



W.A.(MD) No.103 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **05.12.2023**

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THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**
AND
THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD) No.103 of 2022
and
C.M.P.(MD)No.1059 of 2022

The President,
A.622. Thottanampatti Primary Agricultural
Cooperative Credit Society,
Thottanampatti (post), Vendasandur (TK),
Dindigul District-624 005.

... Appellant

-Vs.-

1.M.Periyasamy

2.The Principal Secretary to Government,
Cooperative, Food and Consumer
Protection Department,
Fort St.George, Chennai – 600 009.

3.The Registrar of Cooperative Societies,
NVN Natarajan Maligai,
Kilpauk, Chennai – 10.

... Respondents

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent Act, to
set aside the order dated 24.11.2020 made in W.P.(MD)No.16667 of 2020
on the file of this Court.



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For Appellant : Mr.S.Kumar
For R1 : No Appearance
For R2 & R3 : Mr.M.Lingadurai,
Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.**)

This Writ Appeal has been instituted by the Co-operative Society registered under the provisions of the Tamil Nadu Co-operative Societies Act, 1983 against the orders of the learned Single Judge.

2. The Writ Petition was instituted by the employee of the Co-operative Society / private respondent questioning the validity of the Government Order passed in G.O.Ms.189, Co-operation, Food and Consumer Protection Department, dated 17.11.2009 and claiming fixation of Dearness Allowance at the rate 97% from 01.04.2008, against the Government Order, fixing 84% of dearness allowance.

3. It is not in dispute that the respondent is the employees of the Co-operative Society registered under the provisions of the Tamil



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Nadu Co-operative Societies Act, 1983. Each Co-operative Society is an independent entity registered separately holding registration number assigned by the competent authority under the Act. Each Society is following its special bylaws as approved by the competent authority under the Act governing the service conditions. Salary fixed by the Management of Society has to be approved by the competent authority under the Tamil Nadu Co-operative Societies Act, 1983.

4. Government in order to maintain uniformity in the matter of granting dearness allowance to the employees of the Co-operative Societies passed G.O.No.189, Cooperation, Food and Consumer Protection Department, dated 17.11.2009. The said Government Order was issued pursuant to the recommendation of the Pay Regulatory Commission constituted by the Government to rectify the discrepancies in the fixation of pay to the employees of the Co-operative Societies across the State of Tamil Nadu. Accepting the Commissioner's Report, the Government issued G.O.Ms.No.189, dated 17.11.2009.

5. It is not in dispute between the parties that the said Government Order has been uniformly implemented by all the



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Co-operative Societies by granting 84% of dearness pay to the employees of the respective Co-operative Society concerned. All the employees had already received 84% of the dearness allowance. The learned counsel appearing on behalf of the appellant further made a submission that 12% of dearness allowance in addition had already been granted to the employees of the Co-operative Societies during the pendency of the litigation and therefore, the respondent employee is not entitled to any further dearness allowance as claimed by him.

6. The employees of the Co-operative Societies cannot seek pay on par with the Government employees. Service conditions of the Co-operative Societies employees are governed under the provisions of the Tamil Nadu Co-operative Societies Act and Rules and the Special By-laws approved by the Registrar. That being so, the dearness allowance granted to maintain uniformity cannot be further extended by the Court by granting 97% of dearness allowance by relying on dearness allowance granted to the Government Employees. Such a comparison is impermissible.



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7. The Writ Petition was filed challenging the Government Order granting dearness allowance, but the said dearness allowance had already been granted to all the employees, more so, additional dearness allowance of 12% was also sanctioned and disbursed in favour of the employee. That being the factum, if any grievance exists for the employee of the Co-operative Societies he is at liberty to approach the Government for further relief in the manner known to law.

8. The power of Judicial Review cannot be expanded for the purpose of enhancing dearness allowance and therefore, this Court is of the opinion that the reliance placed on by the learned Single Judge in W.A.No.452 of 2012 dated 20.07.2012 is misplaced. In respect of the said order of the Hon'ble Division Bench, it was passed based on certain mistaken facts and the mistake committed by Government was admitted before this Court in another Writ Proceedings in W.P.(MD) No.19043 and 19049 of 2020. It was mistakenly placed before the earlier Division Bench that the Government granted 97% dearness allowance to the Co-operative Societies employees. Based on such mistake, the relief was granted in the said Writ Appeal and therefore, the said Writ Appeal cannot be followed as a precedent for the purpose of extending 97% dearness allowance to the employees of the Co-operative Societies.



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9. Considering the facts and circumstances, we are of the considered opinion that the Writ Petitioner / private respondent is not entitled for the relief as such sought for in the Writ Proceedings. Thus, the order impugned in this Writ Appeal is set aside and the Writ Appeal is allowed. Consequently, connected Miscellaneous Petition is closed.

[S.M.S.J.] & [V.L.N.J.]
05.12.2023

NCC :Yes/No

Index :Yes/No

Yuva

To

1.The Principal Secretary to Government,
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