

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14156 of 2016

and

W.M.P.Nos. 12386 to 12388 of 2016

A.Shanmugam

... Petitioner

Vs.

1. The Joint Registrar of Co-operative Societies,
Namakkal Region, Namakkal,
Namakkal District.

2. The Managing Director/Deputy Registrar,
Tiruchengode Co-operative,
Urban Bank Ltd., No.8994,
Tiruchengode, Namakkal Distrit.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, call for the entire records relating to the impugned order passed by the second respondent in his proceedings No. Nil, dated 04.04.2016 and quash the same and consequently directing the respondents to disburse the subsistence allowance together with arrears to the petitioner from the date of suspension on 10.12.2015 by taking note of order passed by this Court in W.P.No.22957 of 2012, dated 17.07.2014.

For Petitioner : Mr.C.Prakasam

For Respondents: Mr.L.P.Shanmugasundaram
Special Government Pleader
(Co-operative Society)

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O R D E R

1. The order dated 04.04.2016 issued by the second respondent in respect of subsistence allowance of the writ petitioner is under challenge in this writ petition.

2. The subsistence allowance is a basic right of an employee. Non payment of subsistence allowance will certainly have an impact on the disciplinary proceedings. Further, this Court is of the view that non-payment of subsistence allowance

is violation of Article 21 of the Constitution of India. An employee under suspension is not permitted to take any other employment during the period of suspension. Thus, the subsistence allowance is the only livelihood for the employee facing an order of suspension.

3. In this view of the matter, the payment of subsistence allowance cannot be denied to the employees, who are facing an order of suspension.

4. However, in this writ petition, the writ petitioner is an employee of Co-operative Society and the Co-operative Society is not a State, within the meaning of Article 12 of the Constitution of India.

5. The learned counsel appearing for the writ petitioner made a submission that the Deputy Registrar of Co-Operative Societies issued an order of suspension. The learned counsel for the writ petitioner, though simply stated that the Deputy Registrar of Co-Operative Society issued an order, it is not so, in his capacity as the Deputy Registrar under the provisions of the Tamil Nadu Co-operative Societies Act.

6. In the case on hand, the Deputy Registrar was posted as Managing Director on deputation and therefore, he cannot be construed as a competent authority under the provisions of the Tamil Nadu Co-operative Societies Act.

7. The regularly working Joint Registrars/Deputy Registrars and other authorities in the department with the powers to exercise the provisions of the Act, alone are the competent authorities under the provisions of the Tamil Nadu Co-operative Societies Act.

8. The similar cadre employees or the officials deputed to a Co-operative Society to function as the Managing Director or Special Officer, cannot be construed as competent authorities empowered with the delegated powers under the provisions of the Tamil Nadu Co-operative Societies Act. A distinction is to be drawn in this regard. The Officials appointed on deputation to a Co-operative Society, is not a competent authority, so as to exercise the powers under the Tamil Nadu Co-operative Societies Act.

9. In the case on hand, the Managing Director/Deputy Registrar issued an order impugned in this writ petition. The Managing Director is also one of the Director of the elected Board and he is only a functional Director, who has to communicate the decisions of the Board to the persons concerned. Thus, an order passed by the Society, cannot be construed as an order passed by the State. Thus, for all purposes, the order

impugned is an order passed by the management of Co-operative Society against which the revision lies under Section 153 of the Tamil Nadu Co-operative Societies Act. No writ can be entertained under Article 226 of the Constitution of India, against the order passed by the Co-operative Society, in view of the legal principles laid down by a larger Bench of this Court in the case of Marappan v. The Deputy Registrar, Tamil Nadu Co-operative Societies Act, Namakkal, {2006 (4) CTC 689}.

10. The remedy lies before the competent authorities under the provisions of the Tamil Nadu Co-operative Societies Act. The competent authorities does not mean that the Deputy Registrars/Joint Registrars and the Additional Registrars working on deputation. The Officials, who are delegated with the powers of the Act, by the Registrar of Co-operative Societies, by way of a notification issued by the State alone are competent to exercise the powers of under the provisions of the Tamil Nadu Co-operative Societies Act.

11. This being the legal position, the order impugned in this writ petitioner is an order passed by the Co-operative Society and accordingly, no writ can be entertained. Thus, the writ petition is dismissed as not maintainable and it is left open for the writ petitioner to approach the competent authorities under Section 153 of the Tamil Nadu Co-operative Societies Act, and accordingly no further orders are required to be passed in this writ petition and the writ petition stands dismissed. However, there shall be no order as to cost. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1. The Joint Registrar of Co-operative Societies,
Namakkal Region, Namakkal, Namakkal District.
2. The Managing Director/Deputy Registrar,
Tiruchengode Co-operative,
Urban Bank Ltd., No.8994,
Tiruchengode, Namakkal Distrit.

+ 1 cc to Mr.C.Prakasam, Advocate,SR.66086

+ 1 cc to Mr.L.P.Shanmugasundaram, Advocate,SR.66149

+ 1 cc to The Govt.Pleader, SR.66445

W.P.No.14156 of 2016

VGI (CO)
NR 24/10/2017



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