

In the High Court of Judicature at Madras

Dated : 10.2.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice P.R.SHIVAKUMAR

Writ Appeal No.1569 of 2012 and MP.No.1 of 2012

The Special Officer, D.K.81
Chennasandiram Primary
Agricultural Cooperative Credit
Society Ltd., Chennasandiram,
Krishnagiri District.

...Appellant/2nd Respondent

CAUSE TITILE ACCEEPTED VIDE ORDER
OR COURT DATED 2/6/12 MADE IN
MP.1/12 IN WASR.78891/10

Vs

1.P.Periyannan ... 1st respondent/claimant

2.The Joint Registrar of Cooperative
Societies, Common Cadre Authority,
Dharmapuri Region,
Dharmapuri District

...2nd Respondent/2nd respondent

APPEAL under Clause 15 of the Letters Patent against the order dated 3.8.2010 made in W.P.No.12458 of 2009 petition filed under Article 226 of the Consitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records of the 1st respondent in Na.Ka.2953/04 Tho.Va dated 23/10/07 and quash the same and direct the respondents to pay the subsistence allowance form the date of suspension and continue to pay the same in terms of the Tamil Nadu payment of subsistence Allowance Act, 1981.

For Appellant : Mr.M.S.Palaniswamy

For Respondent-1 : Mr.S.Kamadevan

For Respondent-2 : Mr.L.P.Shanmugasundaram, SGP

JUDGMENT WAS DELIVERED BY V.RAMASUBRAMANIAN, J

The writ appeal arises out of an order passed by the learned Judge directing the appellant to pay subsistence allowance to the first respondent herein, for the period of suspension.

2. Heard Mr.M.S.Palaniswamy, learned counsel for the appellant, Mr.S. Kamadevan, learned counsel appearing for the first respondent and Mr.L.P. Shanmugasundaram, learned Special Government Pleader appearing for the second respondent.

3. The first respondent was placed under suspension by an order dated 19.3.2004 on the allegation that he was guilty of certain irregularities. It was not even indicated in the order of suspension as to whether an enquiry was pending or contemplated.

4. Contending that he was not paid subsistence allowance, the first respondent filed a writ petition in W.P.No.26195 of 2007 on the file of this Court. The said writ petition was disposed of by a learned Judge by an order dated 6.8.2007 directing the appellant and the second respondent (who is the Joint Registrar of Cooperative Societies) to consider the representation for payment of subsistence allowance and to pass orders within a time frame.

5. Pursuant to the said order passed by this Court, the second respondent issued a communication dated 23.10.2007 claiming that no representation made by the first respondent was available in his office, but nevertheless rejecting the claim for payment of subsistence allowance. The claim of the first respondent for subsistence allowance was rejected primarily on two grounds namely (a) that the first respondent was not in the headquarters as required by the order of suspension; and (b) that the first respondent was actually not an employee within the meaning of the Tamilnadu Payment of Subsistence Allowance Act, 1981. It was also stated in the said communication dated 23.10.2007 that the first respondent was involved in a murder case and that subsequently, he was detained under the Tamilnadu Act 14 of 1982.

6. Challenging the said communication dated 23.10.2007, the first respondent filed a writ petition in W.P.No.12458 of 2009. The said writ petition was allowed by a learned Judge, by relying upon a few decisions of this Court, including that of a Division Bench, holding that such persons are entitled to payment of subsistence allowance. Aggrieved by the said order of the learned Judge, the society is on appeal before us.

7. Mr.M.S.Palaniswamy, learned counsel appearing for the appellant society contended that the right of the first respondent to seek subsistence allowance flowed out of the Common Cadre Service Regulations and that Regulation 29(d)(i) mandates, by its proviso, that unless a member of the service furnished a certificate to the

effect that he was not engaged in any other employment and had stayed in the headquarters, he would not be entitled to subsistence allowance. According to the learned counsel, the first respondent never satisfied this condition. Even if the period of detention undergone by the first respondent is excluded, the first respondent, according to the learned counsel for the appellant, did not produce a certificate of non employment and a certificate of residence in the headquarters both before his arrest and after his release from prison.

8. Therefore, relying upon a decision of the Supreme Court in **U.P. State Textile Corporation Limited Vs. P.C.Chaturvedi [2005 (8) SCC 211]**, the learned counsel for the appellant contended that the order of the learned Judge cannot be sustained.

9. Supporting the aforesaid contention of the learned counsel for the appellant, Mr.L.P.Shanmugasundaram, learned Special Government Pleader contended that the first respondent was not an employee within the meaning of the expression under Section 2(a) of the Tamiladu Payment of Subsistence Allowance Act, 1981. He places reliance upon a decision of the Division Bench of this Court in **K.Avanasiappan Vs. The Management of Thekkalur Primary and Agricultural Cooperative Bank rep.by its President P.Senthilvel [CDJ 2011 MHC 6513]**.

10. We have heard the submissions of the learned counsel for the appellant and the learned Special Government Pleader appearing for the second respondent.

11. In so far as the first contention is concerned, it is seen from the order impugned in the writ petition that the first respondent originally filed a writ petition in W.P.No.26195 of 2007. The said writ petition was disposed of by an order dated 6.8.2007 directing the appellant and the second respondent herein to consider and pass orders on the representation. Therefore, there was actually a demand.

12. In so far as the question relating to residence is concerned, it is admitted even in the order impugned in the writ petition that the first respondent was arrested in connection with a criminal case on 30.11.2005. Subsequently, he was detained under the Tamilnadu Act 14 of 1982 on 20.1.2006 and was released after the detention order was revoked on 28.7.2006. After his release, he was made to reside in Hosur and sign before the Hosur Police, as part of the bail conditions. Therefore, it is not a case where the first respondent chose to remain out of the headquarters on his own volition and free will. It was a case where circumstances compelled him to go out of the headquarters not for the purpose of seeking livelihood, but for the purpose of fighting for his own life and liberty. Hence, the conditions contained in the proviso under Regulation 29(d) (i) cannot be applied to cases of this nature.

13. The decision of the Supreme Court in *U.P.State Textile Corporation Limited* cannot be applied to cases of this nature. That was a case where there was a specific requirement that the employee placed under suspension should report everyday at the place of work. It was a requirement borne out of the statutory rule namely Rule 41 of the Uttar Pradesh State Textile Corporation Conduct, Control and Disciplinary Rules, 1992. This sine qua non was not satisfied in the said case.

14. But, in so far as the case on hand is concerned, there was no such requirement under the proviso to Regulation 29(d)(i). The only requirement was about the residence in the headquarters. This condition was impossible of being fulfilled in a case of this nature. Therefore, we have no hesitation in rejecting the first contention of the learned counsel for the appellant.

15. Coming to the second contention raised particularly by the learned Special Government Pleader, it is to be pointed out that the claim of the first respondent for payment of subsistence allowance did not arise purely out of the provisions of the Tamilnadu Payment of Subsistence Allowance Act. In the decision of the Division Bench in *K.Avanasiappan*, the Division Bench merely considered the order passed by the Competent Authority under the Tamilnadu Payment of Subsistence Allowance Act, 1981 and went into the question as to whether a secretary of a society was an employee within the meaning of Section 2(a) or not. The purport of the Regulations was never in issue before the Division Bench. But, the Regulations were taken note of by two earlier Division Benches of this Court. One was in ***Special Officer Vs. M.Srinivasan [2009 (7) MLJ 1025]*** wherein a Division Bench held that when the Regulations issued under the Cooperative Societies Act give the right to a suspended employee to receive the subsistence allowance and the subsistence allowance will be as per the provisions of the Tamilnadu Payment of Subsistence Allowance Act, 1981, the order granting subsistence allowance was proper and justified. The Division Bench took note of several earlier decisions of this Court and also noted the Regulations.

16. Regulation 29(d)(i) reads as follows :

"A cadre employee under suspension shall be entitled to a subsistence allowance as per the Payment of Subsistence Allowance Act, 1981."

17. Therefore, as held by the Division Bench in *Special Officer*, the substantial right accrued out of Regulation 29(d)(i) and the procedure is referred to as per the Act. Hence, the decision in *K.Avanasiappan* would not support the case of the appellant.

18. A similar view was taken by yet another Division Bench in **Kuthiraichandal Primary Cooperative Bank Ltd. Vs. A.Asokan [2009 (1) MLJ 18]**. Therefore, we do not think that after holding, under Regulation 3, that the post of Secretary of a Primary Agricultural Cooperative Society is of Common Cadre Service and after holding such cadre employee to be entitled to subsistence allowance under Regulation 29(d), it is any more open to the appellant to fall back upon the provisions of the Act. Hence, the second contention also deserves to be rejected. Accordingly, the same is rejected.

19. In view of the above, the writ appeal is dismissed. No costs. Consequently, the above MP is also dismissed.

RS

Sd/
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Joint Registrar of Cooperative Societies,
Common Cadre Authority,
Dharmapuri Region,
Dharmapuri District.

+ 1 cc to Mr.M.S.Palaniswamy, Advocate sr.7481

+ 1 cc to Mr.S.Kamadevan, Advocate sr.7056

+ 1 cc to The Government Pleader sr.no.7278

WA.No.1569 of 2012
and MP.No.1 of 2012

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