



W.P.(MD)No.17169 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

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P.Subramaniapillai

: Petitioner

Vs.

1.The Joint Registrar of Co-operative Societies,
Kanyakumari Region at Nagercoil,
Kanyakumari District.

2.The Special Officer,
The Peoples Co-operative Bank Ltd.,
Cape Road, Nagercoil – 629 001.
Kanyakumari District.

: Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the order passed by the first respondent in Na.Ka.No. 5363/2014 Sa.Pa. dated 28.01.2016 and set aside the same and thereby direct the second respondent herein to revise the salary by taking into consideration of the 12(3) Settlement dated 18.11.1996 enforced between the petitioner and the second respondent and to repay the amount of Rs. 40,612/- illegally recovered by the second respondent from the petitioner



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with interest.

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For Petitioner : Mr.R.Murugan

For Respondents : Mr.M.Senthil Ayyanar

Government Advocate

ORDER

This writ petition has been filed challenging the proceedings of the first respondent in Na.Ka.No.5363/2014 Sa.Pa., dated 28.01.2016 and for a consequential direction to the second respondent to revise the salary by taking into consideration of 12(3) Settlement dated 18.11.1996 enforced between the petitioner and the second respondent and to repay the amount of Rs.40,612/- recovered by the second respondent from the petitioner with interest.

2.The case of the petitioner is that he joined as Clerk in the second respondent Co-operative Bank Limited on 15.04.1975 and subsequently, he was promoted as Secretary on and from 28.03.1998 as per the resolution of the second respondent Board dated 27.03.1998. The Peoples Cooperative Bank Limited was under the control of the first and



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second respondents herein and he retired from service on 30.04.2010.

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3. A 12(3) settlement dated 18.11.1996 under the Industrial Dispute Act, 1947, was entered into between the management of the second respondent Bank and the employees of the Bank and the same was implemented on 18.11.1996 with effect from 01.07.1996 to 31.12.1996. Subsequently, the above 12(3) settlement dated 18.11.1996 was cancelled by the Management of the second respondent Bank by its Resolution No.6, dated 29.01.1997. Thereafter, on 10.04.1997, a lesser pay was fixed by the second respondent and according to which, the petitioner's salary was fixed at Rs.1,710/-.

4. According to 12(3) settlement, the salary of the petitioner was fixed at Rs.2,000/- and by the unilateral cancellation of the said settlement, the salary of the petitioner was reduced to Rs.1,710/-. The petitioner was paid monthly salary at the rate fixed by the 12(3) settlement for the period between 01.07.1996 and 31.12.1996. Subsequently, as per the resolution dated 10.04.1997, the second respondent Bank breached the 12(3) settlement dated 18.11.1996 entered between the Board and the employees of the second respondent Bank and



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fixed a lesser pay when the said 12(3) settlement dated 18.11.1996 was in force. Thereafter he received a lesser pay fixed as per the resolution of the Board dated 10.04.1997 under protest with effect from 01.01.1997.

5. Thereafter, the petitioner along with other employees gave a petition to the President of the second respondent/Bank through the Tirunelveli Tuticorin and Kanyakumari District Urban Cooperative Bank employees Union at Tirunelveli and was awaited for action.

6. Subsequently, pay was revised for the petitioner only as per G.O.Ms.No.111 of 1999 dated 19.05.1999 taking into consideration the 12(3) settlement of the year 1994 without considering the 12(3) settlement dated 18.11.1996 when the same was legally in force.

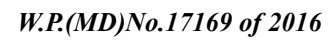
7. Thereafter, as per Na.Ka.No.6850/2007 PA.KOO.SA, dated 12.10.2009, the Deputy Registrar of the Cooperative Society passed an order to recover the difference amount of the salary paid to the petitioner as per the 12(3) settlement, dated 18.11.1996 and the same was also deducted from the salary arrears of the petitioner on 29.10.2009 to tune of Rs.40,612/- (Rupees Forty Thousand Six Hundred and Twelve



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only) i.e., Rs.37,041 towards the salary of the petitioner and Rs.3,671/- towards Provident Fund employer's contribution.

8. Subsequently, Thereafter, the Deputy Registrar of the Cooperative Society, Nagercoil, implemented the 'G.O.Ms.No.288/2006 Cooperation Food and Consumer Protection Department, dated 28.11.2006' (hereinafter referred to as 'G.O.Ms.No.288' in short) with effect from 16.04.2010 and subsequently, the petitioner retired on attaining the age of superannuation from service as Secretary on 30.04.2010. Since the petitioner came to know the revision of salary only in the second week of December 2013, he sent a representation dated 21.12.2013 under Right to Information Act seeking clarification on what basis the Deputy Registrar of the Cooperative Society, Nagercoil, had revised the salary of the then employees of the second respondent – Bank. In response to that particular query, the Deputy Registrar, vide letter No.2889/2013, had stated that the salary of the then employees was revised as per G.O.Ms.No.288 after taking into consideration of the 12(3) settlement dated 18.11.1996.



10. However, the said petition was rejected by the Managing Director of the second respondent – Bank by his proceedings dated 15.07.2014. Against which, the petitioner preferred a revision petition before the first respondent herein and subsequently, the said revision petition was also dismissed by the first respondent vide his proceedings in Na.Ka.No.5363/2014 SA.PA, on 28.01.2016.

11. Aggrieved over the same, the writ petitioner has come forward with the present writ petition before this Court.



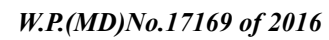
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12. Mr.R.Murugan, the learned Counsel for the petitioner submits that the basic pay of the petitioner was fixed at Rs.1,460/- on 30.06.1996 and as per 12(3) settlement dated 18.11.1996, it had been revised to Rs.2,000/-. The same was implemented on 18.11.1996 with effect from 01.07.1996. The said 12(3) settlement had come into the effect from 01.07.1996 to 31.12.1996. However, by passing a resolution dated 10.04.1997, the 12(3) settlement was unilaterally cancelled and thereby, the pay of the petitioner was revised from Rs.2,000/- to Rs.1710 with effect from 01.01.1997.

13. The counter-affidavit filed is also filed by the first respondent on 31.10.2022.

14. Mr.M.Senthil Ayyanar, the learned Government Advocate appearing for the first respondent submitted that the petitioner after getting the revised salary as per G.O.Ms.No.111 of 1999, dated 19.05.1999, with effect from 01.04.2000 requested the then Special Officer of the Bank by his letter dated 06.01.2010 to revise his pay as per G.O.Ms.No.288 and to revise his salary from 01.07.2001 and financial benefits to be given with effect from 01.01.2003. His request was



15. The learned Government Advocate would submit that the petitioner has retired on 30.04.2010 and had received all his benefits from the Bank whereas, the other employees of the Bank were not. The order of the Government Advocate was revised as per the orders of this Court dated 23.08.2007 and 14.09.2007. The Government Advocate was directed to pay V.P. (MD) No.9342 of 2005 and the pay was fixed as per the order of the Government Advocate dated 14.09.2007 Rs. 288 only with effect from 01.04.2013 and the writ petitioner was directed to pay the balance arrears of the petitioner's financial benefits as per the Government Order with effect from 01.04.2003.

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G.O.Ms.No.288 on 19.02.2010, by entering into a settlement under Section 18(1) of the Industrial Dispute Act, 1947 and re-fixed his pay from 01.07.2001 and also received financial benefits with effect from 01.01.2003.

17. The learned Government Advocate would further submit that the second respondent Board under 12(3) Settlement dated 18.11.1996 had revised the pay and other allowances of its employees with effect from 01.07.1996. This revision was against Government Orders, without the permission of the Department and was against the financial position of the Bank. When it was informed to the Bank, by board resolution dated 29.01.1997, the Bank had cancelled the 12(3) Settlement dated 18.11.1996. Thereafter, the Bank employees refused to receive previous pay and the second Respondent Bank by its Board resolution dated 10.04.1997, certain modifications were made in the 12(3) Settlement and re-fixed the pay of the writ petitioner. The Writ petitioner with his willingness received the lesser pay fixed by board resolution dated 10.04.1997. Insofar as the recovery of excess salary of Rs. 40,612/- is concerned, it was remitted back by the writ petitioner in terms of 12(3) Settlement, dated 18.11.1996, on his own volition.



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18. Heard both sides and perused the materials available on record.

19. The main contention of the writ petitioner is that the 12(3) settlement which was arrived on 18.11.1996 was unilaterally cancelled on 29.01.1997 and on this aspect, the learned Counsel for the petitioner has placed reliance on the orders passed by this Court in W.P. (MD) No.9342 of 2005 dated 23.08.2007 and the relevant portion of the order is extracted hereunder for better understanding:-

“5.Concededly, all the members of the Union and also the petitioner in WP No.23590/2005 were employed in different categories in the Primary Cooperative Bank, which was established under the Tamilnadu Cooperative Societies Act. It is also not in controversy that there was a settlement entered into between the employees and the management under Sec.12(3) of the Industrial Disputes Act, pursuant to which the salary was re-fixed, and they were also being paid. It is also not disputed by the respondents' side that the settlement arrived at between the employees on the one side and the management on the other side, came to be given effect from 1.7.1997 onwards. While the matter



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stood thus, the impugned circular was issued on 4.2.2004 to the respondents 2 and 3 to re-fix the salary. Needless to say that an occasion came before the Apex Court in a case reported in 1999 (2) SCC 687 (KARNATAKA STATE ROAD TRANSPORT CORPORATION V. KSRTC STAFF AND WORKERS' FEDERATION AND ANOTHER), and it has also been subsequently followed by this Court. Once a settlement has been arrived at between the management and the employees under Sec.12(3) of the Industrial Disputes Act, no question of any alteration or modification or replacement or stoppage of any of the benefits which accrued to the employees as per the settlement, would arise.”

20. Since the learned Counsel placed reliance on the above order he ought to have challenged the unilateral cancellation of the above 12(3) settlement dated 18.11.1996. It is pertinent to note that the petitioner has not challenged the cancellation of 12(3) settlement dated 18.11.1996 on 29.01.1997. The petitioner has entered into a settlement under Section 18(1) of the Industrial Disputes Act, 1947 on 19.02.2010 and as such, the pay was re-fixed with effect from 01.07.2001 and he had received all financial benefits with effect from



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21. Admittedly, the petitioner was in service for six months after the deduction of the amount i.e., Rs.40,612/- (Rupees Forty Thousand Six Hundred and Twelve only) [Rs.37,041 towards the salary of the petitioner and Rs.3,671/- towards Provident Fund employer's contribution], however, the same was never questioned or challenged by the petitioner till his retirement on 30.04.2010 and he has also not chosen to take any action against that particular recovery made by the second respondent Bank.

22. Moreover, the petitioner has belatedly approached the second respondent by way of representation dated 24.02.2014 i.e., after a delay of nearly 4 years from the date of his superannuation on 30.04.2010 and the reason given by the petitioner for the delay is that he came to know about the revision of salary only in the second week of December, 2013 is not acceptable to his Court.

23. From the above, it is clear and evident that the petitioner has accepted the salary fixed as per 18(1) settlement dated 19.02.2010



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and he also accepted the re-fixation of pay from 01.07.2001 and all financial benefits with effect from 01.01.2003. Subsequently, he got superannuated on 30.04.2010.

24. Considering all the facts and circumstances of the case, I am of the considered view that since the petitioner, on his own volition, having accepted the 18(1) settlement dated 19.02.2010, re-fixation of his pay from 01.07.2001 and all financial benefits with effect from 01.01.2003, the relief as sought for by the petitioner cannot be granted at this stage and hence, the proceedings of the first respondent dated 28.01.2016 does not warrant any interference by this Court.

25. In the result, the writ petition stands dismissed. No costs.

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Index : Yes / No

Internet : Yes / No

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To

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Kanyakumari Region at Nagercoil,
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- 2.The Special Officer,
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Cape Road, Nagercoil – 629 001.
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