

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE, TIRUVALLUR**

**Present : Dr.J. JULIET PUSHPA, Ph.D. (Law)**

Principal District Judge, Tiruvallur .

**Thursday, the 9<sup>th</sup> day of April, 2026**

**Cooperative C.M.A. No.1/2023**

**(CNR No. TNTR010043652024)**

L. Dillibabu, S/o Logu

Attender

Old Gummidipoondi, Primary Agriculture Cooperative Credit Society

.....Appellant

Versus

1. The Deputy Registrar,

Ponneri Circle

Cooperative Office, Ponneri – 6012024

2. The President

JJ-748, Old Gummidipoondi, Primary Agriculture Cooperative

Credit Society

...Respondent

On appeal as against Surcharge Order passed by the respondent /the Deputy Registrar, Cooperative Societies , Ponneri Range, in Surcharge Na.Ka.849/2023 SP (2) dated 22.08.2023

This appeal coming before me for final hearing on 26.03.2026 in the presence of M/s K. Subramanian, S.Rakesh, Manian, and Thiru. E. Vijayakumar, Government Pleader of this Court for the 1<sup>st</sup> respondent and having the 2<sup>nd</sup> respondent called absent, set exparte, and upon hearing the arguments of both side and upon perusing the material case records and

having stood over for consideration till this date, , this Court delivered the following:

### **JUDGMENT**

This appeal is filed by the appellant under Section 152 of Tamil Nadu Cooperative Societies Act to set aside Surcharge order passed by the respondent/The Deputy Registrar, Ponneri Range, Cooperative Societies, in Na.Ka.849/2023/SP(2) dated 22.08.2023.

#### **2. Case in brief:**

The Appellant was working as Attender of the JJ 748 Old Gummidipoondi Agricultural Cooperative Credit Society, Tiruvallur District. An enquiry was ordered u/s 81 of Tamil Nadu Cooperative Societies Act as per the proceedings of the Deputy Registrar of Cooperative Societies, Ponneri regarding cause of loss to the funds of the society by the appointment of an Office Assistant from 27.03.2017 by violating the Government Order No.3 (CD) Cooperative, Food and Consumer Protection Department dated 05.01.2016. Accordingly, the President, Vice President, Secretary and Executive Members of the said Society and the appellant who was the Office Attender is held liable for the loss caused to the tune of Rs.14,66,145/- by way of remuneration disbursed to the appellant. Accordingly, the Senior Inspector, Deputy Registrar, Ponneri was appointed as Enquiry Officer and he had submitted his enquiry report on 17.03.2023, wherein he had recommended for passing surcharge proceedings as against the appellants

herein and another person u/s 87 of the Act. After enquiry, the impugned proceedings in Na.Ka. 849/2023/SP(2) dated 22.08.2023 was passed by the 1<sup>st</sup> respondent , thereby the appellant along with others are held liable for the financial loss to the tune of Rs.14,40,207/- and ordered to be recovered said amount with interest at 13% per annum and recommended for proceedings under section 87 of the Act for passing of Surcharge order and proceedings for recovery

After enquiry, the impugned proceedings in Na.Ka. 849/2023/SP(2) dated 22.08.2023 was passed by the 1<sup>st</sup> respondent , thereby the appellant and the office bearers including the President, Secretary held liable for the financial loss to the tune of Rs.14,40,207/- and ordered to be recovered said amount with interest at 10.50% per annum and recommended for proceedings under section 87 of the Act for passing of Surcharge order and proceedings for recovery.

3. As against the above said Surcharge order dated 22.08.2023 , the Appellant herein who was the Office Attendant of the said Society has come forward with these to miscellaneous appeals on the following grounds:

### **GROUND OF APPEAL**

The impugned order was not passed in accordance with the Tamil Nadu Cooperative Societies Act , Rules , Byelaws and Government orders. The very launching of the proceedings u/s 87 of the Act is unnecessary as the appointment of the appellant is dated 04.04.2015 and it is open and the same

was duly intimated. The appointment of Dillibabu is legal since the appointment is not in violation of G.O.Ms.No.25(CD) dated 17.02.2011. The appointment was duly communicated and yearly audit was also approved by the competent authorities, so the very launching of inquiry u/s 82 of the Act is against Law. The Inquiry Officer has to restrict the finding whether the appointment is legal or it is intentional or not, but the enquiry Officer has straightway blamed the appellants and tendered the report. The Inquiry Officer ought to have given due weightage to the reply statements of the appellants and the 82 inquiry officer has not applied his mind and never considered the statements then the question of section 87 of the Act would not arise. The respondent relying upon GO No.3(CD) dt. 05.01.2016 which regulates the appointment of any person shall be only through the District Recruitment vide communication No.56302/2016/Saba2(3) dt. 16.10.2017 and the mere reading of the date of GO No.05.01.2015 and the appointment dated 01.04.2017 will show a light upon the merits of the impugned order. Hence, prayed to set aside the impugned order of the respondent.

4. At this juncture, the points for consideration in this appeal are:

- 1. Whether the order passed by the respondent in Surcharge Order Na.Ka.849/2023 /Saba2 dated 22.08.2023 against the appellant has to be set aside?**

## 2. Whether the appeal is to be allowed ?

### 5. POINT:-

Both side arguments heard. Written arguments of both side perused.

On perusal of points put forth by both counsel, it is learnt that the charge against the appellant and the executive members and office Bearers , i.e. President, Vice President, Secretary and Executive members of the JJ 166 Devadanam Agricultural Cooperative Credit Society, Ponneri, Tiruvallur District, appointed the appellant as Office Attendant in the society on 01.04.2017 based on the resolution of the Board and violated the Government Order No.25(C9) Cooperation, Food and Consumer Protection Department dated 17.02.2011, Government Order No.3(C9) Cooperation, Food and Consumer Protection Department dated 05.01.2016 and the Circular of the Registrar, Cooperative Societies Circular No.14/2017/SF2 (RC No.12169/2017/SF-2) dated 13.11.2017 , thereby caused loss to the Society a sum of Rs.14,40,207/- by disbursing the salary to the appellant from 01.04.2017.

6. The learned Government Pleader appearing for the respondent argued that the respondent passed the surcharge order in Rc.No. 1465/2021/SF2 dated 01.03.2024 fastening the liability on the appellants as they have made appointment of L. Dillibabu, Office Assistant in the Society on 27.03.2017 in contravention to the provisions of the above Government

Orders and also the Circular dated 13.11.2017. The appellants are only the elected Board of Directors of the Credit Society and only the day to day affairs of the society shall be maintained by them within the purview of the Byelaws and in accordance with the Societies Act. However, the appellants deliberately contravened the provisions of the Cooperative Societies' Act and Rules with regard to the recruitment to fill up the vacancy of the Office Assistant Post as per the Government Order No. 25(C9) Cooperation, Food and Consumer Protection Department dated 17.02.2011. and also violated the Rule 150 of Tamil Nadu Cooperative Societies Rules 1988 which was amended. As per the GO No.3(CD) dated 05.02.2016, the District Recruitment Board was entrusted with the work of selection of Office staff below the Junior Assistants Category and for this rule 150 was amended. Apart from that, the Registrar of Cooperative Societies in the circular dated 16.10.2017 issued instructions to recruit the sub staff to the society by following the rules prescribed for recruitment. He would further argued that contravention to the above said Government Order dated 17.02.2010, 05.02.2016 and also Circular dated 16.10.2017, the Executives of the Society appointed the Office Assistant, L. Dillibabu , the appellant herein on consolidated pay and fixed in the time scale of pay with effect from 01.03.2018 at the pay band of 3580-104/9-4525-135/10-5875-160/16-8435 , thus caused loss of Rs.14,40,207/- under Rule 150 of the Tamil Nadu Cooperative Societies Rules stipulated that appointment can be made only

after getting selection list from the District Recruitment Bureau.

7. The learned Government Pleader further argued that the Board of Management has no power for *suo motu* appointment of any staff even below the rank of Junior Assistant , i.e. Office Assistant. Hence, surcharge, disqualification and disciplinary actions , the surcharge proceedings initiated by the Deputy Registrar is in accordance with the rules and the Government Orders and also the Circular of the Registrar of Cooperative Societies. Further, he argued that while conducting the surcharge proceedings, notice was duly served on the executives of the society and also the appellant herein, hence, there is no violation to the rules. According to section 33 of Tamil Nadu Cooperative Societies Act 1983, the management of every registered Society shall vest in a Board constituted in accordance with the provisions of the Act, the rules and bylaws which shall exercise such powers and performs such duties as may be confirmed or imposed on it by this Act, the rules and bylaws, thus the executives of the society made wrongful appointment and thereby the society sustained financial loss, thus the surcharge order passed by the respondent is sustainable, enforceable.

8. Per contra, the learned counsel for the appellant assailed the impugned surcharge order of the respondent dated 22.08.2023 mainly on the ground that the respondent blatantly erred in contradicting the GO No.3(CD) dated 05.02.2016 and also the Circular of the Registrar of cooperative Societies dated 16.10.2017, which clearly enunciates that the amendment as

to the recruitment process vested with the District Recruitment Bureau shall come into effect only from 14.11.2017, whereas the appointment made by the appellants based on the resolution 04.04.2015 of the Board of Members of the society is much prior, i.e. 3 ½ years before such amendment made in the Societies Rule 150. Thus, the above said Government Order dated 05.02.2016 has nothing to do with the appointment of the appellant as on 01.04.2017, as the amendment or the order of powers vested with District Recruitment Bureau does not exist as on the date of appointment.

9. On considering the points put forth by both sides, this Court considers that it is necessary to appreciate the rules with regard to the appointment of the appellant which below the rank of Junior Assistant, i.e. Office Assistant in this case as on 01.04.2017. It is specifically held by the respondent in the impugned order that only the appointment made vide resolution dated 30.01.2017 is in violation of the GO Ms.No.3(CD) Cooperative Food and Consumer Protection Department dated 05.01.2016 and also the circular of the Registrar of Cooperative Societies , Chennai dated 13.11.2017 as the powers for recruitment for the post of “Office Assistant” is vested with the District Recruitment Bureau and not with the Board of Members of the Credit Society, such appointment is not valid and liable for surcharge order.

10. Rule 151 of the Tamil Nadu Cooperative Societies Rule 1998 enunciate the procedure to be followed by the Recruitment Bureau. A perusal

of the Government Order No.25 Cooperative Food and Consumer Protection (CJ1) Department dated 17.02.2011, the powers of the District Recruitment Bureau is stated as follows :

“For Rule 151, the following rule shall be substituted namely

*(1)(a) Every society shall report to the Recruitment Bureau for the state every vacancy and vacancy anticipated in the posts of paid officers servants in the category of Junior Assistant and above that may arise in the society together with all the relevant particulars relating to the posts within 15 days in respect of the existing vacancy and within ninety days prior to the date on which the vacancy is anticipated”.*

Thus, the above Government order dated 17.02.2011 deals with the amendment in the recruitment procedure to be followed by the District Recruitment Bureau in respect of the recruitment of staff in the category of Junior Assistant and above. Thus, obviously, the above said Government Order with regard to the recruitment for the post of “Office Assistant” is not applicable as on 01.04.2017, the date on which resolution was passed by the Board of Members of the appellants’ credit society.

11. Coming to the subsequent Government Order dated 05.01.2016, the Registrar of Cooperative Societies has issued a Circular in Circular No.14/2017/SF2 (Rc.No.12169/2017/SF2) dated 13.11.2017, has issued the instructions with regard to the implementation of the recruitment as follows :

*“As per Sub-Rule (5) of the Rule 150 of the Tamil Nadu Cooperative Societies Rules, 1988 as amended by GO Ms.No.3, Cooperation, Food and Consumer Protection CJ1) Department dated 05.01.2016, the Recruitment Bureau for a Revenue District shall recruit*

- (a) the paid officers and servants below the categories of Junior Assistant and all the technical posts in respect of all categories of Apex societies, which have to be filled up by direct recruitment ;*
- (b) the paid officers and servants of all categories including all the technical posts in respect of all categories of central and primary societies, other than staff and students cooperative stores which have to be filled up by direct recruitment ; and*
- (c) Salesman and Packer for employment in the fair price shops under the Public Distribution System*

*Keeping the above in view, it is hereby instructed that all apex, central and primary cooperative societies under the administrative control of the Registrar of Cooperative Societies the special by-laws of which already have provision for appointment of Driver, Office Assistant, Peon, Messenger, Watchman, Sweeper specifying also their cadre strength, to amend the relevant special by-laws prescribing the following Educational Qualification and Other Qualifications for the categories of these posts as shown below”*

*7. The Additional Registrar, Chennai Region and all the regional Joint Registrars are requested to communicate a copy of this circular to all the primary societies in their respective region. They should ensure that wherever necessary all apex, central and primary societies in their respective region amend their respective special by-laws on or before 30.11.2017 with retrospective effect from 14-11-2017 and send a compliance report to the Registrar on or before 05.12.2017.”*

From the above said circular issued by the Registrar of Cooperative Societies in pursuance of the Government Order dated 05.01.2016 clearly stipulates that the amendment in respect of the recruitment of the post below the category of Junior Assistant and necessarily the amendment should be incorporated in the Bye-laws of the concerned Credit Society on or before 30.11.2017 with retrospective effect from 14.11.2017. Therefore, for the appointment made as on 01.04.2017 which is well before the date of effect of Government Order No.3 dated 05.01.2016 is not affected by the said amendment and Government Orders. Moreover, there is no materials on the side of the respondent or even in the impugned order as to whether amendments were incorporated in the bye-laws of the appellants' credit society. But, the fact that till the date of impugned order, no such amendment was carried out in the bye-laws. As such, the appointment made by the Board of Members of the Credit Society is valid and enforceable as per the Rule 151 of the Tamil Nadu Cooperative Societies Rules. Thus, the question of violating the norms fixed by the Government Order dated 05.01.2016 does not arise in view of the fact that the appointment was made much earlier, i.e. two years before the date of effect of the Government Order which was given effect from 14.11.2017. Thus, the findings of the respondent in the impugned order is perverse to the established rules as articulated in the Government order dated 05.01.2016 and also circular of the Registrar of Cooperative

Chennai , Chennai dated 13.11.2017.

12. The learned counsel for the appellant relied on the authority of the Hon'ble High Court, Madras reported in **2017 (4) LW 425** (*M Anbalagan Vs. Deputy Registrar of Cooperative Societies*) and **2024(5) CTC 145** (*R. Moorrthy Vs. Deputy Registrar of Cooperative Societies, Tiruvannamalai and another*) wherein the Hon'ble High Court held that

***“Pre-mediation and knowledge that injury would be caused due to act or omission is sine qua non to establish willfulness and wantonness to attract section 87 – Clerk, in instant case nether had control or dominion over the assets of society nor had acted in willful and negligent manner - Impugned order holding petitioner/clerk guilty, erroneous and set aside”***

In this case, it is impossible even to think that the appellants was appointed as on 01.04.2017 about the amendment which was brought by way of Government Order dated 05.01.2016 which would be an imaginable construction of the facts and the order of the respondent holding that the appellants with the knowledge of the Government Order appointed the appellant as on 01.04.2017 is absolutely unsustainable.

13. Further, the learned counsel for the petitioner has highlighted that the provision under clause 136-D(2) of the Tamil Nadu Cooperative Societies Act that a short term co-operative credit structure society shall have autonomy in all financial and internal administrative matters including the following areas. And one such area is mentioned under sub clause (iv) as

“personnel policy, staffing, recruitment, posting and remuneration to staff. Thus, the District Registrar has no authority to interfere into the financial policy including the remuneration to the staff and under Section 136-D(25) of the Act, the Government or Registrar shall not do anything or take action or issue any order or direction curtailing any of the freedoms or powers given under the Chapter to any short term cooperative credit structure Society.

14. In view of the above provisions, the learned counsel for the appellants also relied on the authority of the Hon’ble High Court, Madras in W.P.(MD)Nos.13900 of 2014 and 618 of 2015 (*Selvakumar Vs. Secretary to Government* ), wherein it is held that

*“This Court is of the considered opinion that the aforesaid narration of the section 136-D would clearly indicate the scheme of the Act and the autonomy granted to the short term cooperative credit structure societies and the non obstinate clause under section 136-B read with the section 136-D would state that autonomy granted to the short term cooperative credit structure societies. Especially sub clause 24 of section 136-D, wherein the government has no power to take away any society from the provision of section 136-A to 136-D and sub clause 25 of section 136-D wherein the government cannot do anything to curtail the freedom of power of the society. The provisions are strongly worded in order to grant absolutely autonomy without any kind of interference from the government / registrar. Therefore this Court is of the considered opinion that even the government has no power to amend the provisions of section under this Chapter XIV-A and in such circumstances the impugned G.O. is definitely curtailing the freedom of autonomy. This Court is of the considered opinion that the im-*

*pugned circular is clearly violative of the section 136-D (25) and hence it is liable to quashed*

*This Court is of the considered view that the Society which has autonomous power to fix salary and the guidelines issued by the government to fix salary is against the statutory provisions of section 136-D of the Tamil Nadu Societies Act. The salary may be higher than the guideline or lower than the guideline and the same cannot be challenged by comparing with the guideline since the guideline itself is against the statutory provisions.”*

In view of the above observations of the Hon’ble High Court, Madras this Court is of the considered opinion that the said credit society being the short term credit society, the Board of Members, had every right as conferred u/s 136D of Tamil Nadu Societies Act to appoint and fix the salary of the Office Assistant as on 01.04.2017 which is not violate to Rule 151.

15. Further, the Hon’ble Supreme Court of India in its authority reported in 2022 AIR SC 1349 ( *Punjab State Cooperative Agricultural Development Bank Vs. Registrar Cooperative Societies and others* ) held that

*“47. The exposition of the legal principles culled out is that an amendment having retrospective operation which has the effect of taking away the benefit already available to the employee under the existing rule indeed would divest the employee from his vested or accrued rights and that being so, it would held to be violative of the rights guaranteed under Articles 14 and 16 of the constitution”*

In view of the above said observations of the Hon’ble Apex Court, depriving the benefit already granted by way of amendment with retrospective effect not sustainable, which is done in this case by the

respondent by declaring the appointment made as on 01.04.2017 in the appointment of sub-staff in the Cooperative society of the appellant where he was appointed as Office Assistant as violative on the grounds of amendment made with effect from 14.11.2017 by the Circular of the Registrar of Cooperative Societies dated 13.11.2017.

16. On perusal of the surcharge order under section 87 of the Act, it nowhere shows that the appellant had displayed acts of willfulness or wantonness that would result in loss to the society. The sine qua non for passing an order under section 87 against an employee under such circumstances, as in the present case is the existence of the aforesaid conditions. Except holding the effect of Circular from 14.11.2017, the appointment made as on 01.04.2017 was held unlawful, that too after passing an unanimous resolution by the Board of Members of the society, there is nothing available to hold that the appellants have done anything liable for the misappropriation or mishandling of the powers conferred in the appointment of Office Assistant. On the other hand, the appellants have acted on the powers conferred under Section 151 of the Societies Rules prior to 14.11.2017. Thus, the surcharge order passed as against the appellants cannot be sustained.

17. Even assuming that if there is loss in the society, in order to attract the surcharge u/s 87 of the Act, the following requirements are needed

to have passed Surcharge Order, that if any person of past or present servant of Society,

- (i) has misappropriated or
- (ii) fraudulently retained any money or other property or
- (iii) has been guilty of breach of trust in relation to any society
- (iv) has caused any deficiency in the assets of Society by breach of trust or wilful negligence or
- (v) has made any payment which is not in accordance with this Act.

18. There is no materials to show that only due to the willful negligence on the part of the appellant, there was loss caused to the Society. The above provisions as discussed of the Cooperative Societies Act shows that the appellants, being the Board of Members of the credit society has got every authority to appoint the Office Assistant as on 01.04.2017 in view of the Rule 151 of the Tamil Nadu Cooperative Societies Rules and the retrospective effect given in the Circular dated 13.11.2017, that too from 14.11.2017 has nothing to do with the appointment made as on 04.04.2015.

19. Further, the Registrar of Cooperative Societies in the above said circulars has issued specific directions to all the to amend the provisions of the by-laws of the Society in view of the amendment made in the Government Order dated 05.01.2016 on or before 30.11.2017 with retrospective effect from 14.11.2017 with respect to appointment of Driver,

Office Assistant, Peon, Messenger, Watchman, Sweeper specifying also their cadre strength, to amend the relevant special by-laws prescribing the following Educational Qualification and Other Qualifications. However, till the date of passing of the impugned order of the respondent, no such amendment is made in the by-laws of the appellants' credit society and no such action was taken by the authorities concerned. As such, without amending the provisions in the bye-laws to incorporate the amendments as envisaged in the government Order dated 05.01.2016 as well as the Circular dated 13.11.2017 with the prior approval of the Registrar of Cooperative societies, the impugned order passed by the respondent implementing such amended provisions in the recruitment and holding the liability on the appointment of the appellant as on 01.04.2017 is not sustainable and legally not valid.

20. Moreover, as pointed out by the learned counsel for the appellant, this Court has already declared that the appointment of the appellant is valid as per the orders of this Court in Cooperative Appeal No.6/2024 dated 12.09.2025.

21. For all the above reasons, this Court comes to the conclusion that the Surcharge Order passed by the 1<sup>st</sup> respondent dated 22.08.2023 has to be set aside for the following reasons :

- (i) The Government Order No.25 dated 17.02.2011 pertains to the recruitment of the staff above the category of Junior Assistant and

the same is not applicable to the category of Sub-staff i.e. Office Assistant

- (ii) The Government Order No.3 dated 05.01.2016 as relied on by the respondent in the impugned order relates to recruitment of substaff, which is much later than the appointment of the appellant this case as on 01.04.2017.
- (iii) The directions of the Registrar of Societies dated 13.11.2017 with regard to amendment in the recruitment procedure is not given effect in respect of the appellants' credit society till the date of impugned order. Even if it is so, it is given with retrospective effect only from 14.11.2017, whereas the impugned appointment made was two years prior as on 01.04.2017.

The charge against the appellant do not meet the mandatory legal requirements to implicate them for payment of the alleged loss. In view of the answer arrived in Point No.1, since the surcharge order dated 22.08.2023 deals with the appointment of the appellant made as on 01.04.2017 Thus, it has to be set aside. These points are answered accordingly.

**In the result, this Cooperative Civil Miscellaneous Appeal is allowed. Accordingly, the Surcharge Order in Na.Ka. 849/2023/Sapa(2) dated 22.08.2023 passed by the 1<sup>st</sup> Respondent, i.e. The Deputy Registrar/ Cooperative Societies , Ponneri under Section 87 of the Tamil**

**Nadu Cooperative Societies Act 1983 as against the Appellant is hereby set aside. No costs.**

Dictated to the Steno-Typist, transcribed by him, corrected and pronounced by me in the Open Court, on this the 9<sup>th</sup> day of April, 2026

**PRINCIPAL DISTRICT JUDGE,  
Tiruvallur**

The evidence and exhibits on the side of  
Appellant & Respondents: NIL

**PRINCIPAL DISTRICT JUDGE,  
Tiruvallur**