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W.P.No.13748 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Reserved on : 06.03.2025

Pronounced on: 02.04.2025

PRESENT:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 13748 of 2020

and

WMP No. 17088, 17090 and 17093 of 2020

The President,
Co-operative Bank Employees Federation – TN,
Regn. No.3647/CNI, (Affiliated to BEFI-TN),
No.27, V.V.Koil Street, Teynampet,
Chennai – 600 086.

.... Petitioner

Vs.

1.The Registrar of Cooperative Societies,
No.170, E.V.R.Periyar Salai,
Kilpauk, Chennai – 600 010.

2. The Commissioner of Labour,
DMS Campus, Teynampet,
Chennai – 600 006.

...Respondents

Prayer in W.P.No.13748 of 2020

To pass an Order or a Writ or a Direction particularly in the nature of Writ of Certiorarified Mandamus calling for the records on the file of the 1st Respondent pertaining to Circular No.Na.Ka.19067/2020/Sa.Ba.1 dated 15.05.2020, quash the same to the extent that the 1st Respondent has withheld payment of Earned Leave Encashment and additional installment of Dearness Allowance, and consequently direct the 1st Respondent to disburse Dearness Allowance and Earned Leave Encashment to all



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employees represented by the Petitioner Federation, in accordance with existing Memoranda of Settlement under Section 12(3) of the Industrial Disputes Act, 1947 reached between the various urban and District Central Co-operative Banks and corresponding Employees Unions, and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in WMP No. 17088 of 2020

To pass an Order dispensing with production of the original copy of the impugned Circular No.Na.Ka.19067/2020/Sa.Ba.1 dated 15.05.2020, pending disposal of the present Writ Petition.

Prayer in WMP No. 17090 of 2020

To pass an order of Interim Injunction restraining the 1st Respondent from altering the service conditions of employees represented by the Petitioner Federation, pending disposal of the present Writ Petition.

Prayer in WMP No.17093 of 2020

To pass an Order of Interim Stay against operation of the Impugned Circular No. Na.Ka.19067/Sa.Ba.1 dated 15.05.2020, to the extent that the 1st Respondent has withheld payment of Earned Leave Encashment and additional installment of Dearness Allowance, and on all consequent proceedings arising from it, pending disposal of the present Writ Petition.

Appearance of Parties:

For Petitioner	:	M/s. D.Geetha, R.Diwakaran and B.Poonghulali, Advocates
For Respondent 1	:	Mr.B.Tamil Nidhi, Additional Government Pleader
For Respondent 2	:	Mr.R.Kumaravel, Additional Government Pleader



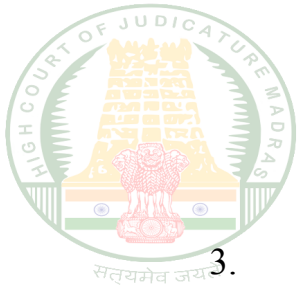
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JUDGMENT

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Heard.

2. The petitioner is a trade union representing employees of co-operative institutions and is affiliated with the Bank Employees Federation of India. In the present writ petition, the petitioner seeks to quash the circular dated 15.05.2020 issued by the 1st respondent, the Registrar of Co-operative Societies. The said circular, addressed to all Regional Deputy Registrars and the Additional Registrar, Chennai Region, stated that in view of the natural disaster caused by the COVID-19 pandemic and the extraordinary circumstances prevailing at that time, all co-operative societies were required to implement certain austerity measures. Specifically, the circular directed that, consequent to the enhancement of the retirement age from 58 to 59 years, the surrender of earned leave would be suspended for a period of one year. Further, it was also informed that the revision of dearness allowance for the period from 01.01.2020 to 30.06.2021 would be withheld, in line with the directions issued by the Government in G.O.Ms.No.51, Personnel and Administrative Reforms Department dated 07.05.2020, G.O.Ms.No.48, P&AR Department dated 27.04.2020, and G.O.Ms.No.232, Finance (Allowances) Department dated 27.04.2020.



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3. When the writ petition was taken up for admission on 05.10.2020, the learned Special Government Pleader entered appearance on behalf of the 1st respondent, and notice was ordered to the 2nd respondent. No orders were passed in the two interim applications filed in the matter. A counter affidavit dated 27.10.2020 was filed on behalf of the 1st respondent, followed by an additional counter affidavit dated 20.02.2025.

4. Along with the additional counter affidavit filed by the 1st respondent, a new circular bearing Na.Ka.No.19067/2020/Sa Ba 1 dated 21.01.2022 was enclosed. This circular referred to the new Government Order issued in G.O.Ms.No.3, Finance (Allowances) Department, dated 01.01.2022, whereby the Government directed the implementation of enhanced dearness allowance with effect from 01.01.2022. In compliance with the said Government Order, the 1st respondent, through the revised circular dated 21.01.2022, ordered all concerned to follow the Government order. This development was addressed in paragraphs 5 and 6 of the additional counter affidavit.



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“I submit that subsequently G.O.Ms.No.3 dated 01.01.2022 Finance (Allowances) Department has been issued with certain directions in which it was decided to sanction the revised rate of Dearness Allowance by enhancing 14% as indicated below: -

Date from which payable	Rate of Dearness Allowance (Per Month)
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(1)

(2)

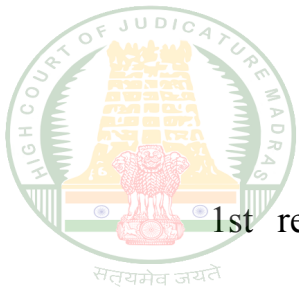
01.01.2022

31 per cent of Basic Pay

The enhanced rate of Dearness Allowance payable under these orders shall be paid in cash with effect from 01.01.2022. Dearness Allowance for the period 01.01.2020 to 31.12.2021 shall be paid at the rates of 17% continuously. In that case the Cooperative Societies are provided with dearness allowance in 17% till 31 December 2021 and from 01.01.2022 they will be getting 31%. The earned leave encashment is not available and the decision is not yet considered by the Government.

I submit that following the said decision the 1st respondent issued another communication dated 21.01.2022 referred the said G.O.Ms.No.03 Finance Department dated 01.01.2022 to all Joint Registrars in this regard and it will apply to the petitioner also”.

5. The petitioner union contends that the wage structure and service conditions of employees working in urban and district central co-operative banks—including matters relating to dearness allowance and encashment of earned leave—are governed by settlements entered into under Section 12(3) of the Industrial Disputes Act, 1947. These settlements are periodically renewed every five years based on the recommendations of the Wage Revision Committee, after obtaining the prior approval of the



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1st respondent–Registrar under Rule 149(1) of the Tamil Nadu Co-operative Societies Rules, 1988. In this context, it is submitted that the impugned circulars issued by the 1st respondent, which seek to implement the government orders, are in direct conflict with the binding settlements arrived at under Section 12(3) of the I.D. Act.

6. The petitioner submits that the encashment of earned leave and the revision of dearness allowance, being matters covered by the subsisting settlement between the parties, cannot be unilaterally altered by way of an administrative circular, particularly without issuing notice under Section 9A of the Industrial Disputes Act, 1947. In the counter affidavit filed by the 1st respondent, it is stated that the impugned circular was issued in public interest and as a matter of policy. With regard to dearness allowance, it is contended that there has been no stoppage or reduction of the existing allowance payable to employees; rather, only the proposed enhancement of dearness allowance has been stopped. Similarly, the encashment of earned leave has been temporarily withheld, with an assurance that it will be restored at a later point in time.

7. With respect to the issue of dearness allowance, the following statement was made in paragraph 16 of the counter affidavit:



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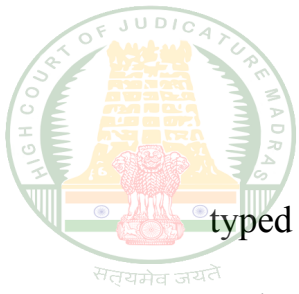


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“...impugned circular does not alter the existing provision of the settlement. The Dearness Allowance and the encashment of earned leave has been ordered to be withheld only for time being with the assurance that the benefits will be resumed later on. It is submitted that the petitioner’s Dearness Allowance has not been reduced. Only under the prevailing pandemic situation, to safeguard the financial condition of Cooperative Societies, the impugned circular has been issued. The impugned circular is in order and legal and it is issued based on the policy decision of the Government.”

8. It is relevant to note that the petitioners approached this Court immediately upon issuance of the impugned circular, even before it was implemented by the respective urban and rural co-operative banks. In the affidavit filed in support of the writ petition, no specific instance has been cited where the encashment of earned leave was actually withheld. Similarly, with regard to the revision of dearness allowance as directed by the Government, the petitioner has not referred to any instance where the revision contemplated under the respective settlements was affected. In light of the above, this Court does not find it necessary to examine in detail the two decisions cited by the petitioner or the four judgments relied upon by the respondents concerning the permissibility of State policy decisions being subject to judicial review.

9. It is sufficient to note that the petitioner is a trade union, and in the



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typed set of papers filed, reliance has been placed on only one settlement under Section 12(3) of the Industrial Disputes Act, purportedly entered into in the Vellore District Central Co-operative Bank on 12.12.2018, as a representative example. In the event that there exists a binding settlement and the concerned bank management is found to be in violation of its terms, it is always open to the union to raise an industrial dispute before the appropriate conciliation officer or to initiate prosecution under Section 29 of the Industrial Disputes Act, 1947. In view of the availability of effective statutory remedies under the said Act, this Court is not inclined to entertain the present writ petition under Article 226 of the Constitution of India.

10. The Supreme Court has summed up that the remedy under Article 226 of the Constitution is available only in exceptional circumstances, and where an effective alternative remedy exists, the aggrieved party is expected to exhaust such remedy before invoking the writ jurisdiction. This principle of law was succinctly summarised in **M/s. Radha Krishan Industries v. State of Himachal Pradesh**, reported in 2021 SCC OnLine SC 334, as follows:

“(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any



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other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

11. The petitioner’s case clearly falls within the ambit of principle (v)



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laid down in the above judgment. Accordingly, the present writ petition,

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Consequently, all connected miscellaneous petitions are also dismissed.

However, there shall be no order as to costs.

02.04.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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Copy to:

1. The Registrar of Cooperative Societies,
No.170, E.V.R.Periyar Salai,
Kilpauk, Chennai – 600 010.
2. The Commissioner of Labour,
DMS Campus, Teynampet,
Chennai – 600 006.

DR. A.D.MARIA CLETE, J.



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Pre-delivery Judgment in
W.P.No. 13748 of 2020

02.04.2025