

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.8771 of 2017

R.Murugesan

.. Petitioner

-vs-

1. The Chengam Agri Producers Coop.
Marketing Society Ltd., Chengam
Tiruvannamalai District
rep.by its Coop.Sub Registrar/
Managing Director
2. The Joint Registrar of Coop. Societies/
Revisional Authority
Tiruvannamalai Zone
Tiruvannamalai .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the memo dated 26.6.2014 of first respondent as confirmed by second respondent order dated 4.3.2016 in Revision Petition No.10/2015 Sa Pa/Na Ka 7000/2014 Sa Pa, quash the same and consequently direct the first respondent to pay the subsistence allowance under the Payment of Subsistence Allowance Act treating the period from 30.1.2004 to 26.6.2014 as one of suspension.

For Petitioner :: Mr.S.Venkataraman

For Respondents :: Mr.L.P.Shanmughasundaram
Special Government Pleader

ORDER

A very peculiar case has been brought today by Mr.S.Venkataraman, a practising Advocate of this Court, seeking an unacceptable relief to be granted in his client's favour.

2. Few facts necessary for the disposal of this writ petition are as follows:-

The petitioner, who was working as Secretary in-charge of Chengam Agri Producers Cooperative Marketing Society Ltd., was

placed under suspension by an order dated 30.1.2004, as he was to retire from service on the next day i.e., 31.1.2004. Thereafter, he was issued with a charge memo on 15.5.2004 alleging several irregularities. Challenging the same, he has preferred Revision Petition No.21 of 2008 under Section 153 of the Tamil Nadu Cooperative Societies Act before the Joint Registrar of Cooperative Societies, Tiruvannamalai taking a firm stand that no disciplinary proceeding could be initiated after the petitioner reached the age of superannuation, as there was no bye-law to that effect. The revisional authority dismissed the revision petition by order dated 3.12.2008, however, observing that the petitioner was entitled to receive the subsistence allowance as per the Tamil Nadu Payment of Subsistence Allowance Act, 1981. The said order was put to challenge in W.P.No.29439 of 2008 and the said writ petition was dismissed on 5.6.2012. Aggrieved thereby, the petitioner preferred W.A.No.1856 of 2012. But the Hon'ble Division Bench, after referring to various judgments of this Court, came to the conclusion that the delinquent cannot be kept under suspension beyond the date of superannuation, as there is no provision either in the Tamil Nadu Cooperative Societies Act or in the bye-laws, with liberty to the respondents to contest the appeal before the Cooperative Tribunal so far as the surcharge proceedings initiated against the petitioner are concerned. Finally, on analyzing the facts placed before it, the writ appeal was allowed setting aside the impugned order with a direction to the respondents to confer the statutory and other entitlements due and payable to the petitioner in accordance with law as expeditiously as possible.

3. Based on the above observation, it is claimed that the petitioner has given a representation on 7.6.2014 requesting the respondents to compute the benefits including the subsistence allowance for the period from 30.1.2004. Pursuant thereto, the first respondent issued a memo dated 26.6.2014 computing the terminal benefits, however, without subsistence allowance from 30.1.2004. As against the memo refusing to pay the subsistence allowance from 30.1.2004, a revision petition was again filed under Section 153 of the Tamil Nadu Cooperative Societies Act claiming subsistence allowance from 30.1.2004 to 26.6.2014. However, the Joint Registrar of Cooperative Societies/revisional authority, Tiruvannamalai, the second respondent herein has rejected his request for payment of subsistence allowance from 30.1.2004. Once again, challenging the said order, this writ petition has been filed.

4. Mr.S.Venkataraman, learned counsel for the petitioner submitted that when the petitioner was serving as Secretary in-charge, knowing pretty well that he was to retire on 31.1.2004, suddenly was placed under suspension one day prior to his date

of retirement on 30.1.2004 and he was kept under suspension till final orders were passed by the Hon'ble Division Bench in W.A.No.1856 of 2012 on 23.4.2014 setting aside the order dated 3.12.2008 passed by the first respondent. In the meanwhile, the Joint Registrar of Cooperative Societies, Tiruvannamalai, while dismissing the revision petition No.21 of 2008 on 3.12.2008, has clearly given a finding that the petitioner was entitled to get the subsistence allowance as per the Act even from 30.1.2004. This order has not been complied with. Therefore, even as per the order passed by the Joint Registrar of Cooperative Societies, Tiruvannamalai, the first respondent should have paid the subsistence allowance from the date of suspension i.e., from 30.1.2004 till 26.6.2014.

5. But this Court hardly finds any justification on the part of the petitioner to come to this Court seeking to quash the impugned order passed by the Joint Registrar of Cooperative Societies refusing payment of subsistence allowance, after he reached the age of superannuation on 31.1.2004. The contention placed before this Court, taking support from the observation made by the Hon'ble Division Bench to confer the statutory and other entitlements due and payable to the petitioner in accordance with law, that the petitioner is entitled to get the subsistence allowance even after he reached the age of superannuation on 31.1.2004, is wholly misconceived, firstly for the reason that the order of the Hon'ble Division Bench, while setting aside the order dated 3.12.2008 passed by the Joint Registrar of Cooperative Societies, Tiruvannamalai, clearly indicates that the petitioner is not entitled to get the subsistence allowance after he reached the age of superannuation on 31.1.2004. While that being the case, it is not known how it can be interpreted or assumed by the petitioner that he is still entitled to receive the benefit of subsistence allowance, when he had already reached the age of superannuation on 31.1.2004.

6. Secondly, when the subsistence allowance is paid to an employee as a percentage of his monthly salary during the period he was placed under suspension temporarily to eke out his livelihood, the moment he ceases to receive the monthly salary as an employee either on reaching the age of superannuation or demitting office by way of resignation or dismissal, he is equally not entitled to receive the subsistence allowance.

7. As mentioned above, when the petitioner was placed under suspension on 30.1.2004, he reached the age of superannuation on the next day i.e., on 31.1.2004. Therefore, when the petitioner had retired from service on reaching the age of superannuation with effect from 31.1.2004, being ceased to receive the monthly salary, he has no right whatsoever to receive the subsistence

allowance. In any event, the observation and the order passed by the Joint Registrar of Cooperative Societies, Tiruvannamalai, the revisional authority in R.P.No.21 of 2008 dated 3.12.2008 was already set aside by the Hon'ble Division Bench in W.A.No.1856 of 2012 in paragraph-10 on 23.4.2014. Therefore, the petitioner has no right whatsoever to claim the subsistence allowance.

8. For all the aforementioned reasons, the writ petition fails and it is dismissed with costs of Rs.1,000/- payable by the petitioner to the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras. Consequently, W.M.P.No.9613 of 2017 is also dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Coop.Sub Registrar/
Managing Director
Chengam Agri Producers Coop.
Marketing Society Ltd., Chengam
Tiruvannamalai District
2. The Joint Registrar of Coop. Societies/
Revisional Authority
Tiruvannamalai Zone
Tiruvannamalai.
3. The Tamil Nadu Mediation and conciliation centre
High Court, Madras.

+1cc to Mr.S.Venkataraman, Advocate, S.R.No.22851
+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.22407
+1cc to the Government Pleader, S.R.No.23273

W.P.No.8771 of 2017

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rmp(05/05/17)