

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 19763 of 2009
AND
CONTEMPT CASE No.1554 of 2011

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DATED 21st JULY, 2016

BETWEEN

Damera Hemalatha

...Petitioner in both WP & CC

And

The Primary Agricultural Cooperative Society
Limited, Arnakonda, Choppadandi Mandal,
Karimangar District, rep. by its President and ors.

....Respondents in WP

Minupala Tirupathi Rao,
President, Primary Agricultural Cooperative Society,
Arnakonda, Chityalapally Post,
Choppadandi Mandal, Karimnagar District

....Respondent in CC

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

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COMMON ORDER:

The facts which lie in narrow compass are not in dispute. However, the facts for the purpose of disposal of the Writ Petition as well as Contempt Case in brief are as follows:
the husband of the petitioner, late Sri Damera Satyanarayana

Reddy was the paid Secretary of the first respondent-Society. While he was in service, a show cause notice was issued to him on the allegation that he had failed to remit an amount of Rs.97,200/-, which was recovered from the members of the Society. Thereafter an enquiry was conducted in accordance with the due procedure and based on the enquiry report submitted by the enquiry officer, the said D.Satyanarayana Reddy, husband of the petitioner was kept in suspension through order dated 3.5.2007. Questioning the said suspension, he filed Writ Petition No.10202 of 2002 and this Court by interim order dated 07.02.2008 suspended the said suspension order. Challenging the same, the first respondent-Society preferred Writ Appeal No. 281 of 2008 and a Division Bench of this Court by order dated 18.03.2008 disposed of the said Writ Appeal as well as Writ Petition No. 10202 of 2002 directing that the enquiry proceedings should be completed before 31.07.2008. If for any reason, the enquiry is not completed within the stipulated period, the delinquent employee-husband of the petitioner should be reinstated in service on 01.08.2008. On 9.7.2008 the enquiry was completed and the enquiry officer submitted his report before 31.07.2008. Thereafter, a show cause notice was also issued to the husband of the petitioner, who submitted his explanation on 30.07.2008. The General Body of the first respondent-Society by its Resolution dated 14.09.2008 accepted the report of the Enquiry Officer and resolved that the petitioner be removed from service subject to the approval of the District Level Committee. However, no orders appear to have been passed by the society. As a matter of fact, whether the District Level Committee was apprised with

regard to dismissal of the petitioner and whether any orders have been passed is not clear in the present case. On 23.06.2009 the husband of the petitioner-D.Satyanarayana Reddy passed away. Thereupon, the wife of late D.Satyanarayana Reddy, filed the present Writ Petition seeking payment of death benefits of her late husband who worked as Secretary of the first respondent-Society, suspension allowance from 3.5.2007 on wards, gratuity, arrears of salary from the date of suspension till the date of his death etc., treating him as in service in terms of the orders of the Division Bench of this Court in Writ Appeal No. 281 of 2008, dated 18.03.2008.

The learned Counsel for the petitioner, Sri Nandigama Krishna Rao while reiterating the averments made in the Writ Petition submits that in terms of the orders of the Division Bench of this Court, the husband of the petitioner shall be deemed to have been in service with effect from 1.8.2008 and as such he is entitled to benefits of salary from 1.8.2008 to 14.9.2008. The learned Counsel for the petitioner submits that pursuant to the interim order of this court, the petitioner had been paid an amount of Rs.45,150/- vide cheque dated 29.7.2012 and the same is not in dispute.

On the other hand, the learned Counsel for the first respondent-Society submits that as directed by the Division Bench of this Court, the enquiry was in fact completed on 9.7.2008 and the General Body of the first respondent-Society passed a Resolution on 14.9.2008 resolving to dismiss the husband of the petitioner from service and as such, he is not entitled for payment of any amount being the Secretary of the

first respondent-Society.

Having considered the respective submissions of the learned Counsel on either side, the fact remains that as per the records available as of today, it is clear that no dismissal order was communicated to the husband of the petitioner in terms of the Resolution of the General Body of the first respondent-Society dated 14.9.2008. The husband of the petitioner passed away on 23.06.2009. The Division Bench of this Court directed the Enquiry Officer to complete the enquiry before 31.07.2008. It is submitted that the enquiry initiated against the husband of the petitioner was completed on 9.7.2008 and thereafter a show cause notice was issued, to which he submitted his explanation on 30.7.2008. In that view of the matter, the argument of the learned Counsel for the petitioner that the enquiry was not completed as directed by the Division Bench of this Court cannot be accepted. However, considering the fact that no final orders were communicated to the husband of the petitioner, the suspension pending enquiry deemed to have been in force till 23.06.2009, the date on which the husband of the petitioner passed away. In which event, as the suspension order pending enquiry deemed to have been in force, it is just and proper that subsistence allowance ought to have been paid to him. A letter dated 27.7.2012 annexed to the counter filed in Contempt proceedings is placed before this Court wherein the petitioner made a claim for payment of subsistence allowance from 3.5.2007 to 23.06.2009 (from date of suspension till the date of demise) which has been worked out therein to Rs.45,150/-. There is some ambiguity in view of the counter affidavit filed by the respondent in Contempt Case

wherein it is stated by the first respondent-Society itself *“insofar as the payment of subsistence allowance from 3.5.2007 to 31.7.2008 is concerned, this respondent calculated the amount at the rate of 50% for six months and at the rate of 75% for the remaining period on the amount of Rs.4,300/- from 01.05.2007 to till 14.09.2008 and thus he is entitled for an amount of Rs.45,150/-.”* In other words, in the letter addressed by the petitioner, what has been stated is that the subsistence allowance is claimed for the period from 3.5.2007 to 23.6.2009 (from the date of suspension till the date of demise of Dameara Satyanarayana Reddy) however in the counter of the first respondent-Society, it is stated that the subsistence allowance has been calculated for the period from 3.5.2007 to 14.9.2008, whereas the said D.Satyanarayana Reddy passed away on 23.6.2009. In those circumstances, in view of the averments in the counter and letter dated 27.07.2012 of the petitioner, it is not clear whether subsistence allowance was paid for the period from 3.5.2007 to 23.6.2009 or from 3.5.2007 to 14.9.2008. Taking that enquiry has been completed on 9.7.2008 as directed by the Division Bench of this Court and inasmuch as no final orders were passed till 23.6.2009, it is deemed that suspension pending enquiry initiated against said D.Satyanarayana Reddy was in force, in which event, the said D.Satyanarayana, husband of the petitioner ought to have been paid subsistence allowance till 23.6.2009. As it was only worked out by the petitioner with regard to payment of subsistence allowance, having regard to the facts and circumstances of the case, there shall be a direction to the first respondent-Society to calculate the subsistence allowance as payable for the period from 3.5.2008 to 23.6.2009 (from the date of suspension till the date

of demise of said D.Satyanarayana Reddy) and pay the same within a period of six weeks from the date of receipt of a copy of this order. It is needless to observe that the amount if any already paid on account of subsistence allowance, the same shall be deducted and only balance amount of subsistence allowance shall be paid by the first respondent-Society. Further it is made clear that with respect to claim for payment of gratuity etc., the petitioner shall workout remedies in accordance with law with the concerned competent authority.

As the Writ Petition itself is disposed of today, there is no need to proceed further with the Contempt Case.

In the light of the foregoing reasons, the Writ Petition as well as Contempt Case are disposed of.

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Miscellaneous petitions pending consideration if any in the Writ Petition and Contempt Case shall stand closed in consequence. No order as to costs.

JUSTICE CHALLA KODANDA RAM

DATED 21st JULY, 2016.

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