



W.P.No.14188 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2024

CORAM:

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

W.P.No.14188 of 2022 and
WMP.No.13429 of 2022

1.K.Anandakumar
2.N.Balaraman
3.S.V.Selvakumar
4.R.Ravi
5.V.Sridharan
6.T.Srithala
7.K.Shanmugasundaram
8.R.Senthilkumar

... Petitioners

Vs.

1.The Deputy Registrar of Co-op Societies,
Nagapattinam Circle, Nagapattinam,
Nagapattinam District
2.The President,
O.N.3, Nagapattinam Urban Cooperative Credit
Society Ltd.,
Nanayakkara Street,
Nagapattinam 611 001,
Nagapattinam District

... Respondents

PRAYER: 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 No.Na.Ka.150/2020/KuNa dated 11.03.2022 and quash the same.



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For Petitioners : Mr.C.Prakasam

For Respondents : Mr.S.Ravikumar,
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 11.03.2022 thereby fixing liability on the petitioners to the tune of Rs.44,20,097/-.

2. The petitioners except the seventh petitioner, are working as Head Assistant, Jewel Appraiser and Assistant respectively in other Cooperative Societies on deputation basis. The seventh petitioner, who was working as Appraiser, was terminated from service. While they were working, when the Registrar of Cooperative Societies issued circular for revision of pay scale to the cooperative employees, by way of entering into settlement under Section 18 or under Section 12(3) of the Industrial Disputes Act, the second respondent had entered into settlement with the petitioners and other society management entered into settlements with the petitioners who are working on deputation basis and accordingly, revised their pay scales. They were also promoted to next higher post. As per the promotion and as per the revision of pay scale, the salary was



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disbursed. However, it was objected by the audit report. Hence on 04.03.2019, the first respondent ordered for enquiry under Section 81 of the Tamilnadu Cooperative Societies Act in respect of revision of pay scale and also promotion. The enquiry officer submitted report before the first respondent stating that the pay scale has been revised and disbursed to the petitioners by way of settlement and they were paid excess amount of Rs.46,98,097/-. On receipt of the same, the first respondent insisted to recover the same from the petitioners' salaries. Already a sum of Rs.1.5 lakhs was deducted from the petitioners' salaries. The grievance of the petitioners is that the petitioners were not served with enquiry report for the enquiry conducted under Section 81 of the Tamilnadu Cooperative Societies Act. The enquiry report was submitted on 13.09.2019. After three years, the first respondent passed the surcharge proceedings.

3. Heard, the learned counsel appearing on either side.

4. On perusal of the counter filed by the first respondent revealed that the petitioners are working in the second respondent



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Society. They were 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 gave promotion to the petitioners and revised their pay and allowances with retrospective effect from 01.07.2015. 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 81 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 petitioners. It further revealed that the second respondent had given double promotion to the first petitioner from Senior Clerk to Secretary by-passing next promotion post of Assistant Secretary which is against the Rule 149 of Tamilnadu Cooperative Societies Rules, 1988. It is also against the bylaws of the Society. In fact, the promotions of the petitioners were not recognised by the Registrar. Though the Registrar of Cooperative Societies, by its communication dated 21.08.2008, directed the Cooperative Societies to revise the pay, the salaries of the petitioners were not revised. The second respondent issued surcharge notice to all and passed orders. Therefore,



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the petitioners ought to have approached the audit authority.

5. Admittedly, the petitioners were not promoted on the basis of their fraud or misrepresentation. After promotion, the petitioners had discharged their duties 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 order cannot be sustained and the same is liable to be quashed. Accordingly, the impugned order passed by the first respondent dated 11.03.2022 is quashed and this writ petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

22.08.2024
(2/3)

Neutral citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To
1.The Deputy Registrar of Co-op Societies,



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Nagapattinam District
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