food and Consumer Protection,  
(CN1) Department,  
Secretariat,  
Chennai-2.
- 2.The Registrar of Co-operative Societies,  
NVN Maligai,  
170, EVR Periyar High Road,  
Kilpauk,  
Chennai-10.
- 3.The Additional Registrar (Finance and Banking),  
O/o.The Registrar of Co-operative Societies,  
NVN Maligai,  
170, EVR Periyar High Road,  
Kilpauk,  
Chennai-10.
- 4.The Regional Joint Registrar/Common Cadre Authority,  
Collectorate Complex,  
Virudhunagar.
- 5.National Bank for Agriculture and Rural Development,  
(NABARD),  
No.48, Uthamar Gandhi Road,  
Subba Road Avenue,  
Nugambakkam,  
Chennai-600 034. ... Respondents in all petitions



Prayer in W.P(MD).No.20314 of 2019:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records relating to the impugned G.O. (Ms).No.14, Co-operation, Food and Consumer Protection (CN1) Department dated 12.02.2019 issued by the first respondent and the consequent order of fourth respondent passed in Na.Ka.2327/19/Ve.SeSa(5) dated 16.07.2019, quash the same.

Prayer in W.P(MD).No.20321 of 2019:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records relating to the impugned G.O. (Ms).No.14, Co-operation, Food and Consumer Protection (CN1) Department dated 12.02.2019 issued by the first respondent and the consequent order of fourth respondent passed in Na.Ka.2327/19/Ve.SeSa(6) dated 16.07.2019, quash the same.

Prayer in W.P(MD).No.20324 of 2019:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records relating to the impugned G.O. (Ms).No.14, Co-operation, Food and Consumer Protection (CN1) Department dated 12.02.2019 issued by the first respondent and the consequent order of fourth respondent passed in Na.Ka.2327/19/Ve.SeSa(1) dated 16.07.2019, quash the same.

Prayer in W.P(MD).No.20327 of 2019:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records relating to the impugned G.O. (Ms).No.14, Co-operation, Food and Consumer Protection (CN1) Department dated 12.02.2019 issued by the first respondent and the consequent order of fourth respondent passed in Na.Ka.2327/19/Ve.SeSa(2) dated 16.07.2019, quash the same.

In all W.Ps.

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

For RR1 to 4 : Mr.M.Ramesh  
Government Advocate

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COMMON ORDER

In identical circumstances, an order has been passed by the Hon'ble Division Bench of this Court in a batch of writ petitions in W.P.(MD) No.19975 of 2019 etc., batch, in the case of **C.Manoharan vs. State of Tamil Nadu and Others**, dated 26.09.2019. The relevant paragraphs of the order dated 26.09.2019 are as follows:-

4. The petitioners in all these writ petitions were appointed as Secretaries of the respective Co-operative



Societies, which are Primary Agricultural Co-operative Credit Societies. By the impugned enactment, the State Government has omitted Sub-Section (23) of Section 136-D of the Act. The provision stood omitted reads as follows:

"136-D. Special provisions applicable to short-term co-operative credit structure societies.-

(1) ...

...

...

(23) There shall be no cadre system in short-term co-operative credit structure society and cadre system in such society shall be abolished."

By deleting Sub-Section (23) of Section 136-D of the Act, a common cadre system in Short-term Co-operative Credit Structure Society stood introduced.

5. As could be seen from the statement of objects and reasons for deleting Sub-Section (23) of Section 136-D of the Act, it is stated that as per the provisions of Sub-Section (23) of Section 136-D, the cadre system in Short-term Co-operative Credit Structure Society was abolished. Now, the Government has decided to amend Section 136-D of the Act suitably to revive the common cadre system in the Short-term Co-operative Credit Structure Societies in order to have efficient staff in the said Societies so that the said Societies shall function viably and also to provide various services in an efficient manner.

6. The challenge to the impugned enactment is on the ground that it violates the fundamental rights of the writ petitioners, who were admittedly salaried employees of the Societies. The petitioners have not challenged the impugned enactment on the ground of lack of legislative competence. These are the two grounds, which will be available to a party, who seeks to challenge the vires of the enactment and there can be no third ground.

7. The petitioners' contention is that in the year 2000, a common cadre system to the Secretaries of Primary Agricultural Co-operative Banks was constituted and a Government Order in G.O.Ms.No.55, Cooperation, Food and Consumer Protection Department, dated 24.03.2000, was issued. The challenge to the Government Order failed and the Government Order was upheld. It is submitted that the Government of India constituted a Task Force headed by Professor.Vaidyanathan to examine the difficulties faced by the Primary Agricultural Co-operative Societies. Based on the recommendations of the Task Force, a Memorandum of Understanding "MOU" was signed between the Government of



India, Government of Tamil Nadu and NABARD. Further, based on the recommendations of the Task Force, it was decided to abolish the common cadre system. Apart from that, the Government of India abided by the terms of the Memorandum of Understanding and amounts were disbursed to the Primary Agricultural Co-operative Societies. Subsequently, by G.O.Ms.No.122, Cooperation, Food and Consumer Protection (CN1) Department, dated 04.07.2008, the common cadre system was abolished.

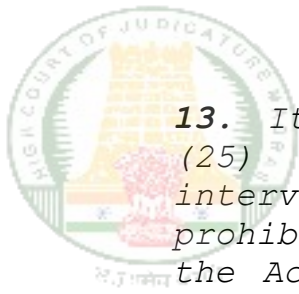
8. According to the petitioners, the abolition of common cadre system is inconsonance with the 97<sup>th</sup> Amendment of the Constitution of India, it accepted the report of the Task Force that if no common cadre system is created, the Primary Agricultural Co-operative Banks cannot efficiently function and it will work prejudice for the service conditions of the employees. Based on this, Sub-Section (23) was inserted to Section 136-D of the Act and the common cadre system was abolished for the Short-Term Co-operative Credit Structure Societies.

9. It is the contention of the petitioners that when the Government of India accepted the recommendation of the Task Force and entered into a memorandum of understanding and abolished the common cadre system, the present recommendation will amount to changing the stand from time to time.

10. It is further submitted that the creation of common cadre system directly infringes the autonomous functioning of the Co-operative Societies, which is enshrined under Article 43B of the Constitution of India. Thus, the petitioners would contend that the respondents are estopped from re-introducing the common cadre system to these Primary Societies.

11. Further it is contended that the impugned enactment will be destructive to the co-operative movement. The proposal of the Registrar of Co-operative Societies for revival of the common cadre system, which was accepted by the Government, will not fulfil the objectives of bringing uniformity in the service conditions.

12. It is further submitted that by restoring the common cadre system, the independence given to a Co-operative Society under Section 136(2)(d)(iv) of the Act has been taken away and the power of recruitment, fixation of salary, transfers and postings will be interfered with, thereby affecting the independence of the Co-operative Society.



**13.** It is further submitted that in terms of Sub-Section (25) of Section 136(2)(d) of the Act, anything which intervenes with the independence of the Society is prohibited. Further, it is submitted that Section 136(b) of the Act states that the amended provision will prevail and have overriding effect over all other provisions, if any provision is against the total independence already conferred on the Society in the remaining portion of Section 136-B of the Act, if not amended in consonance with the independence, the said Section those, which offending unamended portion of the provisions are void.

**14.** In the other set of writ petitions, the challenge is to Sub-Section (3) of Section 75 of the Act, which reads as follows:

"75. Constitution of common cadre of service.-

(1) ...

...

...

(3) The order under sub-section (1) shall provide for the constitution of the competent authority which shall be a committee consisting of both officers of the Government and non-officials and the total strength of such committee shall not exceed five, from among whom one of the officers of the Government not below the rank of Joint Registrar in the Co-operative Department or not below such rank in other departments of the Government as may be prescribed shall be appointed by the Government as the Chairman, to exercise the powers of recruitment, appointment, transfer and disciplinary control (including censure, stoppage of increment, withholding of promotion, suspension by way of punishment, reduction to a lower rank in the seniority list or to a lower post or time scale where in the same service or in another service or to a lower stage in a time scale, compulsory retirement, removal or dismissal) and such other powers as may be prescribed in respect of holders of posts in such common cadre of service. After the constitution of such competent authority, the registered society concerned shall not, in respect of holders of posts in such common cadre of service, exercise any of the powers which are conferred by or under this Act or the rules made thereunder on the competent authority in respect of such common cadre of service. There shall be a separate competent authority in respect



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of each common cadre of service:

Provided that the Government may direct that, for such period not exceeding three years from the date of constitution of a common cadre of service, such committee in relation to that common cadre of service, shall consist of only a single officer of the Government not below the rank of Joint Registrar in the Co-operative Department or not below such rank in other departments of the Government as may be prescribed; and such officer shall be the "competent authority constituted under sub-section (3) of section 75" for the purposes of this Act and any reference to the competent authority in this Act shall, for the period mentioned in this proviso, be construed as a reference to the single officer aforesaid:

Provided further that the registered society under which an employee borne on a common cadre of service is for the time being employed shall also have the power to impose on such employee the penalty or censure or stoppage of increment upto to years without cumulative effect."

**15.** The case of the petitioners is that the first proviso to Section 75 (3) of the Act enables the State Government to appoint a Single Officer as a Committee to function as a common cadre authority and this is illegal. The petitioners would refer to the contentions raised by them, while challenging Section 136-D(23) of the Act, would contend that constituting a single authority will affect the independence of the Society, which has been enshrined in the Constitution of India. Apart from that, the difficulties, which may be faced by the Secretaries in various Societies, depending upon their categorization will be grossly affected. Apart from that, there will be a difference in pay and allowances, if a Secretary is transferred from A-Class Society to a C-Class Society, which classification is based upon the net profit.

**16.** Further, it is submitted that though a Single Authority has now been notified as a common cadre authority, the authority lower in rank is effecting orders of transfer. The petitioners also focused on the benefits that will be accrued to the Society, if the same Secretary is permitted to continue and also relied on certain resolutions passed by the elected Board of Directors certifying the efficient functioning of the Secretaries, who are the writ petitioners. On these grounds, the petitioners seek to declare both the statutory provisions as being ultra vires



the Constitution of India and opposed to the public policy.

17. Mr.Niranjan S.Kumar, learned counsel for the petitioners, after referring to the factual position, which we have set out above, submitted that Chapter-XIV-A of the Act was introduced by Act 62 of 2008 on 27.02.2008 and subsequently, a Circular No.11 of 2009 was passed on 09.04.2009 for implementation of the revival package to the Primary Societies. Subsequently, a letter was addressed to the Societies on 25.05.2009 to implement the Circular No.11 of 2009. At that juncture, Article 43-B of the Constitution of India was inserted by Constitution (97<sup>th</sup> Amendment) Act, 2011, which was effected from 15.02.2012. In terms of Article 43-B of the Constitution of India, the State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies. The impugned enactments are in direct conflict with Article 43-B of the Constitution of India and for such reason, the same are liable to be set aside. Referring to Article 243ZT of the Constitution of India, it is a submission that the existing provisions should continue to remain in force. Reference was also made to Article 243ZI, which deals with incorporation of Co-operative Societies.

18. The learned counsel for the petitioners also referred to the various factual averments, which have been set out in the affidavit filed in support of the writ petitions, resolution passed by the Societies, in which the petitioners are working and submitted that all these factors are required to be taken into consideration and the impugned enactments have to be struck down.

19. Mr.P.Senthur Pandian, learned counsel appearing for the other writ petitioner, referred to Section 136-D(25) of the Act, which states that the Government or the Registrar shall not do anything or take action or issue any order or direction which may have the effect of curtailing any of the freedom or powers given under Chapter-XIV-A. It is submitted that the impugned enactments are directly hit by Section 136-D(25) of the Act. These submissions have been made in addition to the submissions, which were made by the learned counsel for the other writ petitioners.

20. Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the respondents, submitted that the impugned enactments have come into force as on the date of notification and are in vogue since 2018. The Common Cadre Service Rules, 2019 have been framed and have been notified



and have also come into force as on February, 2019. The Rules have been implemented, consequently, orders have been passed and the petitioners / Secretaries of the Societies are resisting the orders of transfer.

**21.** It is submitted that the autonomy of the Society is in no manner affected and the apprehension of the petitioners that their pay will get reduced, if they are transferred from A-Class to C-Class Society, is absolutely a baseless plea as Rule 8 of the Rules clearly states that the pay allowances and other service benefits of common cadre employees shall be decided by the Registrar of the Co-operative Societies from time to time and till such time, common cadre employees will draw the pay and allowances as they presently draw. Therefore, it is the submission of the learned Special Government Pleader that the contentions raised by the petitioners do not merit acceptance.

**22.** We have elaborately heard the arguments of the learned counsel on either side and gave our anxious consideration to the grounds canvassed before us.

**23.** As prefaced by us at the commencement of this order, the constitutional validity of a statute could be challenged only on the two grounds, which we have indicated above and there is no third ground to challenge the same. The petitioners have miserably failed to make out a case that the impugned enactment in any manner violates the fundamental rights of the petitioners or it suffers from legislative incompetency. This would have been sufficient for us to reject the writ petitions. Nevertheless, as we have heard the learned counsels elaborately, we also propose to examine the contentions placed before us.

**24.** The sum and substance of the arguments of the petitioners is that the autonomy of the Co-operative Society as enshrined under Article 43-B of the Constitution of India is being infringed by introduction of the common cadre. To be noted, Article 43-B of the Constitution of India falls in Part-IV, which deals with directive principles of State policy and they are not justifiable and based on the same, the Court would not normally issue directions for implementation, except in cases relating to environmental issues and other issues of public importance. The petitioners are salaried employees of the Societies. All of them appear to be in the good books of the elected Board of Directors, who have supported them by passing a resolution to the effect that their cases are indispensable. Any such resolution cannot bind the Authorities. The appointment to



a post in a Co-operative Society is an appointment to a public office. Therefore, necessarily, the procedures contemplated under the provisions of the Act have to be adhered to before any appointment is made. This applies to promotions as well. Thus, to say that the Societies are free to do anything as per their will and pleasure is a submission to be outrightly rejected.

**25.** The powers and duties that can be discharged by the President and the elected Board of Members of the Society are clearly circumscribed under the Act. Any violation thereof, they are liable to be removed or proceeded with against them. This equally applies to the paid employees of the Society. Therefore, to state that constitution of common cadre system will affect the autonomy of the Society is an argument, which is to be rejected. The petitioners have misunderstood the scope of autonomy, which is referred to in Article 43-B of the Constitution of India or that matter in Article 243ZI of the Constitution of India. The autonomy, which is referred to therein pertains to the autonomous functioning of the Co-operative Society. It does not mean that the Co-operative Society can take law unto themselves and frame their own policy for recruitment, transfer and to regulate their business as per their whims and fancies. The purport of Article 43-B of the Constitution of India is to make the State endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of the Co-operative Societies. The other way of putting it is, by conferring of powers of self governance, it does not mean that the power is unregulated or unbridled. Therefore, the arguments of the learned counsels for the petitioners have to necessarily fail.

**26.** An argument was put forth that the respondents are estopped from reintroducing common cadre system, after having abolished the same earlier by taking note of the report of the Task Force and the memorandum of understanding. There can be no estoppel against the statute. At the relevant point of time, the situation and the manner in which the co-operative societies were managed were taken note of. The High Court was flooded with litigations and very often by the Secretary and paid employees of the Society challenging the order of the Registrar refusing to accept the revision of scales of pay. Extreme cases were dealt by this Court, where the paid employees in collusion with the elected Board of Directors entered into a settlement under Section 18(1) of the Industrial Disputes Act and in few cases under Section 12(3)

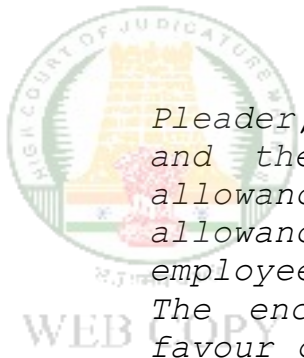


of the Industrial Disputes Act and unilaterally revised their pay and allowance multi-fold. This resulted in draining the finances of the Societies and ultimately driving them to be defunct. Those settlements were ultimately invalidated and the unintended benefits, which were availed by those paid employees and Secretaries were directed to be recovered. Thus, in the given facts, a report was submitted and the Government, in 2008, passed an order in G.O.Ms.No.122, Cooperation, Food and Consumer Protection (CN1) Department, dated 04.07.2008, abolishing the common cadre service in respect of the post of Secretary of Primary Agricultural Co-operative Banks. From the objects and reasons of the impugned enactment, we find that it is intended to have efficient staff in the Societies, so that the Societies shall function viably and also provide various services in an efficient manner. Thus, the State cannot be pinned down by applying the principles of estoppel, which have no application to the facts of the case.

**27.** Arguments on the validity of the proviso to Section 75 (3) of the Act was on the ground that for the first three years, there will be a Single Officer in the rank not below the Joint Registrar in the Co-operative Department as a competent authority constituted under Section 75(3) of the Act. This provision has been in existence ever since the Act came into force. The proviso is in the nature of an interim arrangement having a specified period, (i.e.) not exceeding three years and we find no reason to hold the provision to be unconstitutional and the petitioners have not been able to establish any unconstitutionality in the provision to Section 75(3) of the Act. Therefore, the argument that the proviso to Section 75(3) of the Act is ultra vires to the Constitution of India has to fail.

**28.** To be noted that common cadre system is in respect of various posts in the Co-operative Department. If that be the position, it can hardly be stated that by introducing the common cadre system to the post of Secretary in Primary Agricultural Co-operative Credit Society will affect the autonomy of the Society is an unacceptable argument.

**29.** The learned counsels for the petitioners argued that if a Secretary, who is working in A-Class Society is transferred to C-Class Society, his pay and allowances will be affected and it will be detrimental to his service conditions. We find such apprehension to be baseless. As rightly pointed out by the learned Special Government



Pleader, Rule 8 of the Rules takes care of such situation and the common cadre employees will draw the pay and allowances as they presently draw till the pay and allowances and other service benefits of common cadre employees is decided by the Registrar from time to time. The encomium paid by the elected Board of Directors in favour of the petitioners can hardly improve the case of the petitioners when the challenge is to the constitutional validity of the enactment.

30. Thus, for all the above reasons we find no ground to grant the prayer sought for in the writ petitions. Accordingly, the writ petitions fail and are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

2. Following the above order passed by the Hon'ble Division Bench of this Court, these Writ Petitions are dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

ssb

To

1. The Principal Secretary to Government,  
Co-operation, Food and Consumer Protection,  
(CN1) Department,  
Secretariat,  
Chennai-2.
2. The Registrar of Co-operative Societies,  
NVN Maligai,  
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+1 CC to M/s.SPL.GP. ( SR-21198[F] dated 26/04/2022 )

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