



W.P.No.1601 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :29.07.2024

C O R A M

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

W.P.No.1601 of 2022

K.Dhanalakshmi

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Petitioner

Vs

1. The Registrar of Co operative Societies,
Chennai – 600 010.
2. The Joint Registrar of Co operative Societies,
Salem Region, Salem District.
3. The Deputy Registrar of Co operative Societies,
Salem Circle, Salem District.
4. The President
S S 119, Salem Community Nutrition
and Anganwadi Workers and Anganwadi
Women Co op Thrift and Credit Society Ltd.
Alagapuram, Salem.

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Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying for the issuance of a writ of mandamus directing the respondents to
forbear from interfering with the service conditions and implementation of



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the settlement dated 31.05.2013 concluded under Section 12 (3) of the I.D.Act 1974, entered into before the Labour Officer, Salem in Na.Ka.No.379 between the management and employees of the fourth respondent co operative society.

For Petitioner	:	Mr.G.Punniakotti
For R1 to R3	:	Mr.R.U.Dinesh Rajkumar Additional Government Pleader
For R4	:	Mr.U.Bharanidharan Additional Government Pleader

ORDER

This writ petition is filed for a direction by way of mandamus to forbear the respondents from interfering with the service conditions and implementation of settlement dated 31.05.2013 concluded in the 12 (3) settlement of the I.D.Act,1947 entered into between the management and the employees of the fourth respondent co operative society.

2. The facts in brief as per the affidavit are as under:

2.1. The Salem Community Nutrition and Anganwadi Workers and Anganwadi Women Co op Thrift and Credit Society Ltd. (in short Society) is



registered under Tamil Nadu Co Operative Societies Act, 1983 (for brevity 'the Act') on 17.01.2002. The petitioner joined in the said Society as a Clerk on 18.02.2002 on consolidated monthly pay of Rs.600/- and was promoted as Secretary from 11.05.2013. A settlement under Section 12 (3) of the I.D.Act was entered into between the management of the society and employees on 31.05.2013 before the Labour Officer Salem thereby, the pay of the petitioner as a Secretary was fixed at Rs.8,300/- in the pay band of Rs.8300 - 34800 +G.P. 3600 w.e.f. 01.05.2013.

2.2. The Deputy Registrar of the Society has addressed a letter dated 18.09.2013 *vide* Na.Ka.No.4853/2013(3) directing the President of the Society/fourth respondent to cancel the settlement entered into under Section 12 (3), *ibid*, dated 31.05.2013. The fourth respondent has issued proceedings dated 01.10.2013 and directed the petitioner to remit the excess payment drawn by the petitioner as per the 12 (3) settlement dated 31.05.2013.

2.3. The petitioner has preferred E.P.No.41 of 2019 on the file of the Labour Court, Salem for payment of salary and arrears as per the 12 (3) settlement dated 31.05.2013 for the period w.e.f. 01.05.2013 to 30.08.2019



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to a tune of Rs.8,82,654/-. The matter was referred to District Legal Services

Authority, Salem for settlement in the Lok Adalat as case No.91 of 2021.

On 16.04.2024, the fourth respondent has remitted a sum of Rs.8,82,654/- and the matter was settled in the Lok Adalat on the very same day.

2.4. In the meanwhile the third respondent by order dated 26.11.2021 directed the Co Operative Sub Registrar to inspect the society under Section 82 of the Act in respect of payment of arrears of salary to the petitioners and others. Accordingly, the records of the Society in respect of the 12 (3) settlement were seized and the fourth respondent was instructed not to disburse the salary to the petitioner. Finally, on 26.11.2021 the orders were issued to nullifying the 12(3) settlement dated 31.05.2013.

2.5. Challenging the same, the petitioner has filed W.P.No.2736 of 1991 (batch) and the same were disposed of by order dated 12.02.1992 stating that the authorities cannot interfere with the implementation of the settlement so as to nullify the same. Further, a batch of writ petitions were filed when the Society sought to cancel the 12(3) settlement dated 31.05.2013 and the Division Bench of this Court in W.A.Nos.1539 to 1542 of 2000 has granted interim order of status quo. The respondents have been



issuing oral orders to the Society and the Board of management to nullify the settlement and therefore, sought for issuing a direction to the respondents to forbear from interfering with the service conditions and implementation of 12 (3) settlement dated 31.05.2013.

3. Counter affidavit has been filed by the third respondent stating that the fourth respondent Society came under the administrative control of the Deputy Registrar of Co operative Societies, Salem. It is mentioned in the counter affidavit that the petitioner without reference to the Employment Exchange and in violation of Rule 149 was appointed on consolidated wages and was also promoted as Secretary. She was engaged only as a daily wage employee thereby, her appointment is irregular. Basing on the judgement of the Hon'ble Supreme Court in A.Umarani's case reported in (2004) 7 SCC 112 services of irregular employees of the Co Operative Society cannot be regularised even under G.O.Ms.No.86 dated 12.03.2001. The petitioner appointment is in violation and contravention of the conditions (b) & (h) of the instructions issued by the Registrar of Co Operative Societies dated 21.08.2004.



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4. It is further mentioned in the counter affidavit that the Registrar of Co Operative Societies has issued circulars directing the Societies concerned to take prior approval from the department for entering into 12 (3) settlement in respect of fixation of pay etc. The fourth respondent Board has not taken any steps for getting approval from the first to third respondents, prior to Settlement under Section 12(3) of the I.D.Act thereby, proceedings were issued to cancel the 12 (3) settlement. The fourth had reported that they had passed minutes in its Board meeting dated 01.10.2013 cancelling the irregular 12 (3) settlement and accordingly, the petitioner has also on 01.10.2013 has remitted back the difference of irregular pay received by her.

5. The third respondent has filed additional counter affidavit stating that as per the bylaws the settlement in respect of scale of pay, dearness allowances and other allowances shall be made only with prior written approval in written from the Registrar of Co Operative Societies.

6. Heard both sides and perused the materials available on record.

7. The petitioner was originally appointed as a Clerk on consolidated monthly wages in the fourth respondent Society and later she



was promoted as a Secretary from 11.05.2013. The 12 (3) settlement was entered into on 31.05.2013 between the petitioner and other employees of the fourth respondent in respect of scales of pay of the employees and salaries were increased. However, proceedings have been issued by the first to third respondents stating that entering into 12 (3) settlement between the management and employees of the fourth respondent Society is against the by laws. The relevant bylaws No.3(3) as stated by the respondent in the additional counter affidavit are extracted hereunder:

“the scale of pay, Dearness allowance and all other allowances applicable to different categories of Employees shall be as per the settlement under Section 12(3) or Section 18(1) of the I.D.Act, 1947 arrived at by the Society with its Employees Union or Association or as fixed by the board with the approval in writing of the Registrar from time to time provided that no such settlement shall be made by the Society without the prior approval in writing of the Registrar.”

8. On going through the above bylaws, it is clear that without prior approval of the Registrar of the Society, 12 (3) settlement under the I.D.Act shall not be entered in respect of scale of pay, Dearness allowances and other allowances. Therefore, the 12 (3) settlement dated 31.05.2013 between the petitioner management and other employees of the fourth respondent Society



is contrary to the special by law No.3 (2). Even according to the petitioner the third respondent has thereby, addressed a letter dated 18.09.2013 requesting the fourth respondent to cancel the 12 (3) settlement dated 31.05.2013 as it was entered without prior approval of the Registrar of the Society.

9. It is submitted by the learned counsel for the petitioner that while disposing of W.P.No.2736 of 1991 and (batch) on 12.02.1992, this Court directed the authorities under the Act not to interfere with the implementation of 12(3) settlement under I.D. Act so as to nullify the same. It is also submitted that when Co-operative Society sought to cancel the 12(3) settlement in which the Division Bench of this Court in W.A.Nos.1539 to 1542 of 2000 has granted order of status quo by its order dated 18.09.2000. However, there is no clarity about the writ petition and the writ appeals and the copies of the orders and other relevant material is not filed before this Court. Even otherwise if there are directions given by this Court. in W.A.No.1539 to 1542 of 2000 directing the respondent to maintain status quo how again this writ petition can be filed by the petitioner seeking for a similar relief.



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10. According to the respondent, the 12 (3) settlement entered into between the petitioner management and the employees of the fourth respondent Society dated 31.05.2013 is against the special bylaws and thereby, the settlement was cancelled. Since 12(3) settlement has already been cancelled as against the bylaws and since the petitioner has remitted back the excess amount withdrawn by her in terms of 12 (3) settlement, now, the petitioner cannot seek for a direction to the first to the third respondents to forbear from interfering with the implementation of the 12 (3) settlement. Since 12 (3) settlement itself is not in existence on account of its cancellation, the prayer sought for by the petitioner cannot be granted.

11. Accordingly, this writ petition is dismissed. Connected W.M.P is closed. No costs.

29.07.2024

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Index : Yes/No
Internet : Yes/No
Citation : Yes/No



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To

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3. The Deputy Registrar of Co operative Societies,
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Dr.D.NAGARJUN,J.
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