



W.P.Nos.11481, 11537, 11541 and 11587 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2024

CORAM:

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

W.P.Nos.11481, 11537, 11541 and 11587 of 2022
and W.M.P.Nos.10985, 10986, 11017, 11019 and 11065 of 2022

W.P.No.11481 of 2022:-

N.Ravichandran

... Petitioner

Vs

1. The Deputy Registrar of Co- Operative Societies (Housing), Cuddalore.
2. K.Subramanian,
Deputy Registrar of Co- Operative Societies (H),
Cuddalore.
3. E.2034, Vridhachalam Co - Operative Building Society Ltd.,
Rep. by its President,
Vridhachalam- 606 001.
4. The Inspection Officer,
U/s 82 of TNCS Act, E.2034,
Vridhachalam Co- Operative building Society Ltd,
Rep. by its President,
Vridhachalam- 606 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the inspection report dated 24.04.2020 under Section 82 of the Tamil Nadu Co-



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Operative Societies Act on the file of the consequential Surcharge Order dated 02.03.2022 in Na.Ka.1247 / 2020 / Sa.Pa on the file of the first respondent quash the same.

For Petitioner : Mr.M.S.Palaniswamy
For R1, R2 and R4 : Mr.S.Ravikumar
Special Government Pleader
For R3 : Mrs.S.Anitha

W.P.Nos.11537, 11541 and 11587 of 2022:-

V.Pandiyarajan ... Petitioner in **W.P.No.11537 of 2022**

V.Sukumar ... Petitioner in **W.P.No.11541 of 2022**

S.Kumaran ... Petitioner in **W.P.No.11587 of 2022**

Vs

1. The Deputy Registrar of Co- Operative Societies (Housing),
Cuddalore Circle, Cuddalore.

2. E.2034, Vridhachalam Co - Operative Building Society Ltd.,
Rep. by its President,
44, North Fort Street,
Vridhachalam,

Cuddalore District- 606 001. ... Respondents in **W.P.Nos.11537, 11541 and 11587 of 2022**

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the surcharge order passed by the first respondent in Na.Ka.1247 / 2020 / Sa. pa dated 02.03.2022 quash the same.



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For Petitioners : Mr.M.S.Palaniswamy
For R1 : Mr.S.Ravikumar
Special Government Pleader
For R2 : Mrs.S.Anitha

COMMON ORDER

These writ petitions have been filed challenging the order dated 24.04.2020 and surcharge order dated 02.03.2022, on the file of the first respondent.

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

3. The petitioners were appointed as Clerk and Office Assistant in the Vridhachalam Taluk Co-operative Housing Society Ltd., (hereinafter called as “Society”). Subsequently, they were promoted to various posts in the said Society. While being so, the first respondent ordered for inspection as contemplated under Section 82 of the Tamil Nadu Co-operative Societies Act (hereinafter called as “the Act”), in the Society with regard to payment of excess salary, diversion of funds and non deposit of employees provident fund, gratuity into federation. After inspection, the Inspection Officer submitted his report dated 21.11.2019 to the first respondent. On the basis of the inspection report, the first respondent proceeded with the surcharge proceedings under Section 87



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of the Act. The petitioners were issued notice and they submitted their explanation. However, they were not served with the documents related to surcharge proceedings. Thereafter, they had proceeded with the enquiry under Section 87 of the Act. It is against the circular issued by the first respondent in Circular No.3 of 2018 dated 25.04.2018. As per the inspection report, the petitioners were paid excess salary from the Society from the year 2008 to 2015 contrary to the circular of the Registrar of Co-operative Societies (H) Chennai, in Rc.No.1/95/04 dated 22.02.1995. It was kept in abeyance and another circular was issued by the Registrar of Co-operative Societies dated 31.03.1995. Without taking note of the said circular in the surcharge proceedings, the first respondent passed an order, thereby directed to recover the excess payment made to the petitioners. Hence, this writ petition.

4. The learned counsel for the petitioner would submit that the salary was paid to the petitioners based on the settlement under Section 18(1) of the Industrial Disputes Act between the employers and the Society. As per the settlement, the Society agreed to pay the salary. In fact, such salary was not objected by the auditor after several inspections from 1994 till date. No enquiry should be conducted for the purpose of excess salary paid to the employees under Section 82 of the Act that too after lapse of 14 years. Therefore, no



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surcharge can be levied that too after a period of seven years from the date of commission and omission as per Section 87 of the Act. Therefore, the surcharge proceeding itself is barred by limitation. Further, the first respondent has no power or jurisdiction to interfere in the service matters. The Society is the competent person to raise issue about the excess payment of salary and other benefits related to service of the employee.

5. A perusal of the inspection report revealed that the Inspection Officer enquired about the payment made to the petitioners by way of salary and other benefits under various heads. The Inspection Officer found that the petitioners were paid excess salary and the Society contributed EPF towards the petitioners wrongly and as such, the Society had sustained loss. Pursuant to the inspection report, the first respondent conducted an enquiry under the surcharge proceedings and ordered to recover excess payment from the petitioners.

6. As per Section 172 of the Act, the powers of the Government may be delegated to the authority concerned. Sub section (1) of Section 172 of the Act contemplates that “The Government may, by notification, authorise any authority or officer to exercise any of the powers vested in them by this Act except the powers conferred under sections 170 and 180 and may in like



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manner withdraw such authority”. Therefore, the first respondent is not vested with the power to deal with the service matters of the employees of the Co-operative Societies and the first respondent has no power to pass surcharge order.

7. In view of the above, the impugned orders cannot be sustained and are liable to be quashed. Accordingly, the inspection report dated 24.04.2020 and the surcharge order in Na.Ka.1247 / 2020 / Sa. pa dated 02.03.2022, passed by the first respondent, are hereby quashed. The second respondent in W.P.No.11481 of 2022 is at liberty to recover the excess payment, if any made to the petitioners in accordance with law.

8. Accordingly, these writ petitions are allowed. Consequently, connected Miscellaneous petitions are closed. No costs.

02.09.2024

Internet: Yes

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

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To

1. The Deputy Registrar of Co- Operative Societies (Housing), Cuddalore.



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2. The President,
E.2034, Vridhachalam Co - Operative
Building Society Ltd.,
Vridhachalam- 606 001.

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G.K.ILANTHIRAIYAN. J.

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