



CRP(MD)Nos.1231, 1232, 1233 and 1234 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.07.2024

Delivered on : 23.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRP(MD)Nos.1231, 1232, 1233 and 1234 of 2024

and

CMP(MD)Nos.7072, 7074 , 7075 and 7076 of 2024

CRP(MD)No.1231 of 2024

The Deputy Registrar of Co-operative Societies,
Tiruchendur.

... Revision Petitioner/2nd Respondent

vs.

1.A.Tamilraj

... 1st Respondent/Appellant

2.E.E.432, Madhavankurichi Primary Agricultural
Co-operative Credit Society,
Rep. by its President,
Thandavankadu,
Tiruchendur Taluk.

... 2nd Respondent/1st Respondent

CRP(MD)No.1232 of 2024

The Deputy Registrar of Co-operative Societies,
Tiruchendur.

... Revision Petitioner/2nd Respondent

vs.



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- 1.Arul Selvan
2.Jeyapaul
3.Amutha
4.Vasugi
5.Manimuthu
6.Ramakani
7.Sundar
8.Vairava Raj

... Respondents 1 to 8/Appellants

- 9.E.E.432, Madhavankurichi Primary Agricultural
Co-operative Credit Society,
Rep. by its President,
Thandavankadu,
Tiruchendur Taluk.

... 9th Respondent/1st Respondent

CRP(MD)No.1233 of 2024

The Deputy Registrar of Co-operative Societies,
Tiruchendur.

... Revision Petitioner/2nd Respondent

vs.

- 1.Pappathi
2.Ganeshkumar
3.Rathinakala

... Respondents 1 to 3/Appellants

CRP(MD)No.1234 of 2024

The Deputy Registrar of Co-operative Societies,
Tiruchendur.

... Revision Petitioner/2nd Respondent

vs.

- 1.R.Samraj

... 1st Respondent/Appellant



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2.E.E.432, Madhavankurichi Primary Agricultural
Co-operative Credit Society,
Rep. by its President,
Thandavankadu,
Tiruchendur Taluk.

... 2nd Respondent/1st Respondent

COMMON PRAYER : Petitions filed under Article 227 of the Constitution of India praying to call for the records and set aside the fair and decretal order dated 28.04.2023 passed by the learned Principal District Judge, Thoothukudi made in C.M.A[CS]Nos. 1, 2, 3 and 4 of 2017 and confirm the surcharge order dated 28.11.2016 passed by the Deputy Registrar of Co-operative Society, Tiruchendur in Tha.Va.No.1/2016-2017.

CRP(MD)No.1231 of 2024

For Petitioner : Mr.SR.A.Ramachandran
Additional Government Pleader

For Respondents : Mr.N.Dilipkumar for R1
: Mr.M.E.Ilango for R2

CRP(MD)No.1232 of 2024

For Petitioner : Mr.SR.A.Ramachandran
Additional Government Pleader

For Respondents : Mr.N.Dilipkumar for R1 to R8
: Mr.M.E.Ilango for R9



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CRP(MD)No.1233 of 2024

For Petitioner : Mr.SR.A.Ramachandran
Additional Government Pleader

For Respondents : R1 & R2(Deceased)
: Mr.C.Susikumar for R3
: M.E.Ilango for R4

CRP(MD)No.1234 of 2024

For Petitioner : Mr.SR.A.Ramachandran
Additional Government Pleader

For Respondents : Mr.N.Dilipkumar for R1
: Mr.M.E.Ilango for R2

COMMON ORDER

These Civil Revision Petitions arise out of the common order dated 28.04.2023 allowing the appeals filed by the respondents herein CMA[CS]Nos.1 to 4 of 2017 by the Appellant Tribunal/Principal District Judge, Thoothukudi.

1.1. The appeals were filed by the respondents herein aggrieved by the order of surcharge passed against them under Section 87 of the Tamil Nadu



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Co-operative Societies Act, 1983 (hereinafter referred to as the “Act”). The second respondent Society had conducted an enquiry under Section 81 of the Act and since it was found that the respondents herein being the employees/office bearers of the Society had caused wrongful loss to the Society by fixing higher salaries to the employees of the Society by entering into 12(3)-18(1) settlements under the Industrial Disputes Act and fixing a scale of pay higher than what is permitted and fixed uniformly by the Registrar of Co-operative Societies throughout the State. There are also other items of loss with reference to payment of retiral benefits on an earlier date or other allegations that relate to minimal amounts and in respect of some items, in respect of which the appeals were not pressed. Therefore, the only question that came for the decision in all the above civil miscellaneous appeals was whether or not the respondents herein are liable to be proceeded with for surcharge proceedings by fixing high salaries against the Government Orders and circulars of the Registrars and the Special bye-laws of Society.

1.2 The Tribunal considered the above common point and after considering the decisions relied upon by the appellants held that by a surcharge order, the 18(1) settlement under the Industrial Disputes Act cannot be nullified and



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therefore, allowed the appeals to the said extent. Against this, the Deputy Registrar of Co-operative Societies has preferred these civil revision petitions.

2. *Mr.SR.A.Ramachandran*, the learned Additional Government Pleader appearing on behalf of the petitioner taking this Court through the judgment of the Tribunal, would submit that when a common pay scale is fixed by the Registrar of Co-operative Societies throughout the State, there was no autonomy for the Societies to enter into 12(3) settlements or 18(1) settlements thereby granting higher scales of pay to the employees. When the same is demonstrated to be on the higher side, the sum certainly has to be recovered from the persons, who sanctioned as well as the persons who have drawn such salaries and therefore, the reasoning of the Co-operative Tribunal is erroneous and therefore, this Court should interfere.

3. Also supporting the arguments of the learned Additional Government Pleader, *Mr.M.E.Ilango*, learned counsel appearing for the respondent/E.E.432, Madhavankurichi Primary Agricultural Co-operative Society would place a paper book containing the relevant orders and circulars. He would first place reliance on G.O.No.328, dated 18.02.1997, wherein the salary and other expenses of the



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employees were restricted to 2% of the capital of the Society. Thereafter, by G.O.No.131, dated 04.06.1999, the Government accepted the recommendations of an expert committee, whereunder it categorized the societies and had recommended for sanctioning the number of posts depending on the category and also passed orders regarding dearness allowance, house rent allowance and other compensations. In respect of each and every post, the scale of pay was prescribed as per Annexure 1 of the said Government order.

3.1 Thereafter, by a letter dated 04.04.2005 the Government again passed orders whereby the establishment and contingency expenditure was restricted to 2% of their working capital or if they have earned profits and have operated on profits at least for three years during the last five years, the Primary Agricultural Co-operative Employees' Association was requested to give inputs as to the revision of the pay structure and the Primary Agricultural Co-operative Banks were classified into five broad categories. It was held that they could accordingly fix the pay structure based on net interest income earned by the Primary Agricultural Co-operative Banks. Thereafter, by the G.O(Standing) No.189 dated 17.11.2009, the Government accepted the recommendation of the report of Mr.J.N.Krishnan, Retired Additional Registrar of Co-operative Societies with



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some modifications and directed the Co-operative Societies to implement the said pay scales provided they could pay the salary. Based on the above Government order, the Registrar of Co-operative Societies also issued Circular No.42 of 2009 dated 02.12.2009. The said circular contained the detailed particulars as to the implementation of the said report of the Krishnan Committee. It contained the details as to the classifications of the societies, cadre strength, fixation of new scales of pay with specific directions as to how the pay should be fixed and if the pay that is drawn by the employees is lesser than the pay which is prescribed and if the pay that is drawn by the employees is greater than the pay which is fixed. The other allowances were also mentioned. The said circular finally directed the Co-operative Societies to accordingly fix the scales of pay in respect of all the employees and submit the same to the Deputy Registrar concerned and after obtaining their approval were directed to enter into 12(3) settlements before the Labour Officer concerned. Thereafter, only based on the above circular, the pay of the employees of all the cooperative societies was fixed.

3.2 However, aggrieved by the fixation of pay, the concerned employees filed revisions before the Joint Registrar of Co-operative Societies, Thoothukudi Region in Revision Petitions No.7 and 8 of 2011 and by an order dated



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08.07.2011 and 29.07.2011, the fixation was set aside and it was ordered that the pay should be increased and fixed as prayed for by the employees. Thereafter, the scales of pay were increased and a settlement was entered into before the Labour Officer on 03.03.2014. The respondent/E.E.432, Madhavankurichi Primary Agricultural Co-operative Society also passed a resolution on 07.03.2012 regarding the same. Therefore, by relying upon all the above, he would submit that it is a clear case where the higher scales of pay were sanctioned despite the directions issued by the Registrar of Co-operative Societies. The Society or its office bearers did not have any right whatsoever to enter into such 12(3) settlements.

3.3 The learned counsel would also rely upon the Hon'ble Division Bench of this Court in *Tamil Nadu Vatta Kooturavu Veetu Vasathi Sangangalin Anaithu Paniyalargal Madya Sangam Vs. The Deputy Registrar of Co-operative Societies (Housing) and Ors.*¹, to contend that the Division of this Court has categorically held that the Registrar had powers to issue directions under Section 181 of the Act. Such power would include a power to require the Societies to cancel the settlements which are arrived at before the concerned Labour Commissioners. It has been specifically laid down in the said judgment

¹ 2008 (2) MLJ 385



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that the same will not violate the provisions of the Industrial Disputes Act, 1948.

Therefore, he would pray that when the Registrar has powers, the circular issued by fixing the scale of pay is binding on the societies and therefore, the excess payment which is made is to be recovered by way of surcharge proceedings.

3.4 Placing reliance on Section 87 of the Act, he would submit that willfully causing loss and making any payments to which, they were not authorised to do would also come within the mischief of Section 87 of the Act and therefore, the Tribunal should not have allowed the appeals.

4. Per contra, *Mr N.Dilipkumar*, the learned counsel appearing on behalf of the first respondent in CRP(MD)Nos.1231 and 1234 of 2024 and respondents 1 to 8 in CRP(MD)No.1232 of 2024, firstly, would rely upon the order passed by this Court in W.P.Nos.7181 and 7182 of 2004, where under, it has been held that when the salary itself has been paid pursuant to 12(3)-18(1) settlements arrived at, varying the salary by way of the Government Order without even issue of notice would amount to violation of principles of natural justice. In the instance case, no show-cause notice was issued to the concerned employees. The learned counsel would then rely upon the circular of the Registrar of Co-operative Societies, dated



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27.01.2008 which considered the situations, where pursuant to the directions of the Government in the Government Order the scales of pay that were existing had to be reduced. In such cases, the financial position was directed to be taken into account. He would submit that when pursuant to the re-fixation, the concerned employees have filed revisions and the revisions having been allowed and the order of the Joint Registrar of Co-operative Societies have become final, now belatedly by way of surcharge proceedings, the order passed in the revision petitions cannot be nullified.

4.1 In support of his submissions, the learned counsel would further rely upon the judgments of this Court in ***J.Devraj Vs. The Registrar of Co-operative Societies and others***²; ***M.Selvakumar Vs. The Secretary to Government and another***³; and ***T.Selvarj Vs. The Registrar of Co-operative Societies and another***⁴. He would submit that when the fixation of pay itself has become final, the present surcharge proceedings are not maintainable.

5. I have considered the rival submissions made on either side and perused the material records of the case.

² W.P(MD)No.5938 of 2024, dated 22.01.2020

³ W.P.(MD)Nos.13900 of 2014 and 618 of 2015, dated 01.09.2022

⁴ W.P.(MD)No.14158 of 2014, dated 10.10.2022



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6. There is no quarrel over the proposition that initially by G.O.Ms.No.212 dated 04.07.1995 and thereafter, by G.O.Ms.No.328, dated 18.12.1997, the Societies were directed to take into account their nature of business, volume of transactions, financial position etc., while fixing the scales of pay where an upper ceiling limit of 3% on the working capital was fixed. Later on, by appointing the Krishnan Commission, the entire staff structure of the Co-operative Societies was attempted to be rationalized and was made uniform. The posts were directed to be created depending on the nature of the Societies and scales of pay were also prescribed. The Societies were prohibited from entering into 12(3)-18(1) settlements, except by way of fixing the appropriate pay scales, which is prescribed by the Government order and only after obtaining due approval from the Deputy Registrar of Co-operative Societies.

7. In that view of the matter, to the extent, they contend that the second respondent Society or its office bearers did not have an independent right to fix any different pay scale on their own can be accepted. At the same time, in the instant case, it can be seen that when the pay scale was fixed as per the Government Order at a lower level, the employees approached the jurisdictional



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Joint Registrars by way of a statutory revision under Section 153 of the Act and the said revision was allowed. Neither the Society filed any further appeal against the said statutory order nor did the Registrar initiate any *suo-motu* proceedings against the order. Therefore, when the rights of the parties are decided by a quasi-judicial adjudication, the same cannot be nullified in collateral proceedings by the respondents themselves. The judgment of the Hon'ble Division Bench of this Court reported in **(2008) 2 MLJ 385** (cited *supra*), only enables the Registrar of Co-operative Societies to issue a direction to cancel the 12(3)/18(1) settlements. The same was also not done in this case. The settlement has to be cancelled after the issue of show cause notice and opportunity to the parties. Moreover, when the pay scale itself is fixed according to the order passed in the revision petitions unless the said orders are modified or varied by a superior forum, the same has to be implemented by the second respondent Society.

8. Therefore, in the teeth of the said Order, when the circular issued by the Registrar even after the implementation of the Krishnan Commission recommendations, directs the Societies to enter into settlements, accordingly when the pay scale has been implemented according to the Orders passed under Section 153 of the Act and the settlements having been entered into as per the



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said scales, it cannot be said that the respondents acted with willful negligence or they have made any payment, which is not in accordance with the Act, Rules or bye-laws. Therefore, the Tribunal has rightly interfered with the order of surcharge and allowed the appeals.

9. Accordingly, finding no merits, these Civil Revision Petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

23.08.2024

NCC : Yes
Index : Yes
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To

- 1.The Principal District Judge, Thoothukudi.
- 2.The Deputy Registrar of Co-operative Society, Tiruchendur.



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D.BHARATHA CHAKRAVARTHY, J.

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Pre-Delivery Order Made In
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DATED : 23.08.2024