



W.P.(MD).No.12675 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.06.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD).No.12675 of 2024
and WMP(MD) No.11282 of 2024

G.Saravanan

... Petitioner

Vs

1. The Registrar of Co-operative Societies,
O/o.The Registrar of Co-operative Societies,
N.V.Natarajan Maaligai,
Periyar EVR High Road, Poonamalle High Road,
Kilpauk, Chennai.
2. The Regional Joint Registrar of Co-operative Societies,
O/o.The Joint Registrar of Co-operative Societies,
Medical College Road, N.S.C.Bose Road,
Ramani Nagar, Thanjavur.
3. The Deputy Registrar of Co-operative Societies,
O/o.The Deputy Registrar of Cooperative Societies,
Kumbakonam, Thanjavur District.
4. The Administrator / Secretary,
Z.646, S.Pudur Primary Agricultural Co-operative Credit Society,
Sengarangudi Pudur, Kumbakonam Taluk,
Thanjavur District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order vide Na.Ka.No. 839/2024/SaPa, dated 02.05.2024 passed by the 2nd respondent and quash the same and consequently directing the 2nd and 3rd respondents to approve / regularize the scale of pay revised by the 4th respondent for the post of Attendar with effect from 01.04.2018 and consequently approve the promotion given to the petitioner as Clerk vide resolution, dated 29.08.2022 and revision of scale of pay application to the post of Clerk.

For Petitioner : Mr. D.Shanmugaraja Sethupathi

For Respondents : Mr.K.Selvaganesan
Additional Government Pleader

ORDER

Heard Mr.D.Shanmugaraja Sethupathi, learned counsel appearing for the petitioner and Mr.K.Selvaganesan, learned Additional Government Pleader appearing for the respondents.

2.The petitioner has filed this writ petition challenging the impugned order vide Na.Ka.No. 839/2024/SaPa, dated 02.05.2024 passed by the 2nd respondent and consequently to direct the 2nd and 3rd respondents to approve / regularize the scale of pay revised by the 4th respondent for the post of Attender with effect from 01.04.2018 and also to approve the promotion



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given to the petitioner as Clerk vide resolution, dated 29.08.2022 and revision of scale of pay application to the post of Clerk.

3.The petitioner, who has been appointed as an Attender was slapped with an order of recovery, dated 02.05.2024, stating that the petitioner was originally appointed as a Salesman and there is no manipulation in the order of appointment.

4.In fact, the petitioner has earlier filed a writ petition to consider his representation for fixing his pay on his promotion, on par with his juniors in the cadre of Clerk. On the direction given by this Court, the representation of the petitioner was considered, but to his shock, it was resulted in recovery stating that his appointment was only to the post of Salesman, whereas, his pay has been fixed for the Attender post.

5.Before passing such an order, which would affect the interest of the petitioner, no show-cause notice has been given by the respondents. As far as the petitioner is concerned, there is no manipulation in his appointment and



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all along he has been paid with the salary right from the beginning to the post of Attender.

6.Further, the recovery relates back to the period between 2018-2022, since the recovery has been ordered to be made for a person, who was working as a Clerk, comes under Group 4 category. The recovery order has been passed unmindfully without following the dictum laid down by the Hon'ble Apex Court in ***State of Punjab and others vs. Rafiq Masih (White Washer)*** reported in ***AIR 2015 SC 696***. In which, the Hon'ble Apex Court has laid down the guidelines for recovery in the following manner:-

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly,*



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even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

7. Further, the Government of Tamil Nadu has also passed Government Order in G.O.Ms.No.286 Finance (Pension) Department, dated 28.08.2018 and issued guidelines in the light of the order of the Hon'ble Supreme Court held in **Whitewasher's** case.

8. Even if the respondent authorities thought it fit that the petitioner's pay has to be refixed in view of the allegations stated in the impugned order, that cannot be done all of a sudden, even without putting him on notice.

9. In view of the same, the impugned order in vide Na.Ka.No. 839/2024/SaPa, dated 02.05.2024 is hereby set aside. However, the respondents



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can resort for refixation of pay, if there is apparently any error or mistake on the part of the petitioner by giving him prior notice and pass appropriate orders within a period of four weeks from the date of receipt of copy of this order.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

18.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
PNM

To

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R.N.MANJULA, J.

PNM

**ORDER IN
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