



WP.No.19110 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2024

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THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

WP.No.19110 of 2020

and

WMP.Nos.23680 of 2020 & 32110 of 2023

A.Seenuvasan

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary
Department of Co-Operative Societies
St. George Fort, Chennai.
2. Joint Registrar of Co-operative Societies
Kancheepuram District.
Kancheepuram.
3. Deputy Registrar of Co-Operative Societies,
Maduranthagam
Chengalpattu District.
4. The President
G1699 Payambadi Primary Agricultural
Co-Operative Society,
Payambadi, Madurandagam Taluk,
Chengalpattu District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Certiorari, to call for records pertaining to the impugned communication in Memo dated 30.09.2020 issued by the 4th



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respondent on the basis of an alleged un communicated order dated 02.06.2020 in Na.Ka. No. 824/ 2020/ A1 stated to have been issued by 3rd respondent for recovery of alleged excess payment of salary for a sum of Rs.2,69,746/- and quash the same as illegal, arbitrary, violative of audi alteram partem and for consequential orders.

For Petitioner : Mr.R.Veeramani

For Respondent : Mr.S.Ravikumar
Special Government Pleader for R1 to R3

ORDER

The instant writ petition has been filed challenging the recovery order passed by the 4th respondent vide order dated 30.09.2020.

2. The learned counsel for the petitioner would submit that he was appointed as a Salesman in Paiyambadi Primary Agricultural Co-Operative Society on 01.11.1988 and thereafter, he was working in Sithamur fair price shop in Madurandagam and that he was put in 31 years of unblemished service. The learned counsel would further contend that apart from his post, he was also given various additional responsibilities, and that even after his promotion, he was directed to discharge duty of the Junior



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Clerk and that he had been efficiently and diligently accomplished.

3. It is the further contention of the learned counsel for the petitioner that all of a sudden, an impugned recovery notice was illegally issued on 30.09.2020 to recover a sum of Rs.2,69,746/- [Rupees Two lakhs sixty nine thousand seven hundred and forty six only] on the ground that his pay was wrongly fixed since November 2015, and was directed to pay the above sum as if the same was in excess to his entitlement. The learned counsel would contend that such recovery order is against law and in support of their contention, the learned counsel for the petitioner relied upon the judgement of the Hon'ble Supreme Court in ***Jagdish Prasad Singh Vs. State of Bihar and Others*** reported in ***2024 SCC OnLine SC 1909***.

4. Per contra, the learned Special Government Pleader would vehemently contend that though the salary was fixed by the 4th respondent, unless it is confirmed or approved by the 3rd respondent, the question of sanctioning the said amount will not arise. Whereas, before the approval of the 3rd respondent, the payment was illegally made. Therefore, the respondent justifies the recovery order and prayed to dismiss the writ



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petition.

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5. I have given my anxious consideration to either side submissions.

6. The short point to be considered in the present case is that, whether the recovery order issued by the 4th respondent is sustainable or not. On the harmonious reading of the counter affidavit, this Court could not find traces of any misrepresentation of the petitioner for fixing the disputed excess pay. Furthermore, it is the specific contention of the learned counsel for the petitioner that he was directed to discharge additional duties, and that only in accordance with a post he was holding, the pay was granted. Even while seeing the counter, it is apparent that the petitioner was given the responsibility of a post of Salesman as well as the Junior Clerk. Therefore, when a person was directed to discharge duty in a higher post, before the appropriate Authority approved the same, this Court could not find any fault on the part of the petitioner. As already submitted, when there are no misrepresentation on the part of the petitioner, it become unfair and harsh to direct the petitioner to pay the excess amount, that too at the time of superannuation. In this regard, it is useful to refer the judgment



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of the Hon'ble Supreme Court in **Jagadish Prasad Singh's** [cited supra].

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The relevant paragraph is paragraph 26 and the same reads as under:-

“26. The learned Single Judge as well as the Division Bench of the High Court of Patna also seem to have fallen in the same error. In addition thereto, we are of the view that any step of reduction in the pay scale and recovery from a Government employee would tantamount to a punitive action because the same has drastic civil as well as evil consequences. Thus, no such action could have been taken against the appellant, more particularly, because he had been promoted as an ADSO, while drawing the pay scale of Rs.6500-10500 applicable to the post, way back on 10th March, 1991 and had also superannuated eight years ago before the recovery notice dated 15th April, 2009 was issued. The impugned action direction reduction of pay scale and recovery of the excess amount is grossly arbitrary and illegal and also suffers from the vice of non-adherence to the principles of natural justice and hence, the same cannot be sustained.”

Therefore, this Court could not find any justification in the recovery notice.

7. The learned counsel for the petitioner would further submit that the petitioner had superannuated on 30.09.2024. However, only because of the pendency of this notification, he was not permitted to retire. Therefore, the fact remains that the recovery order was issued only at the fag end of the petitioner's career, which would definitely be an arbitrary exercise of powers by the respondents. Therefore, this Court finds force in the submissions made by the learned counsel for the petitioner. Therefore, the impugned order of recovery is liable to be quashed.



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7. In the result, this writ petition is allowed by quashing the impugned recovery order dated 30.09.2020 in respect of the recovery of excess pay alone. However, it is made clear that the pay fixation made by the 4th respondent against the petitioner is confirmed and may be considered for other calculations. No costs. Consequently, connected WMPs are also closed.

03.10.2024

kmi

Index : Yes /No

Speaking order : Yes/No

Neutral Citation : Yes/No

To

1. The Secretary
State of Tamil Nadu,
Department of Co-Operative Societies
St. George Fort, Chennai.
2. Joint Registrar of Co-operative Societies
Kancheepuram District, Kancheepuram.
3. Deputy Registrar of Co-Operative Societies,
Maduranthagam, Chengalpattu District.



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C.KUMARAPPAN, J.

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