



WP NO. 5437 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-08-2025

CORAM

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THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

WP No. 5437 of 2024

AND

WMP Nos. 6001 and 6003 of 2024

A.Dhananchezhian

S/o R. Asaithambi No 48, South Street Azhaganandhal
Village Kolakkudi Post 606 808 Thiruvannamalai Taluk
Thiruvannamalai District

Petitioner(s)

Vs

1. The Chairman

District Recruitment Bureau Joint Registrar Of Cooperative
Societies Thiruvannamalai Region Thiruvannamalai
Thiruvannamalai District

2. The Deputy Registrar Of Cooperative Societies

Thiruvannamalai Circle Thiruvannamalai Thiruvannamalai District

3. The Administrator

H.H 484 Ahaganandhal Primary Agricultural Cooperative Credit Society
Azhaganandhal Village Kolakkudi Post 606 808 Thiruvannamalai Taluk
Thiruvannamalai District

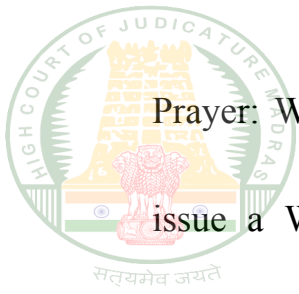
4. S.Devi

Cooperative Sub Registrar O/o Deputy Registrar Of Cooperative Societies
Thiruvannamalai Circle Thiruvannamalai, Thiruvannamalai District

5. S.Sangeetha

D/o Sagadevan No 363 / N, South Mian Road 8th Street
Vengika Thiruvannamalai 606 604

Respondent(s)



Prayer: Writ Petition filed under Article 226 of the Constitution of India pr

issue a Writ of Certiorarified Mandamus, calling for the records relating to the

impugned order passed by the 1st respondent in his proceedings Na.Ka. 7739 / 2023 /

Ma. A. Ni (48) dated 29.01.2024 and quash the same and consequently directing the

1st respondent to place the 5th respondent to any other cooperative society in

Thiruvannamalai District.

For Petitioner(s):

M/s. C.Prakasam

For Respondent(s):

Dr.Suriya, AGP. For RR1 & 2

Mr. T.N.C.Kaushik, Govt. Advocate For R3

M/s. V.Nanmaran For R4

M/s. V. Vargees Amal Raja, For R5

ORDER

This Writ petition has been filed challenging the impugned appointment order dated

29.01.2024 passed by the 1st respondent.

2. The learned counsel for the petitioner would submit that the petitioner was demoted

from the post of clerk to the post of Office Assistant. That was set aside by order dated

06.04.2023 of this Court in C.R.P. No.825 of 2020 wherein it is observed in paragraph

Nos.26 to 33 as follows:



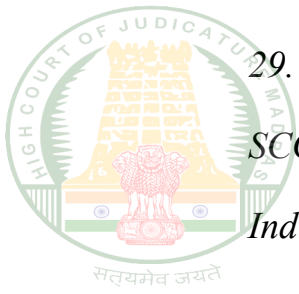
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" 26. On consideration of the rival submissions and on perusal of the typed set, wherein the appointment order of the petitioner as O.A. and the Resolution passed by the Special Officer of the Co-operative Society on 31.01.2011 promoting the petitioner as Clerk from 01.01.2011. The show cause notice issued by the 2nd respondent to the petitioner dated 04.12.2014. The reply sent by the petitioner to the 2nd respondent dated 21.01.2015 and 13.02.2015. The order passed by the 2nd respondent/Original Authority dated 01.06.2015 in Na.Ka.5569/2014 Sa.Pa. The grounds of appeal preferred by the petitioner herein in CTA No.10/2015, as Co-operative Appellate Tribunal and memorandum of grounds raised in this Appeal and Rulings cited in support of the submission of the learned Counsel for the Revision Petitioner in (i) (2013) 16 SCC 482 in the case of Premlata Joshi Vs. Chief Secretary, State of Uttarakhand and Others, (ii). (2015) 4 SCC 334 in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) and others and (iii) (1994) 2 SCC 521 in the case of Shyam Babu Verma and Others Vs. Union of India and others and the Written Arguments furnished by the learned Special Government Pleader for the respondents, on perusal of Section 87(1) of the Co-operative Societies Act, it does not attract the alleged act of the petitioner herein who was a servant of the Society. He has to obey the orders of his Superior. Accordingly, when he is promoted as Clerk, he had executed the work expected from him.



27. *The Special Officer who had passed the proceedings Na.Ka.5569/014 Sa.Pa. dated 01.06.2015 is the officer of the Co-Operative Societies Department of the Government of Tamil Nadu who is aware of the Rules and Procedure and his discretion. Therefore, the Authority who had claimed that the promotion had been granted without power cannot find fault with the power of the Special Officer. The only fault is that after promotions were granted, it was not sent for approval to the authority concerned. Granting approval is the discretion of the Authority concerned as per G.O. Ms. No.189 dated 17.11.2009.*

28. *As rightly pointed out by the learned counsel for the Revision petitioner, by any stretch of imagination, the definition of Section 87(1) of the Co-operative Societies Act cannot be invoked in this particular case. None of the wording in Section 87(1) of the Act attracts the conduct of the petitioner attracting the surcharge proceedings. Also, as rightly pointed out by the learned Counsel for the Revision petitioner, the memo issued is not found acceptable as it is silent about which Rule was violated. The vague definition, "that the Society suffered loss", will not be acceptable in any Court of law in the light the rulings cited by the learned counsel for the petitioner in (i) (1994) 2 SCC 521 in the case of Shyam Babu Verma and Others Vs. Union of India and others, (ii) (2013) 16 SCC 482 in the case of Premlata Joshi Vs. Chief Secretary, State of Uttarkhand and others and (iii) (2015) 4 SCC 334 in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) and others.*



29. *As per the reported ruling of the Hon'ble Supreme Court in (1994)*

521 in the case of Shyam Babu Verma and Others Vs. Union of India and others, it was held that the higher pay scale was erroneously given to the petitioners since 1973. The pay scale of the petitioners reduced in 1984. Since the petitioner received higher scale due to no fault of theirs, it shall be only be just and proper not to recover any excess amount already paid to them. Here also, the facts of the case before this Court attracts the same ratio as laid down by the Hon'ble Supreme Court for no fault of his the petitioner had works as Clerk of the H.H.484 Alaganandal Primary Agricultural Co-operative Bank. Based on the promotion granted to him by the authority empowered to grant promotion namely the Special Officer of H.H.484 Alaganandal Primary Agricultural Co-operative Bank. It was not sent for approval is not the fault of the petitioner herein. Merely stating hat the society suffered loss cannot at all be accepted in the light of the previous inspection in which loss was not found out, except the salary paid to the petitioner as Clerk for the work done by him, that cannot be recovered.

30. *As per the reported ruling in (2013) 16 SCC 482 in the case of Premalata Joshi Vs. Chief Secretary, State of Uttarkhand and others, as far as payment of excess salary made to the appellant in promotional post is concerned, we are of the opinion, that the promotion given to her is because of the wrong exercise of the department in not applying Rules correctly and it is not because of any misrepresentation or suppression by*



the appellant, no recovery amount is called for. This ratio square applies to the facts of the case before this Court.

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31. As per the reported ruling of the Hon'ble Supreme Court in (2015) 4 SCC 334 in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) and others, the recovery of amount paid in excess without fault of recipient, benefit of non-recovery, recoveries would be impermissible in the following circumstances: (i) Recovery from employees belonging to Class III and IV (Group C and D); (ii) Recovery from retired employees, or employees who are due to retire within one year of order of recovery; (iii) Recovery from employees to whom excess payment have been made for a period in excess of five years, before order of recovery is issued; (iv) Recovery where employee is wrongfully required to discharge duties of higher post and has been paid accordingly, and (v) in any other case, where Court concludes that the recovery if effected from an employee would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh equitable balance of employer's right to recover. The observation of the Hon'ble Supreme Court is applicable to the facts of the case as the petitioner was appointed as Office Assistant on compassionate ground, subsequently, considering the financial status of H.H.484 Alaganandal Primary Agricultural Co-operative Bank and the fact that the clerical posts are vacant and qualified person is available as Office Assistant, the Special Officer of the H.H.484 Alaganandal Primary Agricultural Co-operative Bank, had by the board proceedings promoted



him as Clerk which was not sent for approval by inadvertence, the cannot be any recovery from the petitioner as he had worked as Clerk of H.H.484 Alaganandal Primary Agricultural Co-operative Bank.

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32. In the light of the above rulings and wordings under Section 87(1) of the Act do not indicate any wrongful act committed by the petitioner, it is a fact that he had worked as a Clerk based on the promotion granted to him and drawn salary as Clerk of the Co-operative Bank which cannot be faulted. Therefore, the surcharge proceedings passed by the original authority is found to be non-application of mind of the original authority. The Appellate Authority also had not applied its mind to the grounds of appeal preferred by the petitioner. Therefore, the order of the learned Principal District Judge/Appellate Tribunal under the Co-operative Society Act, Thiruvannamalai confirming the surcharge proceedings is also to be set aside.

33. In the light of the above discussion, the finding of the Original Authority was not acceptable and sustainable in Law under Section 87(1) of the Act. The point for consideration is answered in favour of the petitioner and against the respondent. The order passed by the learned Principal District Judge, Thiruvannamali in CTA No.10 of 2015 dated 14.12.2019 confirming the order of the Original Authority in Na.Ka. No.5569/2014 Sa.Pa. is to be set aside."



Further, he would submit that the petitioner was promoted in the year 2011 in

respondent Society and he has been working as a Clerk till now. Hence, prays to set

aside the impugned order dated 29.01.2024 passed by the 1st respondent.

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3. At this Juncture, the learned Additional Government Pleader would submit that the

5th respondent has been appointed through District Recruitment Bureau and they have

been paying salary to the 5th respondent. Hence, there is no necessity to set aside the

appointment order dated 29.01.2024 passed by the 1st respondent.

4. I have given my anxious consideration having heard both sides and perused the

materials available on record.

5. In view of the submissions of the Additional Government Pleader, this Court is of

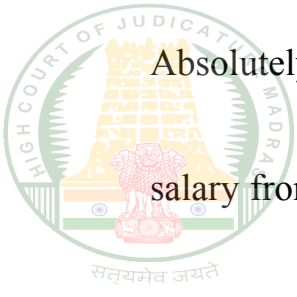
the firm view that there is no necessity to set aside the appointment order dated

29.01.2024 passed by the 1st respondent. Further, the petitioner himself, is not serious

about the appointment of the 5th respondent and his concern is his continuation in the

3rd respondent society as a clerk. Such continuation has been confirmed by the learned

Single Judge of this Court by order dated 06.04.2023 in CRP No.825 of 2020.



Absolutely, there are no changes in his pay scale or any difficulties for hi

salary from the 3rd respondent society. Further, order for continuation of the petitioner

as a clerk in the 3rd respondent society passed by this Court has reached it's finality,

vide order dated 06.04.2023 in CRP No.825 of 2020, as admittedly, there is no appeal

filed against the said order. Hence, this Court Court directs the 3rd respondent to pay

salary to the petitioner in the cadre of Clerk. In view of the liberty given to the

petitioner by order dated 31.01.2024 in W.P. No.2089 of 2024, no further order is

required in respect of the appointment of 5th respondent.

6. In view of the aforesaid observations and directions, the Writ Petition is disposed of.

No costs. Consequently, connected miscellaneous petitions are closed.

06-08-2025

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

Lbm

Note: Issue order copy on 21.08.2025



C.KUMARAPPAN J.



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To

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District Recruitment Bureau Joint Registrar Of Cooperative
Societies Thiruvannamalai Region Thiruvannamalai
Thiruvannamalai District

2. The Deputy Registrar Of Cooperative Societies

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