IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Appeal No.1552 of 2012

The Special Officer
5558 Vadugapatty Primary Agricultural
Co-operative Credit Society
Vadugapatty
Harur Taluk
Dharmapuri District ... Appellant

Vs.

1.T.R.Murugan

2.The Joint Registrar of Co-operative Societies
Dharmapuri Region
Dharmapuri ... Respondents

WRIT Appeal filed under clause 15 of the Letters Patent against the order dated 11.08.2011 made in W.P.No.15896 of 2011.

Prayer in W.P.No.15896 of 2011:-]
Writ of Mandamus, directing the respondents to pay the subsistence allowance from 5.8.2009 to 17.1.2011 and salary from 18.1.2011 to till date to the petitioner.

For Petitioner : L.P.Shanmugasundaram

For Respondents : Mr.R.Ravichandran
Additional Govt. Pleader for R2
No Appearance for R1

JUDGMENT
(delivered by S.MANIKUMAR, J)

Challenge in this writ appeal is to the order dated 11.08.2011 made in W.P.No.15896 of 2011, by which, the writ court, directed payment of subsistence allowance to the first respondent, Secretary of 5558, Vadugapatty Primary Agricultural Co-operative Credit Society, Harur Taluk, Dharmapuri District.

2. When the writ appeal came up for hearing on 01.11.2016, placing reliance on a judgment of a Hon'ble Division Bench of this court in W.A.No.1411/2008 dated 20.11.2011, Mr.L.P.Shanmugasundaram, learned Special Government Pleader, submitted that Secretary of a Co-operative Society, will not fall under the definition of an employee under Section 2(a) of the Tamil Nadu Subsistence Allowance Act, 1981. He, therefore, submitted that the order of the writ court, directing payment of subsistence allowance, requires to be interfered.

3. On 01.11.2016, there was no representation on behalf of the first respondent/Secretary. Therefore, to provide an opportunity, Registry was directed to post the matter on 02.11.2016 and thus it is listed. Today also, there is no representation, on behalf of the first respondent. In the above said circumstances, we are constrained to dispose of the writ appeal, on merits.

4. Facts leading to the appeal are that the first respondent/Secretary of 5558, Vadugapatty Primary Agricultural Co-operative Credit Society, Harur Taluk, Dharmapuri District, was placed under suspension, by the Special Officer, 5558, Vadugapatty Primary Agricultural Co-operative Credit Society, Harur Taluk, Dharmapuri District, vide order, dated 05.08.2009, pending disciplinary action. A charge memo dated 17.08.2009 was issued. The Enquiry Officer filed a report dated 19.04.2010, holding that the charges leveled against the respondent No.1, as proved.

5. Subsequently, vide order dated 19.1.2011, respondent No.1 was reinstated in service. Grievance of the first respondent was that he was not paid subsistence allowance from 05.08.2009 to 17.01.2011 and salary from 18.01.2011 onwards. However, during the course of hearing of the writ petition, learned counsel for the first respondent submitted that salary was paid from 18.11.2011.

6. Before the writ court, learned Additional Government Pleader has not disputed non-payment of subsistence allowance during the above said period. Placing reliance on K.Marappan vs. Deputy Registrar of Co-operative Society, Namakkal reported in (2006) 4 CTC 689, objection has been made to the maintainability of the writ petition. The appellant has also relied on the order of this court dated 25.01.2010 made in W.P.No.26552 of 2009, wherein writ petition filed by the first respondent herein, has been dismissed as not maintainable, as against Co-operative

Society, when petitioner therein had prayed for an order, for payment of salary.

7. Adverting to the rival submissions of both parties and after considering an order of the learned single Judge in S.Sukumar Vs. CE.17 Dharapuram Public Servant's Co-operative Thrift and Credit Society Ltd. reported in 2007 (2) MLJ 1100, the writ court vide order dated 11.08.2011 made in W.P.No.15896 of 2011, directed the appellant to pay subsistence allowance to the first respondent for the period from 05.08.2009 to 17.01.2011, within a period of six weeks from the date of receipt of a copy of that order.

8. Being aggrieved by the abovesaid order made by the writ court, instant writ appeal has been filed.

9.Challenging the correctness of the order, Mr.L.P.Shanmugasundaram, learned Special Government Pleader, submitted that the writ court, failed to give a reasonable opportunity to the appellant to put-forth the submission of the society and only during the course of hearing, the society could ascertain as to whether the respondent No.1 was given subsistence allowance or not. Placing reliance on the decisions of this court in (1) Management, T.P.Spl. 67 Goundanpalayam Primary Agricultural Cooperative Bank Ltd., vs. Asst. Commissioner of Labour reported in 2002 (4) CTC 339, (2) Management of of Thekkalur Primary Co-operative Bank v. The Assistant Commissioner of Labour, Coimbatore reported in 2006 (1) CTC 784, (3) Sampath.S v. S.Srinivasan reported in 2004-1-LLJ-411, (4) S.Sukumar v. CE.17 Dharapuram Public Servants' Co-operative Thrift and Credit Society Ltd, by its Special Officer, Erode reported in (2007) 2 MLJ 1100, (5) S.Sukumar v. CE.17 Dharapuram Public Servants' Co-operative Thrift and Credit Society Ltd, by its Special Officer, Erode reported in (2007) 2 MLJ 1100, (6) M.Kanagasabapathy Vs. The Special Officer, S.390, Pothanoor Primary Agricultural Cooperative Bank Ltd., Pothanoor, Paramathivelur Taluk, Namakkal District 638 181 reported in 2007 (5) CTC 392, (7) K.Avanasiappan vs. The Management of Thekkalur Primary Agricultural Co-operative Bank (K-2019), Thekkalur Post, Avinashi Taluk, Coimbatore District and others in W.A.No.1411 of 2008, disposed on 20.12.2011 and (8) Mani vs. The Deputy Commissioner-cum, Mr.L.P.Shanmugasundaram, learned Special Government Pleader further submitted that the Secretary of the Co-operative Society falls under the definition of an 'officer' under section 2(19) of the Tamil Nadu Co-operative Societies Act, 1983 and therefore, he would not fall under section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 and in such circumstances, the direction of the writ court, to pay subsistence allowance, by invoking the provisions of the Tamil Nadu Payment of Subsistence Act, 1981, is liable to be set aside.

10. It is also his contention that G.O.Ms.No.122 dated 04.07.2008, repealed the status of common cadre employees, provided in G.O.Ms.No.55 dated 24.03.2000 and therefore, payment of subsistence allowance to the Secretary of 5558, Vadugapatty Primary Agricultural Co-operative Credit Society, Harur Taluk, Dharmapuri District, as per the provisions of the Subsistence Act, is liable to be set aside. It is also his contention that the judgment, relied on by the writ court, has been overruled by the same learned Judge, placing reliance on G.O.Ms.No.55 dated 24.03.2000.

11. Heard the learned counsel for the appellant and perused the materials available on record.

12. Indisputably, when an order of suspension was issued, respondent No.1 was the the Secretary of 5558, Vadugapatty Primary Agricultural Co-operative Credit Society, Harur Taluk, Dharmapuri District. He was suspended on 05.08.2009, followed by a charge memo dated 17.08.2009. After the conclusion of the enquiry, vide order dated 19.01.2011 of the Special Officer, 5558, Vadugapatty Primary Agricultural Co-operative Credit Society, Harur Taluk, Dharmapuri District, he was reinstated in service. From 19.01.2011 he was paid salary. But subsistence allowance from 05.08.2009 to 17.01.2011 has not been paid.

13. It is the contention of the learned counsel for the Appellant-Society that the 1st respondent/petitioner is not entitled for subsistence allowance, as per the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981, as he is not an "employee" as defined in Section 2(a) of the said Act. It is his further submission that at the time of placing him under suspension, the 1st respondent was working as the Secretary of the appellant Society and as per Section 2(19) of the Tamil Nadu Co-operative Societies Act, 1983, he was an "officer" of the Society and therefore he is not entitled for subsistence allowance under the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981.

14. Section 2(a) of the Tamil Nadu Subsistence Allowance Act, 1981 defines employee as here under:

> 2(a) " employee " means any person employed in, or in connection with the work or activities of, any establishment to do any skilled, semi-skilled or unskilled, manual, supervisory, technical, clerical or any other kind of work or activities for hire or reward, whether the terms of employment be expressed

or implied, but does not include any such person-

(i) who is employed mainly in a managerial or administrative capacity ; or

(ii) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature ;

15. A bare reading of Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981, makes it clear that, a person, who is employed in a Managerial or Administrative capacity or being employed in a Supervisory capacity with wages, either by the nature of the duties attached to the office or by reason of the powers vested on him, functions mainly of a managerial nature, would not fall within the definition of an employee.

16. Section 2(19) of the Tamil Nadu Co-operative Societies Act, 1983 reads that 'officer' includes a President, Vice President, Managing Director, Secretary, Assistant Secretary, Member of the Board and any other manner employed under the rules or by-laws to give direction in regards to the business of the registered society. Thus from the reading of Section 2(19), it could be deduced that Secretary of Co-operative Societies is classified as an officer.

17. In the Management, T.P.Spl. 67 Goundanpalayam Primary Agricultural Cooperative Bank Ltd., vs. Asst. Commissioner of Labour reported in 2002 (4) CTC 339, the question, which came up for consideration was, whether payment of subsistence allowance ordered to a Secretary of the Co-operative Bank, is permissible under the Tamil Nadu Payment of Subsistence Allowance Act, 1981, a learned single Judge of this court held as follows:

> 8. Prior to going into the question whether the second respondent is an employee under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 so as to become entitled to file an application of that sort before the first respondent who has jurisdiction over the question of granting the payment of subsistence allowance to the second respondent herein, as per the arguments of the petitioner Co-operative Bank herein, basically the second respondent having been employed in the management of Primary Agricultural Cooperative Bank Limited, is governed by the Tamil Nadu Cooperative Societies Act, 1983 since the Bank is a segment falling under the purview of the Tamil Nadu Cooperative Societies Act, and therefore, it is only

the provisions of this Act which are applicable to the case of the petitioner and as per the definition Section 2(19) of the Tamil Nadu Cooperative Societies Act, "Officer" includes a president, vice-president, managing director, secretary, assistant secretary, member of board and any other person empowered under the rules or the by-laws to give directions in regard to the business of the registered society."

9. Therefore, since the second respondent being the Secretary, is classified as an "officer" under the Tamil Nadu Cooperative Societies Act, 1983 which is applicable to him and therefore, there is no question of a second thought whether he could be again re-classified as an "employee" much less falling within the purview of the definition Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 which question will not arise at all. Therefore, basically, it has to be decided whether the second respondent is an "officer" defined under the definition Section 2(19) of the Tamil Nadu Cooperative Societies Act, 1983 or a mere "employee" as defined under Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981. Needless to mention that once the definition of "officer" as per the Tamil Nadu Cooperative Societies Act, 1983 is applicable to the second respondent, automatically, the other definition under Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 would not be attracted at all.

10. The second respondent, admittedly the Secretary of the petitioner Bank, squarely falls under the definition of "Officer" as defined under the definition Section 2(19) of the Tamil Nadu Cooperative Societies Act, 1983 and he is bound by the Tamil Nadu Cooperative Societies Act and Rules and would not fall under any other Act, much less the Tamil Nadu Payment of Subsistence Allowance Act, 1981 as an "employee". The one and the same authority cannot be an "Officer" and an "employee", nor could he be taken both as an "Officer" for the purpose of Cooperative Societies Act and could be taken as an "employee" for the purpose of Tamil Nadu Payment of Subsistence Allowance Act, and therefore, since the second respondent having been the Secretary of the petitioner Bank and falling under the definition Section 2(19) of the Tamil Nadu Cooperative Societies Act, 1983 as an "Officer", he

cannot be classified otherwise than this for any purpose much less for the purpose of Payment of Subsistence Allowance.

11. Moreover, whether the assignment of the petitioner would fall under the definition of Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act having such powers as expressed by the learned single Judge of this Court in his judgment reported in 1989-1-L.L.N. 689 (supra) has been established which is wanting in this case, especially in view of the fact that the Secretary being an "Officer" of the particular cooperative Wing or Bank is the Chief Executive having all the powers not only appointing, determining the salary and having the powers to dismiss its employees, but also doing all such executive acts which are necessary in the functioning of the Cooperative Society or Bank. Therefore, he cannot, under any circumstance, be brought under the definition of Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 as a mere "employee", particularly when no good reasons are assigned as to how he ceases to be an "Officer" as defined under the definition Section 2 (19) of the Tamil Nadu Cooperative Societies Act, 1983, which is a special legislation having overriding powers on other general Acts.

18. In the Management, T.P.Spl. 67 Goundanpalayam Primary Agricultural Cooperative Bank Ltd., vs. Asst. Commissioner of Labour reported in 2002 (4) CTC 339, the respondent therein employed as Secretary was suspended and terminated. On the claim relating to subsistence allowance during the period of suspension under the Tamil Nadu Payment of Subsistence Allowance Act, 1981, this court, dismissed the same, holding that since respondent was classified as an officer under the Tamil Nadu Co-operative Societies Act, 1983, there is no question of treating him as an employee within the purview of Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981. The said view was also taken in the Management of of Thekkalur Primary Co-operative Bank v. The Assistant Commissioner of Labour, Coimbatore reported in 2006 (1) CTC 784.

19. In Sampath.S v. S.Srinivasan reported in 2004-1-LLJ-411, a learned single Judge of this court, held that non-payment of subsistence allowance in favour of the petitioner therein, cannot be construed as violation of the provisions of Tamil Nadu Payment of Subsistence Allowance Act, 1981. Goundanpalayam

Primary Agricultural Cooperative Bank Ltd.'s judgment has been referred.

20. In S.Sukumar v. CE.17 Dharapuram Public Servants' Co-operative Thrift and Credit Society Ltd, by its Special Officer, Erode reported in (2007) 2 MLJ 1100, petitioner therein was a Manager in a society and was suspended. Charges were framed. Disciplinary action was taken and the petitioner therein was reverted to the post of clerk. During the period of suspension, he was paid subsistence allowance. A Special Officer was appointed and he ordered for recovery of the entire subsistence allowance on the ground that the petitioner being a Manager, is not covered by the Tamil Nadu Payment of Subsistence Allowance Act, 1981. After considering the decision in K.Marappan v. Deputy Register of Co-operative Society, Namakkal reported in 2006 (4) CTC 689, based on which, objections were made as to the maintainability of the writ petition challenging the order of recovery, Goundanpalayam Primary Agricultural Cooperative Bank Ltd., vs. Asst. Commissioner of Labour reported in 2002 (4) CTC 339, S.Poongavanam vs. Special Officer HH 565 Kadaladi Primary Agricultural Co-opperative Bank Ltd, Thiruvannamalai District and Another reported in MANU/TN/2655/2006, a learned single Judge of this court held that the petitioner therein, though may be covered by the Tamil Nadu Payment of Subsistence Allowance Act, 1981, yet following a decision of the Hon'ble Division Bench of this court in District Planning Officer, Dharmapuri and another v. Ponnammal, W.A.No.882 of 2006 disposed on 18.8.2006, to which the learned Judge himself was a party, at paragraph 10, observed that "therefore, in the light of the above principles, the appellants cannot shirk the responsibility of paying subsistence allowance to the respondent as directed by the learned Judge...". At paragraph 13 in Sukumar's case, it was held as follows:

> 13. In the light of the clear legal pronouncements, this Court is inclined to quash the said order. Though the impugned order correctly makes out the legal proposition that the petitioner was not entitled to get subsistence allowance in terms of the PSA Act and, therefore, any claim made on the basis of the said Act was not permissible, yet the Court cannot approve the decision of the respondent-society in recovering the subsistence allowance. If it is the stand of the respondent that the PSA Act will not apply and that the bye-laws of the Society are silent in this regard, in the light of the pronouncements cited supra, the respondent-society cannot shirk its responsibilities from paying the subsistence allowance to the petitioner. The petitioner is

entitled to seek payment of subsistence allowance in the light of the pronouncements referred to above.

21. In M.Kanagasabapathy Vs. The Special Officer, S.390, Pothanoor Primary Agricultural Cooperative Bank Ltd., Pothanoor, Paramathivelur Taluk, Namakkal District 638 181 reported in 2007 (5) CTC 392, after considering the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981, Tamil Nadu Co-operative Societies Act, 1983 and a catena of decisions, at paragraph Nos.59 to 63, a Hon'ble Division Bench held as follows:

> 59. Having regard to the main purport and intent of Tamil Nadu Act 43 of 1981 we can safely conclude that the said Act exclusively deals with the payment of subsistence allowance and none else. Though it can be stated that Act 30 of 1983 having regard to its purport and intent, namely, for the orderly development of the co-operative movement in different fields, it is a special enactment in that respect, when it comes to the question of comparing the said Act with Act 43 of 1981 it will have to be held that the said Act, namely, Act 43 of 1981 being a special enactment dealing only with payment of subsistence allowance, and having regard to its origin being earlier in point of time and by virtue of the application of the maxim 'Generalia Specialibus Non Derogant', the special Act would by necessary implication will have over riding effect on the general Act, namely, Act 30 of 1983. We say so because, though a detailed reference to the various provisions of Act 30 of 1983 disclose that the said Act is mainly meant to regulate proper establishment of a co-operative society and its management and administration after such establishment, the provisions relating to regulation of service conditions of the officers and employees are purely incidental and the said Act 30 of 1983 is not primarily meant for the regulation of the service conditions of the officers and employees of the co-operative society. It also does not specifically deal with the detail procedure as regards to suspension of an employee with particular reference to the period, wages and any other condition, in the course of his employment in any co-operative society.
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> 60. In fact, under Section 75 of the Act, though there is a provision providing for suspension

of an employee, there is no specific provision as regards the manner in which an employee placed under suspension pending enquiry is to be dealt with. To be more specific, there is no provision in the Act providing for the manner in which payment of subsistence allowance has to be made during the period of suspension pending enquiry. Whereas under Act 43 of 1981 what is left out in the Act 30 of 1983 has been specifically taken care of, namely, the payment of subsistence allowance in respect of an "industrial establishment" which term takes within its fold even a registered co-operative society governed by the provisions of Act 30 of 1983. Therefore, when it comes to the question of payment of subsistence allowance, it can be safely held that Act 43 of 1981 being a special legislation on the subject would alone govern and in that respect Act 30 of 1983 would become a general enactment, having regard to the applicability of the maxim 'Generalia Specialibus Non Derogant'. When we approach this issue from the other angle as to whether there is any specific provision in the Act 30 of 1983 by way of non-abstante clause, it will have to be held that there is no such specific provision which would exclude the applicability of the Act 43 of 1981 to any co-operative society. In this context, when we apply the decision of the Hon'ble Supreme Court reported in AIR 1961 Supreme Court 1762(Major E.G.Barsay Vs. State of Bombay) having regard to the fact that there is no non obstante clause in the Act 30 of 1983 and by virtue of the fact that the Act 43 of 1981 being special enactment earlier in point of time Act 43 of 1981 alone would prevail.

61. One other aspect, which is also to be examined is that there are provisions in the bye-laws of the co-operative society which provides for payment of subsistence allowance. As far as the applicability of the bye-laws are concerned, having regard to the categoric decision of the Hon'ble Supreme Court reported in AIR 1970 Supreme Court 245 (Co-operative Central Bank Ltd., and others etc. Vs. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others etc.) that bye-laws of a co-operative society framed in pursuance of the provisions of the Act cannot be held to have the force of law, it will have to be held that the same would not in any way impinge upon the specific provision contained under the Act 43 of 1981

providing for payment of subsistence allowance. In fact the Hon'ble Supreme Court in the said decision, apart from stating that the same has no statutory force also held that such bye-laws of the society are similar in nature to the Articles of Association of a company incorporated under the Companies Act and therefore, it has no force of law. Similarly, comparison was also made with the Standing Orders under the Industrial Employment Standing Orders Act, where again, it was held that though such Standing Orders are binding on the employer and employee of an industry, they do not have the force of law. Therefore, when it is well settled that bye-laws of the co-operative society have no force of law, the same cannot stand the scrutiny when it comes to the question of applicability of Act 43 of 1981. We are therefore, of the firm view that Act 43 of 1981 being a special enactment specifically enacted to deal with the payment of subsistence allowance during the period of suspension pending enquiry, which act being earlier in point of time as compared to the Act 30 of 1983 which should be construed as a general enactment in the present context, Act 43 of 1981 alone would prevail.

62. As far as the definition of an 'officer' under Section 2(19) of the Act 30 of 1983 is concerned, the same does not in any manner conflict with the provisions contained under Act 43 of 1981 even though the applicability of the said Section in the context of various other provisions contained in Act 30 of 1983 will definitely hold good. The construction of the said provision, compared with the definition of an 'employee' under Section 2(a) of Act 43 of 1981, it can be safely held that there is no necessity to examine the combined effect of both the provisions. There can be no difficulty in examining the question whether a person falling within the term 'officer' as defined under Section 2 (19) of the Act 30 of 1983 would fall within the definition of 'employee' as defined under Section 2 (a) of the Act 43 of 1981. If such an exercise is independently carried out, while dealing with an application preferred under the Act 43 of 1981, there is no question of any conflict arising there from. Therefore, the statement of law as stated by the learned single Judge in the decision reported in 2002(4) CTC 339 (The Management, T.P.Spl.67 Goundanpalayam Primary Agricultural Co-operative Bank Ltd., by its President, Goundanpalayam Kangeyam

via Erode District Vs. The Assistant Commissioner of Labour, The Authority under the Payment of Subsistence Allowance Act, Salem and another) was wholly unnecessary. When the status of an employee is defined under Section 2(a) of the Act 43 of 1981, it can be independently examined irrespective of such a person falling within the definition of 'officer' under Section 2(19) of the Act 30 of 1983. Therefore, there is no gainsaying that the definition under Section 2(19) of the Act 30 of 1983 would make the Act 43 of 1981 itself inapplicable. In view of the above, we are unable to subscribe to the said view of the learned Single Judge having regard to our detailed analysis made in the earlier paragraphs, where the said features of Act 43 of 1981 and by virtue of the said position, the same would reign the field in derogation of the Act 30 of 1983, which is a general enactment. Having regard to our above conclusion, we overrule the judgment reported in 2002(4) CTC 339 (The Management, T.P.Spl.67 Goundanpalayam Primary Agricultural Co-operative Bank Ltd., by its President, Goundanpalayam Kangeyam via Erode District Vs. The Assistant Commissioner of Labour, The Authority under the Payment of Subsistence Allowance Act, Salem and another).

63. Therefore, applying the various guidelines set out in the decisions of the Hon'ble Supreme Court referred to above, we are convinced that on a construction of the principal subject matter as well as particular perspective of both the enactments, we have no hesitation in holding that the Act 30 of 1983 is a general enactment while Act 43 of 1981 is a special enactment. In the light of our conclusion as above, the writ appeal deserves to be allowed and the orders of the learned Single Judge impugned in this appeal has to be set aside. However, the mere applicability of the Act 43 of 1981 by itself would not straightaway entitle the appellant to claim that his application as allowed by the respondents 2 and 3 are to be sustained.

22. In K.Avanasiappan vs. The Management of Thekkalur Primary Agricultural Co-operative Bank (K-2019), Thekkalur Post, Avinashi Taluk, Coimbatore District and others in W.A.No.1411 of 2008, disposed on 20.12.2011, the appellant therein, was employed as a Secretary of the Society. He was suspended for certain acts of misconduct. He was paid subsistence allowance at the rate of 25% of his wages in terms of the bye-law 12(c) of the Society. He filed appeal before the Assistant Commissioner

of Labour, Coimbatore, claiming subsistence allowance in terms of Tamil Nadu Payment of Subsistence Allowance Act, 1981 on the ground that he is an employee within the meaning of section 2(a) of the said Act. Appeal was dismissed by the Assistant Commissioner of Labour, Coimbatore. Further appeal before the Deputy Commissioner of Labour was allowed stating that Secretary would be falling within the definition of Section 2(a) of the Act and directed extension of benefit of subsistence allowance in terms of Tamil Nadu Payment of Subsistence Allowance Act, 1981. When the correctness of the order of the Deputy Commissioner of Labour, Coimbatore, was challenged, the writ court, reversed the decision by stating that the appellant was not an employee within the definition of Section 2(a) of the said Act. The employee preferred a writ appeal. After adverting to the definitions and on the facts and circumstances of the case, a Hon'ble Division Bench of this Court, vide Judgment dated 20.12.2011 in W.A.No.1411/2008, at paragraph Nos.4 to 6, held as follows:

> 4. Section 2(a) provides that an employee means any person employed in or in connection with the work or activities of any establishment to do any skilled, semi-skilled or unskilled, manual, supervisory, technical, clerical or any other kind of work or activities for hire or reward, whether the terms of employment be expressed or implied. By virtue of the above definition, even when a person is employed in the supervisory capacity, he would be an employee within the said definition. Nevertheless, sub-clauses (i) & (ii) of clause (a) of Section 2 excludes certain categories of persons from the definition. Sub-clause (ii) of clause (a) of Section 2 excludes a person who being employed in a supervisory capacity draws wages exceeding three thousand and five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested to him, functions mainly of a managerial nature.
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> 5. It is the specific case of the first respondent co-operative Bank that the appellant was the administrative head over the Assistant Secretary, Cashier, Accountant, Jewel Appraiser, Clerk, Salesman, Packer, Peon and Watchman and they are under his control. He is empowered to sign cheques and he is also empowered to grant leave to the subordinate employees. He is the highest paid person in the Bank with a monthly salary of Rs.10,447/-. He is also empowered to issue service certificates to the subordinate officers and

employees. He is entitled to use the separate seal and letter heads. Over all, he is the supervisor of the job carried out by his subordinates. In support of the above, various exhibits have been filed. With those averments, the first respondent pointed out that in view of the duties and responsibilities of the appellant, he cannot be considered to be an employee within the definition of Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, as he is the Secretary of the Bank. In fact, during his examination, the appellant himself had admitted the above contentions of the first respondent Bank. The appellant has been receiving a salary of more than Rs.3,500/- per mensem and he is the administrative head of all the activities of his subordinates right from the Assistant Secretary to Watchman. In terms of sub-clause (ii) of clause (a) of Section 2, he is excluded from the definition of Section 2(a) of the said Act. The learned Judge, after analysing the above provisions, has held that the appellant cannot be brought within the definition of Section 2(a) and consequently held that he is not an employee. That apart, in terms of Section 2(19) of the Tamil Nadu Co-operative Societies Act, 1983, 'Officer' includes a President, Vice President, Managing Director, Secretary, Assistant Secretary, Member of Board and any other person empowered under the rules or bye-laws to give directions in regard to the business of the registered society. That definition of Officer includes the Secretary of the Co-operative Bank as well. Hence, the learned Judge has correctly held that the appellant is not an employee within the meaning of Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act and he is an Officer within the meaning of Section 2 (19) of the Tamil Nadu Co-operative Societies Act. Even on facts, the learned Judge has found that in terms of bye-law 12(c) of the society, the Secretary would be entitled to the payment of subsistence allowance only at the rate of 25% of the basic wages during the period of suspension and he had been paid that amount as well.

6. Having regard to the above findings and for our reasons as well, we are of the considered view that the appellant, who is the Secretary of the first respondent co-operative Bank, cannot be termed to be an employee under Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act,

1981. Accordingly, the challenge to the order in the writ petition must fail and the writ appeal is dismissed. No costs.

23. In Mani vs. The Deputy Commissioner-cum ....., a learned single Judge of this court, held as follows:

> 3. In this case, the evidence clearly shows that under the byelaws, the Secretary is the Chief Executive of the bank vested with powers to sanction loans, power to appoint staff committee and in the absence of the Special Officer, has power to grant leave to staff members. The petitioner himself has admitted in his evidence that he was the Chief Executive of the Bank and that he was also sanctioning jewel loans and F.D. Loans. As Chief Executive, he would certainly have over all supervision of the activities of the staff employed in the Bank and would be the person who would also have the charge of the correspondence of the Bank. The petitioner would clearly be a person who is in the managerial or administrative capacity. There is no doubt that he was employed in administrative capacity. It is not his case at any point of time that he was employed in any capacity other than administrative capacity.
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> 4. Counsel for respondents 1and 2 brought to my notice a decision rendered by the Kerala High Court with regard to the status of the Secretary of a Co-operative Society vis-a-vis the definition of "employee" under the Kerala Payment of Subsistence Allowance Act, 1972. The Division Bench of the Court in that case viz., Shertallai Taluk Co-operative Land Mortgage bank Ltd. v. Deputy Labour Commissioner [1991] 78 FJR 355 held that the Secretary of the Co-operative bank who had the duty to execute all the decisions of the Board of Directors and was the Chief Executive and was not an employee for the purpose of the Subsistence Allowance Act.
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> 5. The impugned order is not vitiated by any error. The petitioner not being an employee as defined in Section 2 (a) of the Act was not entitled to make any claim under the provisions of the Act. The rejection of this petition, however, is not to be construed as denial of his right to claim subsistence allowance under any other law to the extent the petitioner is entitled to do so. The writ petition is dismissed.

24. Thus, it is clear from a catena of decision, referred to above, that a Secretary working in a Co-Operative Society executes the decisions of the Board of Directors and thus he performs managerial duties and therefore as defined in Section 2 (19) of the Tamil Nadu Co-operative Societies Act, he is an officer and not an employee as defined in Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981. Thus, the issue as to whether a Secretary working in a co-operative society is an "officer" or "employee" and whether he is entitled for subsistence allowance under the provisions of Tamil Nadu Payment of Subsistence Allowance Act, 1981, is no more res-integra in view of the judgment in K.Avanasiappan vs. The Management of Thekkalur Primary Agricultural Co-op. Bank (K-2019), referred to supra. In view of the above settled position of law, the order made in the writ petition is to be interfered with and hereby ordered that the 1st respondent/petitioner is not entitled for subsistence allowance under the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981. However, we hold that the first respondent/petitioner is entitled for subsistence allowance, in terms of the approved bye-laws of the appellant's society for the period he was under suspension.

25. Writ appeal is allowed to the extent that the 1st respondent, Secretary of the Society, will not come under the provisions of Payment of Subsistence Allowance Act, and that he would be entitled to subsistence allowance, as per the approved by-laws. Admittedly, subsistence allowance was not paid from 05.08.2009 to 17.01.2011. The 1st respondent is entitled to subsistence allowance, as indicated, which the appellant is directed to compute and disburse the same, within a period of two months, from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

asr
To

The Joint Registrar of Cooperative Societies,
Dharmapuri Region,Dharmapuri.

Writ Appeal No.1552 of 2012

SSI(CO)
CSL/15.03.2019