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W.P.Nos.1629 and 2453 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.08.2024

Delivered on : 22.08.2024

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.1629 and 2453 of 2020

&

W.M.P.Nos.1908, 1910 & 2849 of 2020

W.P.No.1629 of 2020

1. V.Murugan
2. A.Kamalakannan
3. T.Santhana Krishnan
4. K.Sadasivam
5. R.Siva
6. V.Tangarassou
7. E.Sekar
8. Thirugnanasambandan

... Petitioners

Vs.

1. The Registrar of Cooperative Societies
V.V.P Nagar
Thattanchavady Post
Puducherry – 605 009
2. Thavalakuppam Primary Agricultural
Co-operative Credit Society Ltd.,
Represented by its Manager V.Murugan
3. Mangalam Primary Agricultural Cooperative



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Credit Society Ltd.,
Represented by its Manager A.Kamalakannan

4. Kothapurinatham Primary Agricultural
Cooperative Credit Society Ltd.,
Represented by its Manager, K.Sadasivam
5. Kalapet Primary Agricultural
Cooperative Credit Society Ltd.,
Represented by its Senior Clerk R.Siva
6. Mannadipet Primary Agricultural
Cooperative Credit Society Ltd.,
Represented by its Manager E.Sekar ... Respondents

(R2 to R6 suo motu impleaded vide order dated 03.08.2023)

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari calling for the records of the respondent
in proceedings No.RCS/Planning/Directions/2019/22 dated 14.01.2020 and
quash the same as illegal

W.P.No.2453 of 2020

Veerappan

... Petitioner

Vs.

1. The Registrar of Co-operative Societies
Government of Puducherry
Co-operative Department
VVP Nagar, Thattanchavady Post
Puducherry
2. The Administrator / Managing Director



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The Pondicherry Co-operative Milk
Producer's Union Ltd., (PONLAIT)
No.P.1, Vazhudavoor Road
Kurumampet, Pondicherry - 605 009

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the impugned order vide No.RCS/Planning/Directions/2019/22 dated 14.01.2020 issued by the first respondent and quash the same as the same is issued by the 1st respondent contrary to the provisions of the Industrial Dispute Act.

For Petitioner : Mr.K.Sasindran
in W.P.No.1629 of 2020

Mr.B.Balavijayan
in W.P.No.2453 of 2020

For Respondents : Ms.G.Djearany
Government Advocate
for R1 in both WPs

Mr.A.Prakash Adiyapadam
for R2, R4 to R6 in W.P.No.1629 of 2020

Mr.L.Swaminathan
for R2 in W.P.No.2453 of 2020

COMMON ORDER

These writ petitions have been filed challenging the proceedings of the first respondent dated 14.01.2020 under Section 81(1) of the Puducherry



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Cooperative Societies Act, 1972' [hereinafter "Act"] as it is contrary to Section 72(1) of the Act.

2. The petitioners are the employees of the Cooperative Societies functioning at Puducherry. All the Cooperative Societies are registered under the Act. Section 72(1) of the Act deals with the establishment of Contributory Provident Fund for the benefit of the employees of the Cooperative Societies. Accordingly, a registered Society shall establish a Contributory Provident Fund for the benefit of its employees to which shall be credited all contributions made by the employees and the society in accordance with the rules and by-laws or the Employees Provident Funds Act, 1952 (Central Act 19 of 1952) whichever is more beneficial. Accordingly, the Cooperative Societies have framed a subsidiary Regulations for the purpose of Contributory Provident Fund for the employees and they also have a set of Rules. Accordingly, the employees have to pay 12% towards their share for Contributory Provident Fund. As per the Employee's Provident Fund Act, the employer is also liable to pay 12% of the employee's salary towards Provident Fund. However, the employer's share towards



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provident fund is capped at the maximum salary limit of Rs.15,000/-.

Accordingly, the employer is liable to pay a maximum contribution of Rs.1800/- i.e., 12% of the salary of an employee. However there is no such ceiling limit as per the Cooperative Societies Regulations. They are contributing more than 12% for the past several years. Further, their Societies are paying tea allowance to its employees at the rate of Rs.20/- per day. They can surrender their earn leave and get encashment subject to a maximum of 30 days.

3. While that being so, the first respondent issued directions as per Section 81 of the Act imposing restrictions on employer's contribution to the Employees Provident Fund, disallowance of tea allowance and disallowance of earn leave surrender during the tenure of service of an employee with effect from 01.01.2020.

4. The learned counsel for the petitioner would submit that these directions are contrary to Section 72(1) of the Act. The said provision is clear that either to follow the regulations of the Contributory Provident Fund



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created by the Society or the provisions contained in the Act whichever is more beneficial for the employees. Therefore, the first respondent has no powers to compel the Societies to follow a particular scheme which has less beneficial to its employees. All the Societies have their own set of by-laws and subsidiary regulations which has statutory force. Therefore, the respondent cannot overwrite the set of Rules and Regulations unilaterally, that too by way of Administrative order. The tea allowance was provided on the recommendation of the Pay Commission, now it has been suddenly cancelled and it is contrary to by-laws.

5. Adverting to the counter affidavit, the learned Government Advocate submitted that when the respective employers of the petitioners did not raise any objection over the direction issued by the first respondent, the petitioners, being the employees, have no *locus standi* to challenge the directions issued by the first respondent and only on the objection raised by the first respondent, the petitioners have impleaded their respective Societies as Respondents 2 to 6. The first respondent issued directions only after considering the financial crisis of Societies. Excessive employment, increase



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in the recurring expenditure of employees' salary and decrease in the business turnover due to severe private sector competition are some of the reasons for financial crisis. Therefore, only for the survival of the societies, the Government of Puducherry had taken measures for recurring revenue expenditure. Insofar as the employer's contribution towards Provident Fund is concerned, it is restricted to Rs.1,800/- i.e., 12% of the maximum salary ceiling limit of Rs.15,000/-. Therefore, the employer is liable to pay a maximum contribution of Rs.1800/- for an employee irrespective of their salary. However, both employer and employee without following the same, the Societies are contributing more than 12%. Attention was also drawn to the proviso to paragraph 26-A(2) of the EPF Scheme, which reads as follows:

“Provided that, subject to the provisions contained in sub-paragraph (6) of paragraph 26 and in sub-paragraph (1) of paragraph 27A, where the monthly pay of such a member exceed fifteen thousand rupees, the contribution payable by him, and in respect of him the employer, shall be limited to the amounts payable on a monthly pay of fifteen thousand rupees, including dearness allowance, retaining allowance (if any) and cash value of food concession.”



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6. Accordingly, the employer was contributing at the rate of 12% of the employee's monthly salary where the term “Salary” includes Basic Salary, Dearness Allowance and retaining allowance drawn by the employees. Therefore, in order to comply with the provisions of the Act, the first respondent rightly issued directions with ultimate motive of reducing the recurring revenue expenditure for the survival of the Societies.

7. It could be seen from the submissions made before this Court that as the Societies are facing much financial difficulties even for its survival and it cannot pay even the monthly salary to its employees and in order to overcome such financial crisis, the Government has taken various measures and as part of such measure, the societies contribution to the employees' Provident Fund was restricted to Rs.1,800/- and the allowance for tea was stopped. Therefore, it cannot be said that it is contrary to regulations. Insofar as the earn leave surrender is concerned, due to encashment of the Earn Leave, the funds of Societies were drained to the lowest level due to which the Societies are unable to disburse the monthly



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salary on regular basis. Therefore, the encashment of earn leave has been rightly withheld during the employees service period and it could be considered only after their retirement.

8. In view of the above, this Court finds no infirmity or illegality in the proceedings of the first respondent dated 14.01.2020 and accordingly, these writ petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

22.08.2024

Index:Yes/No
Neutral Citation/Yes/No
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To
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1. The Commissioner
Corporation of Greater Chennai
Rippon Building, Chennai - 600 003
2. The Collector of Chennai
4th Floor, Singaravelan Maligai
Rajaji Salai, Chennai- 600 001
3. The Assistant Commissioner
Chennai Corporation Zone-9
Lake Area, Nungambakkam
Chennai - 600 034
4. The Chair Person
Zone-IX, Street Vending Committee
Corporation of Greater Chennai
Chennai - 600 034



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G.K.ILANTHIRAIYAN, J.

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Pre-delivery order in
W.P.Nos.1629 and 2453 of 2020

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