IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.10823 of 2009

K.Ulaganathan .. Petitioner

Vs.

1.The Additional Registrar of Coop. Societies,
Sales, Planning and Development,
O/o. Registrar of Coop. Societies,
Kilpauk, Chennai - 600 010.

2.The Chairman,
Common Cadre Authority/Joint
Registrar of Co-op Societies,
Villupuram Region, Villupuram,
Villupuram District.

3.The Special Officer,
CL.SPL.121, Jakkampettai Primary
Agricultural Co-Op Credit Society,
Jakkampettai Village, Thenpasar Post,
Tindivanam Taluk,
Villupuram District. .. Respondents

(R3 impleaded as per order of this Court dated 06.12.2012 made in M.P.No.1 of 2011 in W.P.No.10823 of 2009)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order of the 2nd respondent in his proceedings Na.Ka.No.14321/2004 - Ve.Se.Sa., dated 12.02.2008 confirmed by the 1st respondent in his proceedings No.25189/2008 Sa.Pa.1, dated 16.10.2008 and quash the same and consequently reinstate the petitioner into service with all attendant benefits and other benefits.

For Petitioner : Mr.C.Prakasam

For Respondents : Ms.T.Girija,
(Government Advocate)

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O R D E R

Writ Petition filed for issuance of writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order of the 2nd respondent in his proceedings Na.Ka.No.14321/2004 - Ve.Se.Sa., dated 12.02.2008 confirmed by the 1st respondent in his proceedings No.25189/2008 Sa.Pa.1, dated 16.10.2008 and quash the same and consequently reinstate the petitioner into service with all attendant benefits and other benefits.

2.According to the petitioner, he was working as Secretary of the CL.SPL.121, Jakkampettai Primary Agricultural Co-Op Bank, Ltd., (hereinafter referred to as the "Bank"). The petitioner is challenging the order of termination confirmed by the first respondent in his proceedings bearing No.25189/2008 Sa.Pa.1, dated 16.10.2008 on the ground that entire domestic enquiry conducted by the petitioner is vitiated for non-payment of subsistence allowance.

3.The learned counsel appearing for the petitioner contended that the petitioner was working as Secretary of the CL.SPL.121, Jakkampettai Primary Agricultural Co-Op Bank, Ltd., and he was suspended from service on 05.11.2004, by the order passed by the second respondent. The Special Officer of the Bank did not pay the subsistence allowance. The petitioner filed W.P.No.24438 of 2005 for a mandamus directing the respondents therein to pay the subsistence allowance to the petitioner as per the suspension order dated 05.11.2004, passed by the second respondent. This Court by the order dated 05.08.2005, directed the respondents therein to pay subsistence allowance to the petitioner. The Special Officer of the Bank filed W.A.No.2091 of 2005. Subsequently, the Special Officer withdrew the Writ Appeal and the said Writ Appeal was dismissed by the Division Bench of this Court by the order dated 09.11.2005 as withdrawn. Even thereafter, the Special Officer of the Bank did not pay the subsistence allowance to the petitioner. The learned counsel appearing for the petitioner further contended that the petitioner filed Contempt Petition No.883 of 2007 and only after directions from this Court, the Special Officer paid a part of the subsistence allowance and did not pay the balance amount of subsistence allowance to the petitioner. Due to non-payment of subsistence allowance by the Special Officer, the petitioner could not effectively participate in the domestic enquiry and put forth his case. The petitioner is greatly prejudiced by non-payment of subsistence allowance by the Special Officer. The order of termination passed by the second respondent based on the enquiry report is illegal and arbitrary. The Revisional Authority failed to consider the contention of the petitioner in

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the revision filed by the petitioner that domestic enquiry is vitiated for non-payment of subsistence allowance and the second respondent dismissed the petitioner based on the enquiry report, which is illegal. The first respondent mechanically dismissed the revision filed by the petitioner and prayed for setting aside the orders of the respondents and prayed for reinstatement of the petitioner in service with all attendant benefits and other benefits. The learned counsel appearing for the petitioner submitted that at the time of filing the Writ Petition, the petitioner was aged 56 years and prayed for notional reinstatement of petitioner into service with all attendant benefits and other benefits.

4.The first respondent filed counter affidavit and denied the averments of the petitioner that subsistence allowance was not paid to him. The second respondent in paragraph No.3 of the counter affidavit filed has stated that subsistence allowance was paid to the petitioner as follows:

Date of suspension	Period for which subsistence allowance was paid	Amount of Subsistence allowance Rs.	Date of payment
05.11.2004	05.11.2004 - 30.11.2005	53,583	10.12.2005
	01.12.2005 - 31.10.2007	95,946	10.12.2007
	01.11.2007 - 11.02.2008	14,031	30.04.2008
	Total	1,63,560	

The learned Government Advocate appearing for the respondents contended that the contention of the petitioner that domestic enquiry is vitiated for non-payment of subsistence allowance is contrary to the facts. The contempt petition filed by the petitioner was closed, as the subsistence allowance was paid to the petitioner. The domestic enquiry was conducted properly following the principles of natural justice. The petitioner was given ample opportunity to put forth his case in the domestic enquiry. The petitioner participated in the domestic enquiry. In the domestic enquiry, the charges leveled against the petitioner were proved and hence the second respondent passed the order of termination, after considering all the materials. The first respondent dismissed the revision only after properly considering the objections raised by the petitioner and the petitioner is not entitled to the relief sought for in the Writ Petition and prayed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the

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respondents and perused the entire materials on record.

6.The issue to be decided in the Writ Petition is whether the petitioner was paid subsistence allowance during the period of suspension regularly and whether the domestic enquiry conducted is vitiated for non-payment of subsistence allowance.

7.From the materials on record it is seen that the petitioner was suspended from service with effect from 05.11.2004. The petitioner was not paid subsistence allowance and on the Writ Petition filed by him, this Court by the order dated 05.08.2005, directed the respondents therein to pay the subsistence allowance. The Special Officer of the Bank filed W.A.No.2091 of 2005 before this Court and subsequently withdrew the same. Even after withdrawing the same, subsistence allowance was not paid to the petitioner regularly. The subsistence allowance was paid on 10.12.2005 in one lump sum for the period from 05.11.2004 to 30.11.2005 and subsequently for two years, the petitioner was not paid subsistence allowance. The Special Officer paid the subsistence allowance for the period from 01.12.2005 to 31.10.2007 on 10.12.2007 in lump sum for two years. Thereafter no subsistence allowance was paid to the petitioner. The order of dismissal was passed on 12.02.2008. After the said order of dismissal only the petitioner was paid subsistence allowance on 30.04.2008, for the period from 01.11.2007 to 11.02.2008. When an employee is suspended from service, the employer must pay the subsistence allowance every month. But in this case, the petitioner was paid subsistence allowance in lump sum on three occasions, firstly for 13 months, secondly for 2 years and thirdly for 4 months, after dismissing the petitioner from service. The petitioner has filed W.P.No.24438 of 2005, alleging that non-payment of subsistence allowance is greatly prejudiced. In spite of the order of this Court dated 05.08.2005 made in W.P.No.24438 of 2005 directing the respondents therein to pay the subsistence allowance, the petitioner was not paid subsistence allowance. In view of the same, the contention of the learned Government Advocate appearing for the respondents that entire subsistence allowance was paid to the petitioner and the domestic enquiry was not vitiated is contrary to the facts.

8.It is well settled that conducting domestic enquiry without payment of subsistence allowance is vitiated when the employee was greatly prejudiced by non-payment of subsistence allowance and he could not effectively put forth his case in domestic enquiry and could not participate in the domestic enquiry. In view of well settled principles of law, conducting domestic enquiry without payment of subsistence allowance is erroneous and the contention of the learned counsel appearing for the petitioner is acceptable and the contention of the

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learned Government Advocate appearing for the respondents is not valid.

9.For the above reason, the Writ Petition stands allowed. The petitioner is entitled for notional reinstatement with all attendant and other benefits. The respondents are directed to pay the same to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

krk

To

1.The Additional Registrar of Coop. Societies,
Sales, Planning and Development,
O/o. Registrar of Coop. Societies,
Kilpauk, Chennai - 600 010.

2.The Chairman,
Common Cadre Authority/Joint
Registrar of Co-op Societies,
Villupuram Region, Villupuram,
Villupuram District.

3.The Special Officer,
CL.SPL.121, Jakkampettai Primary
Agricultural Co-Op Credit Society,
Jakkampettai Village, Thenpasar Post,
Tindivanam Taluk,
Villupuram District.

+1cc to Mr.C.Prakasam, Advocate SR.No.59017

+1cc to Mr.L.P.Shanmuga Sundaram, Advocate SR.No.58968

+1cc to Government Pleader SR.No.59685

W.P.No.10823 of 2009

NRL(CO)
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