

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.8635 OF 2010

Dated:13.10.2017

Between:

M. Mallaiah, S/o. Lingaiah,
Aged about 53 years, Occ: Employee,
R/o.H.No.6-7-38, Beside NHC Girls
High School, Subashnagar, Nizamabad,
Nizamabad District

.. Petitioner

And

The District Collector (Co-op),
Nizamabad, Nizamabad District
and others

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No.8635 OF 2010****ORDER:**

Heard.

2. Petitioner alleges that he was appointed as Secretary to Primary Agricultural Cooperative Society, Doopally, Nizamabad District, on 24.11.1977. On 01.04.2002, he was suspended from service. This Writ Petition is filed aggrieved by the suspension order and further continuation in suspension and to declare the action of the respondents in not releasing the subsistence allowance and reinstating him into service.

3. According to learned counsel for the petitioner, as per the averments of the affidavit filed in support of the Writ Petition, the petitioner alleges that he was not paid subsistence allowance from 01.04.2002; such action is illegal and he is entitled to huge amount of subsistence allowance for all the period till the Writ Petition is filed. According to petitioner, representations were made on 25.06.2009, 11.12.2009 and 05.03.2010 and as there was no response and subsistence allowance was not paid, this Writ Petition is filed.

4. The 4th respondent filed counter affidavit deposed by the then President of the respondent Society. The counter affidavit was signed on 04.07.2010 but the same was filed on 07.07.2010. In paragraph No.5 of the said counter affidavit, it is categorically stated that after conducting enquiry, final orders removing the petitioner were passed on 27.01.2004. It is averred that after suspension, the petitioner's whereabouts were not known;

he never approached the 4th respondent for payment of subsistence allowance and has not produced non-employment certificate for receiving the subsistence allowance. It is further stated that in fact, the petitioner did not turn up to participate in the departmental enquiry or in the surcharge proceedings.

5. Since by the time the Writ Petition was filed, the petitioner was already removed from service and removal from service is not challenged, the Court cannot give a *mandamus* at this stage directing the respondent Society to pay subsistence allowance for the period of suspension. Moreover, it is the specific assertion of the 4th respondent that the petitioner did not turn up to its office and did not produce non-employment certificate, which are required for the purpose of processing of subsistence allowance prior to his removal, which is not controverted. Thus, no direction as sought for can be given.

6. The Writ Petition is accordingly dismissed. However, it is open to the petitioner to work out his remedies as available in law, if he is aggrieved by the decisions taken by the respondent Society regarding removal from service and passing orders in surcharge proceedings. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in the Writ Petition shall stand closed.

P. NAVEEN RAO, J

Date:13.10.2017

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