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W.P.(MD)No.14158 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.02.2022

PRONOUNCED ON : 10.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.14158 of 2014

and

M.P.(MD)Nos.1 of 2014 and 1 of 2015

and

W.M.P.(MD)No.2287 of 2016

T. Selvaraj

... Petitioner

vs.

- 1.The Registrar of Cooperative Societies,
170, Periyar EVR High Road,
Kilpauk, Chennai-10.
- 2.The Joint Registrar of Co-operative Societies,
Thoothukudi Region, Thoothukudi.
- 3.The Deputy Registrar of Co-operative Societies,
Tiruchendur, Thoothukudi District.
- 4.E.E.226, Megnanapuram Primary Agriculture
Co-operative Credit Society,



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represented by its President,
Megnanapuram-628210,
Tiruchendur Taluk,
Thoothukudi District.

5.The Deputy Commissioner of Labour,
Palayamkottai, Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings of the 3rd respondent, dated 03.03.2014, as communicated to the petitioner by the 4th respondent, vide Letter No.A516/14-15, dated 11.04.2014, as well as the order passed by the 2nd respondent in Na.Ka.No. 4343/14 ஈடு, dated 15.07.2014 and to quash the same as illegal and further, to direct the 4th respondent Society to forthwith to revise the scale of pay by implementing the order passed by the 5th respondent in Na.Ka.No.A4/3735/ 2014 (2), dated 14.07.2014.

For Petitioner : Mr.M.C.Swamy
For R1 to R3 & R5 : M/s.D.Farjana Ghoushia
Special Government Pleader
For R4 : Mr.M.Jerin Mathew
for Mr.M.E.Ilango



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ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned proceedings of the 3rd respondent, dated 03.03.2014, as communicated to the petitioner by the 4th respondent, vide Letter No.A516/14-15, dated 11.04.2014, as well as the order passed by the 2nd respondent in Na.Ka.No.4343/14 ஈடு, dated 15.07.2014 and further, to direct the 4th respondent Society to forthwith to revise the scale of pay by implementing the order passed by the 5th respondent in Na.Ka.No.A4/3735/2014 (2), dated 14.07.2014.

2.The brief facts as stated in the affidavit are that the petitioner is presently working as a Secretary in the 4th respondent Society and he was appointed on 07.10.1977 and has completed 37 years of service. A dispute arose in respect of scale of pay to the employees of the society, which resulted in a settlement under Section 18 (1) of the Industrial Disputes Act, dated 24.03.1998.



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Thereafter, contrary to the contents of the settlement, the Government issued a G.O.Ms.No.131 Co-operative Food and Consumer Protection Department, dated 04.06.1999 and following the same, the 3rd respondent issued proceedings, dated 01.03.2004. Immediately, various persons challenged the said proceedings by way of writ petitions before this Court. The petitioner had also preferred a writ petition in W.P.No.7837 of 2004 before this Court and this Court, by order, dated 02.04.2008, disposed of the writ petition giving liberty to the 3rd respondent to pass fresh orders after issuing notice to the petitioners and till then this Court directed to maintain the status quo as on the date of the disposal of writ petition. As per the settlement under Section 18 (1) of Industrial Disputes Act the petitioner's basic pay was Rs.11,925/- as on 01.04.2008. Pursuant to the order passed by this Court a circular was issued by the 1st respondent in Rc.No.138115/2007 P.A.C.B.1, dated 27.01.2008, wherein, the 1st respondent directed all the Cooperative Society including the 4th respondent to take immediate steps to revise the pay and allowance, by taking into consideration of the letter No.6768/CN1/



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05-2, dated 04.04.2005. Even after the order passed by this Court in the above said writ petition, the 4th respondent Society did not act in accordance with the order of this Court. As per G.O.Ms.No.189 dated 17.11.2009, the employees are entitled for revised basic pay as on 01.04.2008 + 84% DA + 5% increment to new basic pay. The 3rd respondent once again without duly following the norms mentioned in G.O.Ms.No.189, dated 17.11.2009, for fixing the scale of pay wrongly fixed the petitioner's scale of pay as Rs.7,020/- as on 01.04.2008 instead Rs.11,750+2,038, as on 01.04.2008 instead of Rs.23075+289. So as per the G.O., the 3rd respondent herein fixed the petitioner's actual basic pay on 01.04.2008 salary as Rs.11,925/- and total pay as Rs.23075+289. Immediately, the petitioner challenged the aforesaid proceedings of the 3rd respondent, dated 07.04.2010, before the 2nd respondent by way of revision under Section 153 of Tamil Nadu Cooperative Societies Act and the said Revision Petition No.15/2010, which came to be allowed by the 2nd respondent, vide order, dated 26.04.2011, whereby the 2nd respondent specifically passed orders directing the 4th respondent to fix the



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scale of pay as per the government orders, circulars holding the field on that date, i.e., circular, dated 27.01.2008 and G.O.Ms.No.189, dated 17.11.2009. The then Special Officer (in-charge) of the 4th respondent, in compliance to the order passed in Revision Petition No.15 of 2010 passed a Resolution on 11.04.2012, whereby, the petitioner's pay scale was fixed as Rs.23,075+289 as on 01.04.2008 and thereafter, the petitioner was continuously drawing pay scale of Rs. 23,075+289 with future yearly increment and finally he was drawing the pay scale of Rs.24700+289.

3. The contention of the petitioner is that in view of some previous enmity, the then President of the 4th respondent Society one P.S. Gopalakrishnan made a complaint to the 3rd respondent and the 3rd respondent directed the subordinates to scrutinize the petitioner's service records from 01.07.1988 to 30.04.2013, for a period of 25 years. Based on the information received under RTI Act, the 3rd respondent vide proceedings, dated 28.06.2013 has stated that after scrutiny



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report found that the petitioner's service record as on 30.04.2013 is in order and the basic pay received by the petitioner is corrected. The society audit certificate, dated 20.11.2013 in R.C.No.82/2012-2013 was also duly certified by the Assistant Director of Co-operative Audit, Thoothukudi.

4. The further contention of the petitioner is that the 1st respondent had issued a new circular in No.7 of 2014 in Na.Ka.17933/2013/தொவ்வுச.1, dated 28.02.2014, in order to fix new scale of pay. Accordingly, the petitioner is entitled to 10% increment on the basic salary i.e. 24700+289 drawn as on 01.04.2013. Following, the circular issued by the 1st respondent, one another settlement, dated 03.03.2014, under Section 12 (3) of the I.D. Act came to be entered by the Union as well as the management. Pursuant to the settlement, dated 03.03.2014, the 4th respondent society passed a resolution on 19.03.2014, wherein, the 4th respondent Society accepted the above settlement. The 4th respondent Society submitted a proposal to 3rd respondent for approval dated 19.03.2014 and the 4th respondent



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Society forwarded the petitioner's revised pay proposal in accordance to circular No.7 of 2014, vide proceedings, dated 28.02.2014, along with the settlement, dated 03.03.2014. By way of the said proposal, the petitioner's basic pay was fixed as Rs.24310+3,508. However, to the shock and surprise, the 3rd respondent, arbitrarily without any application of mind, blindly rejected the revised pay proposal and went to the extent of even reducing the original scale of pay of Rs. 24,700+289 to Rs.16200+204 instead of new pay applicable to the petitioner is Rs.24310+3,508. The 3rd respondent without adverting to the relevant circulars passed by the 1st respondent as well as settlement under Section 12 (1) of Industrial Disputes Act without any valid reasons passed a proceeding whereby the 3rd respondent mechanically reduced the basic pay of the petitioner. The 3rd respondent also directed the 4th respondent to recover a sum of Rs.1,77,675/- being the alleged excess amount paid to the petitioner. The said proceeding was communicated to the petitioner, vide the letter of the 4th respondent, dated 11.04.2014. The petitioner submitted that the proposal of revision was forwarded



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only after the resolution passed by the 4th respondent society on 19.03.2014. The contention of the petitioner is that it is not known on what circumstances, the impugned proceedings of the 3rd respondent has been dated as 03.03.2014 which is quite impossible. This itself would indicate that the 3rd respondent is acting in a *mala fide* manner obviously only to overcome the settlement entered between the Union as well as the Society as well as the resolution passed by the Society, dated 19.03.2014 adopting the settlement, dated 03.03.2014.

5. The petitioner preferred a complaint immediately to the 5th respondent being the authority to implement the settlement arrived under Section 12 (3) of the I.D. Act. The 5th respondent after hearing either side, disposed of the said petition, vide order in Se.Mu.Ka.No.A4/3735/ 2014 (2), dated 14.07.2014 and directed the 4th respondent to implement the settlement under Section 12 (3) of the I.D. Act. Pursuant to the order passed by the 5th respondent, the petitioner submitted a detailed representation, dated 21.07.2014, to the respondents 1 to 4.



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The 3rd respondent, vide proceedings, dated 25.07.2014, without application of mind replied that he had followed the proceedings, dated 07.04.2010, even without advertng the same was superseded by the order of the 2nd respondent dated 26.04.2011. Further, the 3rd respondent went to the extent of stating that he had not scrutinized the earlier fixation of scale of pay of Rs.23075+204 which is an error apparent on the face of the record as well as contrary to the earlier proceedings, dated 10.06.2013. The 4th respondent has not revised the petitioner's pay scale as per settlement under Section 12 (3) of I.D. Act and further, reduced the basic pay without any notice is complete arbitrariness. Aggrieved over the same, the petitioner preferred a revision petition under Section 153 and the 2nd respondent, vide order, dated 15.07.2014, simply returned the petitioner's revision petition stating that already the petitioner had approached the 5th respondent. Therefore, the petitioner left with no option has preferred this writ petition.

6. The 1st respondent has filed a counter affidavit stating that as per Section



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181 of the Tamil Nadu Cooperative Societies Act, 1983, the 1st respondent is empowered to issue suitable directions to the Cooperative Societies for effective administration. The 2nd and 3rd respondents are working under 1st respondent and implementing the orders of the 1st respondent. The 1st respondent issued circular No. 42, dated 02.12.2009 and another Circular, dated, dated 28.02.2014, regarding fixation of pay and allowances of the employees working in Primary Cooperative Agricultural Credit Societies. The petitioner had not challenged any Government Order (or) instructions of the 1st respondent but has challenged only the consequential impugned order, dated 03.03.2014, passed by the 3rd respondent. The 1st respondent is the Head of Department in respect of Cooperative Department, whereby the 1st respondent has approved the fixation of salary in new pay scale is vetted with the 3rd respondent. Since the petitioner has challenged the 3rd respondent's consequential order, the 1st respondent is not a necessary and proper party to adjudicate the issues raised in the writ petition. Hence, the writ petition is liable to be dismissed on basis of "Misjoinder of



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parties". The Circular No.7 of 2014 issued by the 1st respondent but the petitioner has not challenged the said circular. The 1st respondent has acted as per the provisions of the Act and the circulars are binding upon the cooperative societies and its employees. Therefore, the first respondent prayed to dismiss the writ petition.

7. The respondents 2 and 3 have filed a counter affidavit along with the vacate stay petition and has submitted that the 4th respondent society is functioning as per the Tamil Nadu Cooperative Societies Act read with Rules as per by laws and Special by laws relating to the service conditions of the employees of the society. As per Section 181 of the Act, the 1st respondent will issue suitable direction to the Cooperative Societies for effective administration. The 2nd and 3rd respondents are working under the control of the 1st respondent and implementing the orders of the 1st respondent. The pay and allowances of the employees of the 4th respondent society are periodically revised as per settlement



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based on Government Orders and the instructions of the Registrar of Cooperative Societies. The Government of Tamil Nadu issued G.O. No. 328 Cooperation, Food and Consumer Protection Department, dated 18.12.1997, permitting the cooperative societies to conclude settlement. Accordingly, the Elected Board of the petitioner society also concluded the 18 (1) Settlement. As per G.O.Ms.No. 131, dated 01.06.1999, the 3rd respondent fixed the pay and allowances applicable to the petitioner, vide Na.Ka.1138/2004, dated 01.03.2004. Aggrieved by the said pay fixation, the petitioner filed W.P. No. 7837 of 2004. The Government of Tamil Nadu issued G.O.No.189, dated 17.11.2009, whereby, guidelines were issued and a Circular No.42/2009, dated 02.12.2009, was issued. The petitioner's pay was re-structured, vide proceedings, dated 17.05.2010, with effect from 01.04.2008 onwards. The writ petitioner filed a revision petition No.15/2010 and the 2nd respondent, vide order, dated 26.04.2011, has directed to revise the petitioner's pay as applicable as per the G.O.s and circulars. The first respondent issued Circular No.7/2014, dated 28.02.014, regarding fixation of pay and



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allowances of the employees working in Primary Cooperative Agricultural Credit Societies. Already Circular No. 42, dated 02.12.2009, issued by the 1st respondent was in force. The 3rd respondent was authorized to revise the pay and allowances after rectifying the previous irregularities. The 4th respondent entered into 12(3) Settlement, dated 03.03.2014 and the same was implemented. The writ petitioner alone is not willing to accept the salary fixed by the 3rd respondent as per Circular No.7/2014 and the remaining staff of the petitioner's society have accepted the fixation and they are getting the eligible salary every month.

8. The 2nd respondent never directed the 3rd respondent to send the fixation proposal. The petitioner is eligible to draw the basic pay of Rs.12,875/- as on 31.03.2013. The basic pay fixed as per G.O.No.189, by the Deputy Registrar of Co-operative Societies, Tiruchendur and the basic pay drawn against the G.O. are detailed below:



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Period	Basic Pay fixed as per G.O.189	Basic Pay drawn against the G.O.	Difference
1.4.2008	11750	23075	11325
1.7.2008	11975	23400	11425
1.7.2009	12200	23725	11525
1.7.2010	12425	24050	11625
1.7.2011	12650	24375	11725
1.7.2012	12875	24700	11825

The petitioner's pay was fixed at Rs.16,200/- with allowances totaling to Rs. 30,027/- from 01.04.2013. The excess amount drawn by the petitioner was ordered to be recovered.

9. The 4th respondent submitted the salary proposal of the petitioner for fixation and approval before the 3rd respondent. The 3rd respondent after scrutinizing the entire materials including the G.O.s and circulars passed by the authorities has held the fixation to the petitioner is against the circular and therefore, directed to recover the Rs.1,77,615/- for the period from 01.04.2013 to 28.02.2014. The 4th respondent society accepted the new fixation of pay and



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according to the new pay structure and signed the pay acquaintance as per the orders of the 3rd respondent. The allegation that the Ex-President has deliberately reduced the pay structure was denied as false and the respondents have submitted the pay structure was revised as per the circulars and G.O.s. Since there was error committed by the respondents in the earlier fixation and the same was ordered to be rectified and the excess amount paid was directed to be recovered. Alternative remedy is available to the petitioner to file Revision under section 153 and review under section 154. Hence, the writ petition is not maintainable as per the judgment of this Court in *Marappan Case* reported in **2006 4 CTC 689**. Therefore, 2nd and 3rd respondents prayed to dismiss the writ petition.

10. Heard Mr.M.C.Swamy, learned Counsel appearing for the petitioner, M/s.D.Farjana Ghousia, learned Special Government Pleader appearing for the respondents 1 to 3 and 5 and Mr.M.Jerin Mathew, learned Counsel appearing for the 4th respondent.



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11. The petitioner had attained superannuation and was retired from service while the writ petition was pending. Based on State of Punjab and others Vs. Rafiq Masih (White Washer) reported (2015) 4 SCC 334 case, the recovery cannot be made after retirement. Therefore, the recovery is against the judgment of the Hon'ble Supreme Court.

12. The learned Counsel appearing for the petitioner relied on the judgment rendered in W.P.(MD)No.5938 of 2014, dated 22.01.2020 and W.P.(MD)No.4975 of 2013, dated 06.01.2020, wherein the learned Single Judge has stated that since no notice was issued to the petitioner, the Hon'ble Court directed the respondents to pass order on the proposal of the 4th respondent to approve the salary of the petitioner. Therefore, the learned Single Judge has held that the 4th respondent's proposal ought to be approved and the recovery cannot be made by the respondents.



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13. The learned Counsel appearing for the respondents relied on the judgment rendered in W.P.(MD)Nos.10875 and 10876 of 2015, dated 30.11.2020, wherein the Learned Single Judge had held that the directions or the circulars are issued in the interest of administration of the Co-operative Societies and the public interest cannot be said to be irregular or illegal. Further, in the impugned order, G.O.No.189, nowhere states that 97% of DA is to be paid to all the employees of the Co-operative Societies. Across Tamil Nadu, the Government orders are to be interpreted completely so as to ensure the purpose or object set out in 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. Finally has held that the writ petitioners therein were not entitled to pay fixation against the circular and the Government orders and has dismissed the writ petition. It is seen there are conflicting judgements by the learned Single Judges.



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Bench has held that so long as the directions issued by the Registrar under 181 are not challenged, the consequential orders passed by the second respondent cannot be challenged.

15. This Court is of the considered opinion that the entire issue before the Honourable Division Bench is different since the directions of the Registrar under section 181 was not challenged and the consequential orders passed under section 166 alone was challenged. Moreover, the Honourable Division Bench has passed the orders prior to the amendment of the Act, 1983. In the 2009, the Act was amended and section 136-A to 136-D was introduced wherein autonomy was granted to the Short Term Co-operative Society. The 4th respondent Society would come under section 136-D(2)(iv) wherein it states that the Short Term Co-operative Society has autonomy over the remuneration of the staffs. Under section 136-D(25), the Government or any other officials have no power to interfere with the function of the Society either by issuing any direction or issue any orders



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which may have the effect of curtailing the powers of the Society. The respondents have not denied that the 4th respondent Society comes under the purview of the Section 136 D. This Court has dealt with the cases recently in W.P. (MD) No.13900 of 2014 and W.P.(MD) No. 618 of 2015 wherein, the fixation was challenged. The contention raised in those writ petitions are that the fixation by the Government is against the autonomy powers granted under Section 136 D and this Court has held that Section 136 D has been violated by issuing the circulars. It was further held that the Government has no power to issue any circulars or any direction whereby it curtails the autonomy granted under Section 136, since there is a statutory prohibition for issuing such circulars. Therefore, this Court is of the considered opinion that the fixation by the respondents is against the statutory provisions. The 4th respondent Society has power to fix the salary for its own staff based on their financial status or viability. Therefore, the fixation and the recovery are against the statutory provisions.



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16. Since none of the judgments have dealt with the “concept of autonomy” granted to the 4th respondent society, this Court is of the considered opinion that the judgments cited supra cannot be relied on. The Hon’ble Division Bench in Sangam case stated supra, had dealt with the issue that was prevailing prior to the amendment and hence the said case cannot be relied on.

17. Therefore, this Court is of the considered opinion that the 4th respondent will come under the purview of the autonomy power granted to the 4th respondent under section 136 A to 136 D. Since the Society has power to fix its own salary based on its financial viability, the 4th respondent has submitted a proposal and that would be salary fixation for the petitioner. Moreover, the petitioner had attained superannuation and had retired from service while the case was pending before this Court. Therefore, the respondents are directed to pay the salary as fixed in the proposal and the respondents are not empowered to reduce the



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amount. Consequently, the respondents are not empowered to recover the amount of Rs.1,77,615/-.

18. With the above said observation, the writ petition is allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

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Internet : Yes

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To

- 1.The Registrar of Cooperative Societies,
170, Periyar EVR High Road,
Kilpauk, Chennai-10.
- 2.The Joint Registrar of Co-operative Societies,
Thoothukudi Region, Thoothukudi.
- 3.The Deputy Registrar of Co-operative Societies,
Tiruchendur, Thoothukudi District.
- 4.The Deputy Commissioner of Labour,
Palayamkottai, Tirunelveli District.



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S.SRIMATHY, J

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Note:

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Order made in
W.P.(MD)No.14158 of 2014

10.10.2022