



WEB COPY



W.P.No.5630 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

**W.P.No.5630 of 2022
and
W.M.P.No.5725 of 2022**

R.Bharathan
S/o.Radhakrishnan

... Petitioner

Vs

1. The Deputy Registrar of Cooperative Societies
Mayiladuthurai Circle,
Mayiladuthurai
Mayiladuthurai District.
2. The President
ZP 67, Nidur Primary Agricultural
Cooperative Credit Society
Nidur, Mayiladuthurai District.
3. The President
ZP 96 Thirumangalam Primary Agricultural
Cooperative Credit Society
Thirumangalam
Mayiladuthurai District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings



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Na.Ka.82/2021 Tho.Vae.Sa dated 06.09.2021 and quash the same.

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For Petitioner	:	Mr.G.Prakasam
For Respondents	:	Ms.V.Yamuna Devi Special Government Pleader for R1

ORDER

The petitioner had originally joined as a Clerk in the third respondent – Society on 10.04.1991. Thereafter, he was deputed as the Clerk in the second respondent – Society by the Joint Registrar through his proceedings dated 01.07.2010. When the post of Secretary in the second respondent - Society fell vacant, the petitioner was designated as Secretary In-charge in the second respondent – Society from 01.05.2012 onwards. Later, on 14.11.2018, the petitioner was promoted as Secretary by the third respondent – Society through a Board Meeting dated 14.11.2018 and the pay and allowance was fixed as that of the Secretary's time scale of pay of the third respondent – Society. In this backdrop, the first respondent herein had passed the impugned order dated 06.09.2021 stating that the pay of the petitioner fixed as that of 'A' Class Society is wrong and directed the President of the second respondent - Society to refix the petitioner's scale of pay and recover the excess payment from the petitioner.



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Challenging the same, the present writ petition has been filed.

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2. The learned counsel for the petitioner submitted that the petitioner was duly and properly designated as Secretary In-charge of the second respondent - Society and thereafter, he was permanently absorbed in the second respondent - Society and since the proposal was sent to the Registrar of Co-operative Societies on 29.06.2012 itself with regard to the absorption of the petitioner's service in the second respondent - Society, there is no infirmity in the payments that have been received by him for the post of Secretary in the second respondent - Society.

3. The learned Special Government Pleader appearing for the first respondent, on the other hand, submitted that based on the report of the first respondent dated 28.12.2020 about the pay and allowance permitted and drawn by the petitioner in 'A' Class Society, without permission of the first respondent herein, the revision of the pay scale as well as excess payment made to the petitioner is not legally sustainable and hence, there is no infirmity in the impugned order.



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4. It is seen from the averments in the counter affidavit filed by the first respondent himself that the decision to absorb the petitioner permanently in the second respondent - Society was taken at the District Level Committee under the Chairmanship of Regional Joint Registrar of the Co-operative Societies, Nagapattinam, in its meeting held on 29.06.2012, wherein, the Deputy Registrar from the Regional Joint Registrar's Office, the Circle Deputy Registrar and Special Officers of both the second and third respondent - Societies had jointly resolved to absorb the petitioner permanently in the second respondent - Society. The resolution was followed by the proposal given to the first respondent herein on 29.06.2012. Thereafter, many letter correspondences were also made from the year 2012 to ratify the permanent absorption of the petitioner. This aspect is not disputed by the respondents but the only objection for the first respondent is, that the second respondent - Society, without complying the required formalities had permitted the petitioner to receive the pay scale, as that of the 'A' Class Society, which is contrary to the norms.



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5. The only reason given for not responding to the proposal sent to the first respondent herein on 29.06.2012 is due to the Covid-19 Situation, that had affected the entire State. When the decision of permanent absorption had taken in the District Level Committee, where the Deputy Registrars and concerned Special officers were also present and had jointly resolved for such absorption and the proposal was duly sent on 29.06.2012, citing the reason that could not respond in time owing to Covid-19 situation is, unacceptable. This apart, the Covid-19 Pandemic had struck through the year 2019 and the delay in considering the proposal prior to that is unexplained. When the first respondent himself is a part of the resolution for permanent absorption of the petitioner in the second respondent - Society and having kept the proposal pending, it is not now open to them to state that the petitioner had been excessively receiving the pay scale, as that of 'A' Class Society and therefore, the consequential recovery sought for also cannot be sustained.

6. In the result, the impugned order dated 06.09.2021 bearing reference No.Na.Ka.82/2021 Tho.Vae.Sa on the file of the first respondent is hereby quashed.



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M.S.RAMESH,J.

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The Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

30.11.2023

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

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To

The Deputy Registrar of Cooperative Societies
Mayiladuthurai Circle,
Mayiladuthurai
Mayiladuthurai District.

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