

W.P.Nos.37119, 5288 & 1349 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.37119, 5288 & 1349 of 2015

and

MP.Nos. 1 to 4 of 2015 & 1 to 3 of 2015

P.Jeevanandham

.... Petitioner in all W.Ps

Vs

1.The Deputy Registrar of Coop.Societies,
Tiruvarur Circle, Tiruvarur, Tiruvarur District.

2. The President,
O.N.78, Tiruvarur District Adi Dravidar
Welfare Department Employees Cooperative
Thrift and Credit Society Ltd.,
No.14-A, Kaaraikattu Street,
Tiruvarur.

.... Respondents in all W.Ps

Prayer in W.P.No.37119 of 2015: Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorari calling for the entire records relating to the impugned order passed by the first respondent in his proceedings Na.Ka.No.520/2015/Sa.Pa, dated 20.08.2015 and quash the same.

Prayer in W.P.No.5288 of 2015: Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorari calling for

the entire records relating to the impugned order passed by the first respondent in his proceedings Na.Ka.No.1296/2014 Naa.Vi, dated 18.11.2014 and consequential order passed by the first respondent in his proceedings Na.Ka.No.1296/2014 Naa.Vi(3), dated 07.01.2015 and quash the same.

Prayer in W.P.No.1349 of 2015: Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorari calling for the entire records relating to the impugned order passed by the first respondent in his proceedings Na.Ka.5364/2010-Naa.Vi(1), dated 23.04.2014 and quash the same.

For Petitioner in all W.Ps : Mr.C.Prakasam

For Respondents in all W.Ps : Mr.S.Ravikumar,
Special Government Pleader

COMMON ORDER

These Writ Petitions have been filed challenging the order passed by the first respondent dated 23.04.2014, 20.08.2015 and 07.01.2015 respectively, thereby fixing liability on the petitioner to the tune of Rs.6,43,257/-.

2. The petitioner was working as a Clerk in the second respondent Society on 15.07.2003. He was terminated from service. While he was working, when the Registrar of Co-operative Societies

issued circular for revision of pay scale to the co-operative employees, by way of entering into settlement under Section 12(3) of the Industrial Disputes Act, the second respondent had entered into settlement with the petitioner and other society management entered into settlements with the petitioner who is working on deputation basis and accordingly, revised his pay scale. He was also promoted to next higher post. As per the promotion and as per the revision of pay scale, the salary was disbursed. However, it was objected by the audit report. Hence, the first respondent ordered for enquiry under Section 81 of the Tamilnadu Cooperative Societies Act in respect of revision of pay scale. The enquiry officer submitted report before the first respondent stating that the pay scale has been revised and disbursed to the petitioner by way of settlement and he was paid excess amount of Rs.6,43,257/-. On receipt of the same, the first respondent insisted to recover the same from the petitioner's salary. The grievance of the petitioner is that the petitioner was not served with enquiry report for the enquiry conducted under Section 81 of the Tamilnadu Cooperative Societies Act. Thereafter, the first respondent passed the surcharge proceedings.

3. Heard, the learned counsel appearing on either side and perused the materials available on record.

4. On perusal of the counter filed by the first respondent revealed that the petitioner is working in the second respondent Society. He was appointed against Rule No.149 of Tamilnadu Cooperative Societies Rules, 1988. That apart, no cadre strength was fixed and approved by the Registrar. The Board of Management revised his pay and allowances with retrospective effect from 31.03.2010. Therefore, it was objected by audit officer and submitted special report about the illegal promotions and also loss caused to the Society. Therefore, enquiry was ordered under Section 87 of the Tamilnadu Cooperative Societies Act, 1983 and as per the enquiry report, the surcharge proceedings was passed to recover the excess salary and allowances paid to the petitioner. Though the Registrar of Cooperative Societies, by its communication dated 07.12.2010, directed the Cooperative Societies to revise the pay, the salary of the petitioner was not revised. The second respondent issued surcharge notice to the petitioner and passed orders. Therefore, the petitioners ought to have approached the audit authority.

5. Admittedly, the petitioner was not promoted on the basis of his fraud or misrepresentation. The petitioner had discharged his duty in the promotional post. Therefore, insofar as recovery of salaries which were paid in the promotional post, cannot be recovered, that too by way of surcharge proceedings.

6. In view of above, the impugned orders cannot be sustained and the same are liable to be quashed. Accordingly, the impugned order passed by the first respondent dated 23.04.2015, 20.08.2015 and 07.01.2015 are hereby quashed and these writ petitions are allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

06.09.2024

Neutral citation: Yes/No

Index: Yes/No

Speaking/Non-speaking order

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Note : Issue order copy on 13.09.2024

G.K.ILANTHIRAIYAN, J.

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To

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