

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 26/10/2015

DATED: 28 /01/2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.3802 of 2015 &
M.P.No.2 of 2015

R.2650, Keezhakudiyiruppu Primary
Agricultural Co-op. Credit Society,
Rep. by its President,
Keezhakudiyiruppu Village & Post,
Udayarpalayam Taluk, Ariyalur District. Petitioner

Vs.

1.The Assistant Commissioner of Labour /
Competent Authority,
Tamil Nadu Payment of Subsistence Allowance Act,
Office of the Deputy Commissioner of Labour,
Trichy.

2.G.Pandithurai Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India for a Writ of Certiorari, to call for the
records relating to the order dated 20.07.2012 made in
P.Oo.No.03/2012, on the file of the first respondent herein and
quash the same.

For Petitioner : Mr.C.Munusamy

For Respondents : Mr.E.M.S.Natarajan
Government Advocate for R1

Mr.C.Prakasam for R2

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O R D E R

The petitioner has submitted that the second respondent was working as Clerk from 28.04.1990. In the year 1999, he committed irregularities causing monetary loss to the petitioner Society. Hence, he was issued with charge memo framing as many as four charges and he offered to give explanation for the charges framed as against him. Thereafter Domestic Enquiry Officer was appointed. The Enquiry Officer conducted enquiry by giving ample opportunities to the second respondent to put forth his case. After considering the evidence available on record as well as the explanation of the second respondent, the Enquiry Officer found that most of the charges were proved. Then again notice was issued to the second respondent to give explanation on the finding of the Enquiry Officer. However, the second respondent did not come forward to put forth his explanation or whatever it may be. Hence, the Special Officer passed the order dated 29.11.2011 terminating the services of the second respondent since continuance of service of the second respondent will be detrimental to the interest of the society and its members besides public at large.

2. The petitioner has further submitted that the second respondent has challenged the above said order before the Joint Registrar of Co-operative Societies by way of revision under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 and the same was rejected on 30.10.2012. The second respondent has filed writ petition challenging the said order before this Court in W.P.No.12477 of 2013 and the same is pending disposal. The petitioner has further submitted that the second respondent was placed under suspension on 07.02.2007 and charge memo was issued. Thereafter, the second respondent filed writ petitions one after another in each and every stage of enquiry proceedings and stalled the entire proceedings. Therefore, there is no delay on the part of the Management in completing the Domestic Enquiry Proceedings. Apart from that the second respondent was duly paid a sum of Rs.1,98,788/-. Having received the entire subsistence allowance, the second respondent again filed a petition seeking further subsistence allowance before the first respondent and the same was allowed. The order passed by the first respondent is nothing but arbitrary and capricious. Hence, the petitioner has filed the above writ petition.

3. The learned counsel Mr.C.Munusamy appearing for the petitioner submits that the second respondent was working as a Clerk from 28..04.1990 in the petitioner Co-operative Society. During his service, in the year 1999, he committed irregularities for his personal gain and caused monitory loss to the petitioner Society. Hence, he was issued with charge memo, framing as many as four charges and he was offered to give

explanation for the charges framed against him. Subsequently, a comprehensive enquiry was conducted after affording sufficient opportunity to the second respondent. The said charges were proved. Therefore, second notice was issued to the second respondent for his explanation as per mandatory provision. He did not give any explanation. Hence, the second respondent was terminated from service by its order dated 29.01.2011. The second respondent had also challenged the said order before the Joint Registrar of Co-operative Societies as per Section 153 of the Tamil Nadu Co-operative Society Act. The said revision was rejected on merits. Aggrieved by the said order the petitioner has filed W.P.No.12477 of 2013 and the same is pending enquiry.

4. The learned counsel further submits that the second respondent was placed under suspension from 07.02.2007 and charge memo was issued. The second respondent filed writ petitions one after another in each and every stage of enquiry proceedings and stalled the entire proceedings. Since there is no delay on the part of the management in completing the domestic enquiry proceedings. Apart from that, the second respondent was paid a sum of Rs.1,98,788/- and after having received the entire subsistence allowance, the second respondent had again filed petition seeking further subsistence allowance before the first respondent. The same was erroneously allowed. Hence, the very competent counsel entreats the Court to set aside the first respondent's order dated 20.07.2012.

5. The highly competent counsel Mr.C.Prakasam appearing for the second respondent submits that the second respondent has filed petition in S.A.No.3 of 2012, on the file of the Assistant Commissioner of Labour, Trichy, against the Special Officer, Co-operative Society. He had also filed counter statement and resisted the same. The Assistant Commissioner of Labour had conducted a comprehensive enquiry. After recording oral evidence of both parties and on perusing the relevant documents marked by the employee, the impugned order has been passed and the Assistant Commissioner of Labour directed the petitioner herein to pay a sum of Rs.1,70,325/-. The Assistant Commissioner of Labour has not committed any irregularity or illegality. As such, the said order is executable against the petitioner herein.

6. The highly competent Government Advocate Mr.E.M.S.Natarajan appearing for the first respondent submits that the second respondent herein has filed a petition before the first respondent against the writ petitioner and the same was decided on merits after considering oral and documentary evidence of both sides.

7. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on

all sides and on perusing the typed set of papers, this Court is of the view that the impugned order has been passed by the first respondent, after well considering the oral and documentary evidence and after correctly assessing the subsistence allowance. Therefore, the above writ petition does not generate sufficient force to allow it. Hence, the above writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

r n s/vs

To

The Assistant Commissioner of Labour /
Competent Authority,
Tamil Nadu Payment of Subsistence Allowance Act,
Office of the Deputy Commissioner of Labour,
Trichy.

W.P.No.3802 of 2015 &
M.P.No.2 of 2015

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