



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

**W.P.(MD)Nos.7124 to 7126 of 2017 &
1064 to 1066 & 5548 of 2018 &
**W.M.P.(MD)Nos.5633 to 5635 of 2017 &
1108 to 1110 & 5448 of 2018****

W.P.(MD)No.7124 of 2017

K.Somasundaram

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Co-operation Food and Consumer Protection Department,
Secretariat, Chennai – 9.
2. The Registrar of Co-operative Societies,
170, Periyar E.V.R.High Road,
Kilpauk, Chennai – 10.
3. The Deputy Registrar of Co-operative Society (Housing),
Tirunelveli Region, Vannarpettai,
Tirunelveli.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 3rd respondent in R.C.1382/2016 A (1) dated 09.03.2017 and quash the same and consequentially direct the respondents to pay all monetary benefits as applicable to the petitioner on the basis of the fixation of pay dated 18.04.13



and further fixation of the pay in the promoted posts i.e. Junior Inspector, Senior Inspector and Co-operative Sub Registrar.

(in all W.Ps.)

For Petitioners : Mr.H.Arumugam

For Respondents: Mr.M.Senthil Ayyanar,
Government Advocate.

* * *

COMMON ORDER

Heard the learned counsel on either side.

2. Except in W.P.(MD)No.5548 of 2018, in all these writ petitioners challenge is in respect of the final orders. The service details of the writ petitioners are as follows:-

S.No.	Name	Date of joining Junior Assistant	Date of conferment of Selection Grade in the post of Junior Assistant	Date of promotion as Junior Inspector
1.	C.Balu	26.04.1997	26.04.2007	08.04.2009
2.	K.Somasundaram	12.01.1996	12.01.2006	26.10.2007
3.	S.V.Krishnakumari	16.11.1998	16.11.1998	---
4.	D.Suresh	19.12.1997	19.12.2007	12.07.2010
5.	T.K.Ramasamy	15.04.1996	15.04.2006	09.04.2008
6.	C.Vadivel	22.05.1992	22.05.2002	---
7.	S.P.Sudalaimuthu Pandian	12.12.1996	12.12.2006	09.04.2008



3. Except the petitioners in W.P.(MD)No.7125 of 2017 and W.P.(MD)No.1065 of 2018, the other petitioners subsequently became Junior Inspectors. There is controversy as to whether the post of Junior Inspector can be considered as a promotional post. I need not go into the same at present. The fact remains that in the year 2010, the Grade Pay of the writ petitioners payable on their being conferred Selection Grade was revised and enhanced to Rs.4,200/-. This pay fixation was interfered with in the year 2017. Except for Mr.C.Balu in W.P.(MD)No.5548 of 2018, for others even without issuing show cause notice, straightaway, the impugned orders have been passed. The effect of the impugned orders was twofold.

a) Fixation of Grade Pay on their being conferred Selection Grade was reduced from Rs.4,200/- to Rs.2,800/-.

b) Recovery was also ordered.

Challenging the stand of the respondents, these writ petitions have been filed.

4. The learned counsel appearing for the writ petitioner placed reliance on **White Washer** case. The



Hon'ble Supreme Court in the decision reported in **(2015) 4**

SCC 334 (State of Punjab and Others V. Rafiq Masih

(White Washer) and Others) held as follows:-

“ 18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

...

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.”



5. The petitioners had not committed any act of misrepresentation. It was the department had fixed their Grade Pay at Rs.4,200/-. Therefore, effecting recovery after a lapse of more than ten years is patently monstrous and unfair. I therefore hold that the respondents are not entitled to recover the so called excess pay from the petitioners. This issue stands concluded.

6. As regards the issue as to whether they were rightly granted Grade Pay, since it entails civil consequence, principles of natural justice will have to be complied with. The respondents are therefore directed to issue show cause to the petitioners herein and pass revised order after getting the petitioners' response. The petitioners will be given two weeks time to offer their response, after they are issued with show cause notice. All the contentions of the petitioners are left open. This writ petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

29.11.2022

Index : Yes / No
Internet : Yes/ No

PMU



WEB COPY



To:

1. The Secretary to Government,
Co-operation Food and Consumer Protection Department,
Secretariat, Chennai – 9.
2. The Registrar of Co-operative Societies,
170, Periyar E.V.R.High Road,
Kilpauk, Chennai – 10.
3. The Deputy Registrar of Co-operative Society (Housing),
Tirunelveli Region, Vannarpettai,
Tirunelveli.



WEB COPY



7

W.P.(MD)NO.7124 OF 2017

G.R.SWAMINATHAN,J.

PMU

W.P.(MD)Nos.7124 to 7126 of 2017 &
1064 to 1066 & 5548 of 2018

29.11.2022