

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-08-2017

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.14831 of 2016
and
WMP No.12967 of 2016

S.Kamalanathan

.. Petitioner

vs.

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

2.The Managing Director,
C.1245, Arni Agricultural Producers
Co-operative Marketing Society Ltd.,
Arni,
Thiruvannamalai District.

.. Respondents

This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents to disburse the subsistence allowance to the petitioner as per suspension order dated 31.1.2015 from the period 1.11.2014 (said to have been placed under suspension) together with arrears.

For Petitioner : Mr.C.Prakasam

For Respondents-1&2 : Mr.L.P.Shanmugasundaram,
Special Government Pleader (Co-
op.).

O R D E R

The relief sought for in this writ petition is for a direction to the respondents to disburse the subsistence allowance to the writ petitioner, since the writ petitioner was placed under suspension in order dated 31.1.2015.

2. The learned counsel for the writ petitioner contended that in spite of the fact that the writ petitioner is continuing under suspension, his right of subsistence allowance has not been considered. Subsistence allowance is a basic right of an employee, who is under suspension and the same cannot be denied at any point of time. The authority competent has to pay the subsistence allowance during the period of suspension and an enquiry also to be conducted as early as possible to avoid hardship to the delinquent officials. However, in the case on hand, the writ petitioner is working in a Co-operative Society and he has to approach the Competent Authorities under Section 153 of the Tamil Nadu Co-operative Societies Act, seeking the relief of payment of subsistence allowance.

3. The larger Bench of this Honourable Court, in the case of **K.Marappan vs. Deputy Registrar of Co-Operative Societies, Namakkal Circle, Namakkal [(2006) 4 CTC 689 (FB)]**, held that no writ can lie against the Co-operative Society. In this view of the matter, it is left open for the writ petitioner to file a Revision Petitioner under

Section 153 of the Act, however, this Court has expressed its opinion that Payment of subsistence allowance is a livelihood and non-payment of subsistence allowance is violative of Article 21 of the Constitution of India. No person shall be deprived of his life and an employee placed under suspension, cannot undertake any employment elsewhere during the period of suspension.

4. Such being the condition imposed by the employers, normally, the payment of subsistence allowance to lead the livelihood is mandatory and non-payment is certainly in violation of Article 21 of the Constitution of India. The subsistence allowance, being a basic right, cannot be denied to an employee who is under suspension.

5. Accordingly, the Revisional Authority has to consider these aspects and pass appropriate orders in the event of preferring a Revision Petition by the writ petitioner under Section 153 of the Tamil Nadu Co-operative Societies Act.

6. With this observation, the payment of subsistence allowance is a continuing cause and the question of delay will not arise in this case. Accordingly, the writ petition stands dismissed as not maintainable. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

07-08-2017

Speaking Order/Non-Speaking Order.

<http://www.judis.in> Index : Yes/No.

Internet : Yes/No.
Svn

S.M.SUBRAMANIAM, J.

Svn

To

The Joint Registrar Co-operative Societies,
Thiruvannamalai Region,
Thiruvannamalai,
Thiruvannamalai District.



WP No.14831 of 2016

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