



WEB COPY

W.P.(MD)No.5065 of 2016:

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2022

CORAM

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

W.P. (MD)Nos.5065 and 5066 of 2016

and

W.M.P. (MD)Nos.4509 and 4510 of 2016

and 22388 of 2019

W.P. (MD)No.5065 of 2016:

N. Kannan

... Petitioner

vs.

1.The Deputy Registrar,
Kumbakonam, Thanjavur District.

2.The Special Officer/ The President,
OK 52, Kumbakonam Divisional Noon Meals
Employees Cooperative Society Limited,
Kumbakonam, Thanjavur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the 1st respondent in Na.Ka.No. 2973/ 2014/Na.Va, dated 07.09.2015 and to quash the same.

W.P. (MD)No.5066 of 2016:

R.Vadivelu

... Petitioner

vs.

1.The Deputy Registrar,
Kumbakonam, Thanjavur District.

2.The Special Officer / The President,
O.K.53, Thirupananthal and Thiruvaidaimaruthur
Regional Primary and Middle School Teachers Co-operative,
Kumbakonam Division,
Thanjavur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the 1st respondent in Na.Ka.No.5198/2013/Na.va, dated 07.09.2015 and to quash the same.

In both cases:

For Petitioner	: Mr.H.Velavadhas
For R1	: Mr.P.Thambidurai
	Government Advocate (Civil side)
For R2	: Mr.Aayiram K.Selvakumar

<https://hcservices.ecourts.gov.in/hcservices/>



COMMON ORDER

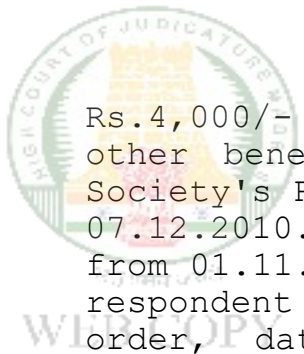
The Writ Petition in W.P.(MD)No.5065 of 2016 is filed for issuance of a Writ of Certiorari, to quash the impugned order of the 1st respondent passed in Na.Ka.No. 2973/ 2014/Na.Va, dated 07.09.2015.

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2.The Writ Petition in W.P.(MD)No.5066 of 2016 is filed for issuance of a Writ of Certiorari, to quash the impugned order of the 1st respondent passed in Na.Ka.No.5198/2013/Na.va, dated 07.09.2015.

3.The brief facts as stated in W.P. (MD) No.5065 of 2016 are that the petitioner was working as Secretary in second respondent Co-operative society from 04.01.2001 without salary. The society passed a Resolution No.1 in the meeting of 25.07.2001, whereby, the petitioner's appointment was approved on consolidated payment sanctioned by the second respondent. The petitioner submitted representations wherein, the representation was sent to the first respondent on 21.08.2008. The first respondent passed an order, dated 07.12.2010. However, no salary was paid to the petitioner. Again, another meeting was conducted on 15.10.2012, wherein it was resolved to pay the salary to all the employees of the Society. The first respondent, vide order, dated 07.01.2013, fixed the petitioner's salary, wherein the petitioner's salary was changed to Clerk in Clause "F" of the schedule. The refixed salary was a sum of Rs.4,200-20,200/-. The petitioner's basic salary fixed as Rs.4,200/- from 01.08.2008 with increment sum of Rs.2,400/- and other benefits were calculated in accordance to the Cooperative Societies Rules. The said order was passed by the proceedings, dated 07.12.2010. The above said salary was given retrospective effect from 01.11.2012, as per the respondent proceedings. Thereafter, the respondent issued a show cause notice, dated 12.10.2015. The petitioner submitted a reply on 23.11.2015. Thereafter, the impugned order, dated 07.09.2015, was passed, wherein the salary fixed to the petitioners was stopped and recovery was ordered by refixing the salary of the petitioner from 01.11.2012. Aggrieved over same, the present Writ Petition is filed.

4.The brief facts as stated in W.P. (MD) No.5066 of 2016 are that the petitioner was working as Secretary in second respondent Co-operative Society from 23.02.2004 without salary. The society passed a resolution in the meeting of 19.04.2004, whereby, the petitioner's appointment was approved on consolidated payment sanctioned by the second respondent. The petitioner submitted representations wherein, the representation was sent to the first respondent on 21.08.2008. The first respondent issued Na.Ka.No.5626/2012/Na.va2, dated 07.01.2013, permitting to refix the salary. Already the petitioner received Rs.4,000/- per month from the Socociety. The petitioner's salary was changed to Clerk salary in Clause "F" of the schedule. The refixed salary was a sum of Rs.8,300-34,800/-. The petitioner's basic salary fixed as



Rs.4,000/- from 23.02.2004 with increment sum of Rs.2,880/- and other benefits were calculated in accordance to the Cooperative Society's Rules. The said order was passed by the proceedings, dated 07.12.2010. The above said salary was given retrospective effect from 01.11.2012, as per the respondent proceedings. Thereafter, the respondent without issuing a show cause notice passed the impugned order, dated 07.09.2015, wherein the salary fixed to the petitioners was stopped and recovery was ordered by re-fixing the salary of the petitioner from 01.11.2012. Aggrieved over same, the present Writ Petition is filed.

5. The first respondent has filed a counter affidavit in W.P. (MD)No.5065 of 2016 stating that the Kumbakonam Division Noon Meal Employee Co-operative Thrift and Credit Society Limited is a newly formed Society. The Society was registered on 23.04.2001, by the Deputy Registrar of Co-operative Societies, Kumbakonam and it is working with effect from 30.04.2001. The Deputy Registrar constituted Board of Directors as interim arrangement to run the Co-operative Society. The above Board was constituted and took charge of decisions with effect from 30.04.2001 and the Society was managed by the Special Officer up to the date of 08.05.2013. The Board of Directors passed Resolution No.1, dated 25.07.2001 and directly recruited the petitioner as Clerk to maintain the accounts. Initially, he was paid with Rs.30/- per day as wages with effect from 25.07.2001. Further, the management raised the wages to the petitioner, fixing the consolidated pay of Rs.4,000/- per month and the Special Officer raised the consolidated pay to Rs.6,000/- per month. The petitioner submitted representations to revise the salary in accordance to G.O.Ms.No.89, Cooperation Food and Consumer Protection Department, dated 16.05.2000 and G.O. Ms. No. 262, Co-operation Food and Consumer Protection Department, dated 21.08.2007. The Special Officer submitted the proposal to the Deputy Registrar on 10.12.2012 to revise the pay and allowances of the employees. The Deputy Registrar directed the Special Officers, vide letter, dated 07.01.2013, to follow the guidelines issued by the Registrar in proceedings, dated 07.12.2010. The Special Officer failed to follow the instructions given in the Registrars Circular, thereby, violated the conditions. The Special Officer over looked the conditions stipulated in G.O.Ms.No.89, Co-operation Food and Consumer Protection Department, dated 16.05.2000 and G.O.Ms.No.262, Co-operation Food and Consumer Protection Department, dated 21.08.2007.

6. The petitioner was appointed as Clerk after 12.03.2001, i.e. on 25.07.2001. The G.O.Ms.No.86, Co-operation Food and Consumer Protection Department, dated 12.03.2001, it has been laid down that direct appointment of employment in Co-operative Societies after 12.03.2001, has been prohibited and in this case, the petitioner has been appointed on 25.07.2001, i.e., after 12.03.2001 and therefore, his appointment is illegal and erroneous and his appointment is

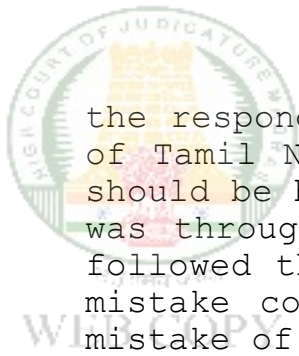


Rule 149 of Tamil Nadu Co-operative Societies Rules, 1988. So, petitioner's appointment is irregular and illegal. He is not entitled to claim the revised scale of pay and allowances, as per G.O.Ms.No.262, Co-operation Food and Consumer Protection Department, dated 21.08.2007 and letter of the Registrar, dated 17.12.2010. The Special Officer revised the scale of the petitioner in accordance to G.O.Ms.No.262, Co-operation Food and Consumer Protection Department, dated 21.08.2007 and letter of the Registrar, dated 17.12.2010 and the same is valid. The Special Officer revised the salary and implemented the pay with effect from 01.08.2008 and the new salary was fixed in the Board Meeting held on 11.01.2013 with retrospective effect from 01.08.2008 notionally increasing the pay and allowances and arrive at total salary of Rs.14,257/- and implemented from 01.11.2012. The implementation of new scale is against rules and regulations and the petitioner is not entitled to revision of salary. Hence, the departmental auditor during the audit for the year 2012-2013 objected the implementation of new salary and suggested the recovery of Rs.1,12,085/-. The Deputy Registrar issued a letter to the President of the respondent Society to withdraw the implementation of time scale of pay with allowances with effect from 01.11.2012 and the respondent issued show cause notice, dated 12.10.2015. The petitioner submitted a reply on 23.11.2015. Thereafter, considering the representation, the impugned order, dated 07.09.2015, was passed. Since the payment is against the G.O.Ms.No.86, Co-operation Food and Consumer Protection Department, dated 12.03.2001 and G.O.Ms.No.262, Co-operation Food and Consumer Protection Department, dated 21.08.2007 and letter of the Registrar, dated 17.12.2010, the said recovery order was issued and the same is legally valid and the first respondent prayed to dismiss the Writ Petition.

7. Heard Mr. H. Velavadas, learned Counsel appearing for the petitioner and Mr. P. Thambidurai, learned Government Advocate appearing for the first respondent and Mr. Aayiram K. Selvakumar, learned Counsel appearing for the second respondent in both Writ Petitions.

8. It is seen from the records that the Kumbakonam Division Noon Meal Employee Co-operative Thrift and Credit Society Limited was registered on 23.04.2001 and working from 30.04.2001. The Board of Directors consisting of five members appointed a Special Officer to manage the affairs of the Society. Initially, the Board engaged the petitioner on daily wages basis. Thereafter, provided consolidated pay and implemented pay revision, issued under G.O.Ms.No.262 Co-operation Food and Consumer Protection Department, dated 21.08.2007.

9. The case of the respondents is that after 12.03.2001, direct recruitment cannot be carried out by Co-operative Society since under G.O.Ms.No.86, Co-operation Food and Consumer Protection Department, dated 12.03.2001 direct recruitment was prohibited and



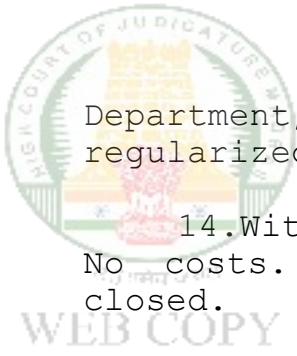
the respondents ought to have followed Sub-Rule 1 and 2 of Rule 149 of Tamil Nadu Co-operative Society Rules, 1988 and the appointment should be by the committee. Prior to G.O. Ms. No. 86 the recruitment was through employment exchange. The erst while management has not followed the Rule 149 while recruiting the petitioners. This is the mistake committed by the erst while management and it is not the mistake of the petitioners.

10. It is seen from the records that the Society is a newly formed society and the Board has taken the decision to fix the salary to its employees after taking the financial status of the Society. The cadre strength ought to have been fixed, the Society ought to have followed the rules to recruitment and statutory provisions for payment of salary, ought to have framed by laws. Without any of these, the Society ought not to have appointed anybody and thereafter claim the appointment as irregular or illegal. The Society cannot run without any employees and therefore, the respondents ought to have taken proper steps to appoint the employees and thereafter, to fix the pay and salary to the employees. The Society cannot commit mistakes and for the said mistakes the society cannot deny the benefits to the petitioners.

11. As per the respondents, the recruitment was after the cut of date. But the respondents claim that it is a newly formed Society, without even minimum working plan, the Societies are being run and after a period of time the issue will pop up like **Justin's case**. The issue of irregular appointment was settled through **Justin's case** and a cut-off date has been drawn. Again, the Society is being run haphazardly and the same issues are being raised again. The respondents again appointed the employees without following any provisions and now states that the appointment was illegal. This mistake is committed by the Board of Directors, the Special Officers as well as Registrars and they are liable to be punished. However, for this mistakes the petitioners cannot be made to suffer and hence this Court is of the considered opinion that the impugned order is liable to be set aside and hence the impugned order is quashed.

12.As far as the Writ Petition W.P.(MD)No.5065 of 2016 is concerned, even though he is appointed subsequent to the cut of date as stated in G.O.Ms.No.86, Co-operation Food and Consumer Protection Department, dated 12.03.2001, the petitioner is entitled to be regularized with revised scale of pay with effect from 01.11.2012. Hence, the impugned order is set aside and the respondents are restrained from recovering the payment made to the petitioner.

13.As far as the Writ Petition W.P.(MD)No.5066 of 2016 is concerned, the impugned order is set aside and the respondents are restrained from recovering the payment made to the petitioner. Even though he is appointed subsequent to the cut of date as stated in G.O.Ms.No.86, Co-operation Food and Consumer Protection



Department, dated 12.03.2001, the petitioner is entitled to be regularized with revised scale of pay with effect from 01.11.2012.

14. With the above direction, the Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Deputy Registrar, (Cooperative Department)
Kumbakonam, Thanjavur District.

+1 CC to M/s.H. VELAVADHASS, Advocate (SR-20278[F] dated
21/04/2022)

+1 CC to M/S.SPG., SR-20737, dated 22/04/2022

W.P. (MD)Nos.5065 and 5066 of 2016

20.04.2022

RK(03/06/2022) 6P 4C