



W.P(MD)No.11186 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 13.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.11186 of 2015 and
MP(MD) No.2 of 2015

1.Jeyakumar
2.L.Jeyachandran Hepsepa ... Petitioners

Vs

- 1.The Secretary to Government,
Co-Operation Food & Consumer,
Protection Department,
Fort St. George,
Chennai 600009.
- 2.The Registrar of Co-Operative Societies,
NV Natarajan Maligai,
No.170, E.V.R. High Road,
Keelpauk,
Chennai -10.
- 3.The Regional General Manager,
NABARD,
No.48, Mahathma Gandhi Road,
Post Box No.6074,
Nungambakkam,
Chennai-34.



W.P(MD)No.11186 of 2015

4.The President,
Asirvathapuram Primary Agriculture
Co-operative Credit Society,
Asirvathapuram,
Sathankulam Taluk,
Tuticorin District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned G.O.Ms.No.189, Co-operative Food and Consumer Protection Department dated 17.11.2009 and quash the same in respect of fixation of Dearness Allowance of 84% insofar as the petitioners are concerned and consequently direct the respondents to fix the pay scales along with D.A.97% from 01.04.2008 and pay the same to the petitioners from 01.04.2008 as arrears after deducting whatever amount was paid already to the petitioners.

For Petitioners	: Mr.K.Sathiya Singh
For R1 to R3	: Mr.K.Balasubramaniam Special Government Pleader
For R4	: Mr.J.John

ORDER

The petitioners are employees of Asirvathapuram Primary Agriculture Co-operative Credit Society, Asirvathapuram,



W.P(MD)No.11186 of 2015

Sathankulam Taluk, Tuticorin/the fourth respondent herein. They have filed this writ petition challenging the Government Order in G.O Ms.No.189, Co-operation Food and Consumer Protection Department, dated 17.11.2009, in and by which, the Government has fixed the dearness allowance eligible for the Co-operative employees as 84%. The case of the petitioners is that at that relevant point of time, the Government servants were provided with 97% of dearness allowance. Therefore, the employees of various Co-operative Societies have challenged the Government Order in G.O Ms.No.189, Co-operation Food and Consumer Protection Department, dated 17.11.2009 before this Court in WP(MD) No.9399 of 2011 and this Court by order dated 12.07.2011 has disposed of that writ petition, in view of the decision taken in a similar issue in WP(MD) No.4761 of 2020 that the employees of Co-operative Societies are also entitled for dearness allowance at the rate of 97% instead of 84%. Therefore, the petitioners herein have approached this Court, seeking similar relief.



W.P(MD)No.11186 of 2015

2.The learned counsel appearing for the petitioner submits that the Division Bench of this Court in WA No.452 of 2012, dated 20.07.2012, dismissed the writ appeal filed by the Government questioning the order passed in WP(MD) No.9399 of 2011, directing the Government to pay the dearness allowance at the rate of 97%. However, the Honourable Division Bench of this Court in a subsequent batch of writ appeals in W.A(MD) Nos.1278 to 1281 of 2020 etc., batch, dated 27.11.2023 has rejected the similar claim of 97% of dearness allowance to the employees of the Co-operative Societies and the relevant paragraph is as under:-

"8. The power of Judicial Review cannot be expanded for the purpose of enhancing dearness allowance and therefore, this Court is of the opinion that the reliance placed on by the learned Single Judge in W.A.No.452 of 2012 dated 20.07.2012 is misplaced. In respect of the said order of the Hon'ble Division Bench, it was passed based on certain mistaken facts and the mistake committed by Government was admitted before this Court in another Writ Proceedings in W.P.(MD) No. 19043 and 19049 of 2020. It was mistakenly placed



W.P(MD)No.11186 of 2015

before the earlier Division Bench that the Government granted 97% dearness allowance to the Cooperative Societies employees. Based on such mistake, the relief was granted in the said Writ Appeal and therefore, the said Writ Appeal cannot be followed as a precedent for the purpose of extending 97% dearness allowance to the employees of the Co-operative Societies."

3. The learned counsel for the petitioner by referring to the subsequent order passed by the Division Bench of this Court in W.A(MD) No.191 of 2024, dated 09.02.2024 submits that in view of the conflict decisions of the learned Judges of this Court in WA No. 452 of 2012, dated 20.07.2012 and the judgment in a batch of writ appeals in W.A(MD) Nos.1278 to 1281 of 2020 etc., batch, dated 27.11.2023, the issue has been referred to a Larger Bench.

4. Considering the fact that this writ petition is pending from the year 2015, and taking into consideration of the decision rendered by the Division Bench of this Court in a batch of writ appeals in W.A(MD) Nos.1278 to 1281 of 2020 etc., batch, dated



W.P(MD)No.11186 of 2015

27.11.2023, this court is accepting the view of the Division Bench of this Court in the aforesaid writ appeal, even though the Division Bench of this Court has referred the matter to a Larger Bench, as this Court is not inclined to keep the writ petition of the year 2015, till the decision of the Larger Bench.

5.In view of the above, this writ petition is closed, in the light of the orders passed in a batch of writ appeals in W.A(MD) Nos.1278 to 1281 of 2020 etc., dated 27.11.2023, with liberty to this petitioner to work out his remedy based on the outcome of the reference made before the Larger Bench. No Costs. Consequently, connected Miscellaneous Petition is closed.

13.11.2024

NCC:Yes/No

Index:Yes

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W.P(MD)No.11186 of 2015

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B.PUGALENDHI, J.

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