

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2016

CORAM

THE HON'BLE Mr. JUSTICE M.SATHYANARAYANAN

W.P.Nos.25798 and 31447 of 2016
and
W.M.P.No.27285 of 2016

W.P.No.25798 of 2016

P.Eswaran ...Petitioner

-Vs-

The Managing Director,
Coimbatore District Co-operative Bank,
No.80, State Bank road,
Post Box No.3781,
Coimbatore - 641 018. ...Respondent

This petition is filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the respondent to furnish documents sought for by the petitioner vide petitioner's interim reply dated 22.06.2016.

For Petitioner : Mr.V.Pravin Rathinam

For Respondent : Mr.L.P.Shanmugasundaram, Spl.G.P.

W.P.No.31447 of 2016

P.Eswaran ...Petitioner

-Vs-

1.The President,
Coimbatore District Central Co-operative Bank,
No.80, State Bank road,
Post Box No.3781,
Coimbatore - 641 018.

2. The Registrar of Co-operative Societies,
No.170, EVR Periyar High Road,
Kilpauk,
Chennai - 600 010

...Respondent

This petition is filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent in his proceedings dated 07.01.2015 vide Rc.00041/2015/P and to quash the same and consequently direct the respondent to pay to the petitioner the subsistence allowance in accordance with the said rules and bye laws and existing practice from the period of suspension commencing from 07.01.2015 (deducting the amount of subsistence allowances paid for the period fro months of January 2015 February 2015).

For Petitioner : Mr.V.Pravin Rathinam

For Respondents : Mr.L.P.Shanmugasundaram, Spl.G.P.

COMMON ORDER

By consent, both the writ petitions are taken up for final disposal and a common order is passed.

2. The petitioner, while working as Assistant General Manager (Agricultural Credit) in the service of the first respondent was placed under suspension by the first respondent, by order dated 07.01.2015.

3. The grievance expressed by the petitioner is that despite he has been placed under suspension, the subsistence allowance was paid only for the months of January and February, 2015 and very belatedly, the charge memo was issued on 06.06.2016. Making a challenge to the charge memo as well as the non payment of subsistence allowance as well as for furnishing certain documents so as to enable him to submit the written statement of defence, the petitioner came forward to file these writ petitions.

4. Learned counsel for the petitioner would submit that unless and until the petitioner is paid with the subsistence allowance, it is not possible for him to participate in the departmental enquiry and his family is suffering very much on account of non-payment of subsistence allowance from March, 2015 onwards. So far as the charge memo is concerned, it is submitted by the learned counsel for the petitioner that the charge memo came to be issued belatedly and no proper explanation is putforth. He further drawn the attention of this Court to the bye-laws of the first respondent and would submit that as per bye-law 13(2)(c), no employee shall be kept under suspension for a period exceeding one year without the approval or ratification of the Registrar. In this case, though he was placed under suspension as early as on 07.01.2015, it has not been approved/ ratified. Therefore, he prays for revocation of order of suspension.

5. Learned counsel for the petitioner has drawn the attention of the Court to the affidavit filed in support of W.P.No.25798/2016 and would submit that for the purpose of submitting the written statement of defence, the petitioner requires certain documents. In this regard, he has also made an interim reply on 22.06.2016 and prayed for furnishing of certain documents.

6. Per contra, Mr.L.P.Shanmugasundaram, learned Special Government Pleader would submit that insofar as the revocation of the suspension order is concerned, the petitioner has not made any such plea in the affidavit filed in support of the writ petition in W.P.No.31447 of 2016 and would further add that so far as non-payment of subsistence allowance is concerned, necessary instructions may be given to the first respondent to pay the arrears of subsistence allowance and continue to pay the subsistence allowance till the culmination of the disciplinary proceedings. So far as the contention of the learned counsel for the petitioner that on account of the delay, the charge memo is to be quashed, it is submitted by the learned Special Government Pleader that the delay in issuance of the charge memo per se cannot be a ground to quash the charge as it would depend upon the facts and circumstances of each case and on instruction, he would further submit that the representation dated 22.06.2016 submitted by the petitioner seeking certain documents so as to enable him to submit the written statement of defence will be considered in accordance with law and prays for appropriate orders.

7. This Court paid the best attention to the rival submissions and perused the materials placed on record.

8. The petitioner, in response of the charge memo dated 06.06.2016, submitted a reply dated 22.06.2016, praying for furnishing of certain documents and according to the learned counsel for the petitioner, without those documents, the petitioner may not be in a position to submit his written statement of defence and make his effective defence in the departmental proceedings. Insofar as the challenge made to the charge memo as well as the order of suspension is concerned, it is the submission of the petitioner that as per the above said bye laws, it should be approved / ratified by the Registrar and it has not been done.

9. This Court, after considering the rival submissions is of the view that it would be suffice to direct the first respondent to consider and dispose of the petitioner's representation dated 22.06.2016 seeking certain documents so as to enable him to submit his written statement of defence, within a period of eight weeks from the date of receipt of a copy of this order. On receipt of the same, it is open to the petitioner to work out

his remedy in accordance with law. The Writ Petition No.25798 of 2016 is disposed of accordingly.

9. Insofar as the challenge made to the charge memo is concerned, in the light of bye-law 13(ii)(c), it is open to the first respondent to seek approval/ ratification from the Registrar for continuance of the order of suspension and the said exercise shall be completed within eight weeks from the date of receipt of a copy of this order and upon taking a decision, necessary communication should be sent to the petitioner also. The arrears of subsistence allowance shall be paid to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. Till the revocation of the order of suspension, the petitioner shall be paid the subsistence allowance periodically subject to the condition the petitioner shall file an affidavit as to the non-employment. It is also made clear that the petitioner shall extend maximum co-operation for early conclusion of the departmental proceedings in his own interest. The Writ Petition No.31447 of 2016 is disposed of according. However, in the circumstances of the case, there is no order as to costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

vs

To

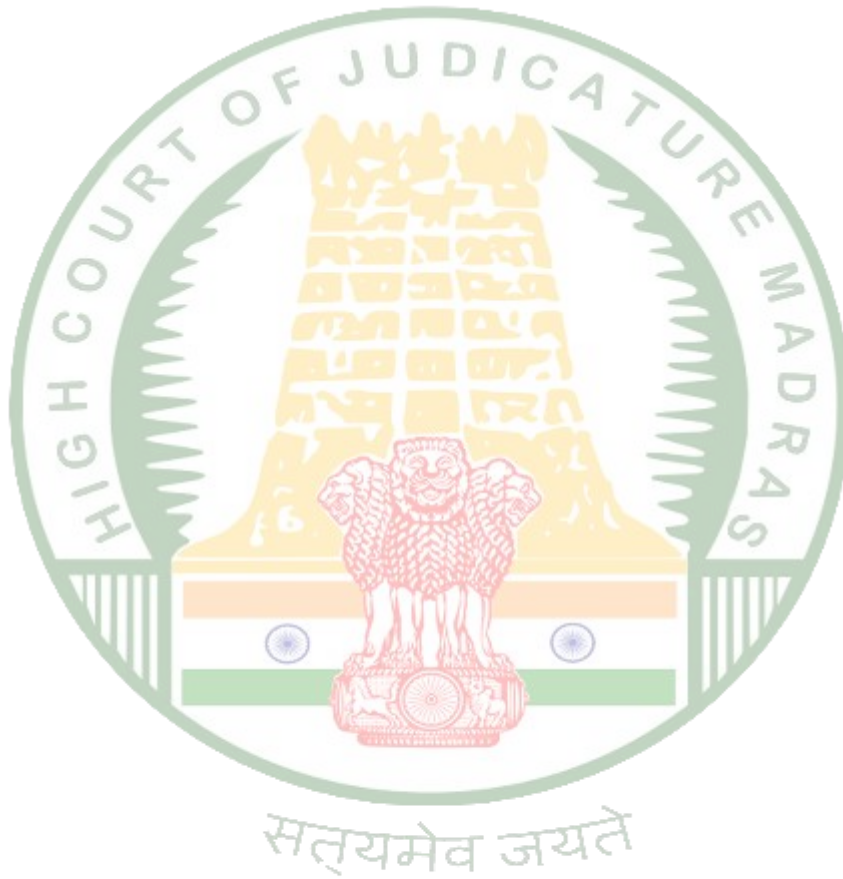
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2 cc to M/s.S.V. Pravin Rathinam, Advocate, Sr. 72561, 72562
1 cc to M/s. Government Pleader, Sr. 72632

W.P.Nos.25798 and 31447 of 2016

CNR (CO)
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