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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.7534 of 2008

K.Karuppannan

.. Petitioner

Vs.

1.The Joint Registrar of Co-operative
Societies/Chairman
Common Cadre Service Committee
Coimbatore Region
Coimbatore District.

2.The Special Officer
K248 Karanipalayam Primary
Agricultural Co-operative Bank Ltd.,
Karanipalayam, Velayutham Palayam (Post)
Avinashi Taluk 641 654.
Coimbatore District.

.. Respondents

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 records of the 1st respondent in and by his proceedings Na.Ka.No.17588/2007/Ve.4, dated 09.11.2007, quash the same and consequently directing the respondents to reinstate the petitioner into service with all consequential service and monetary benefit.

For Petitioner : Mr.MA.P.Thangavel

For R1 : Ms.T.Girija
Government Advocate (Co-op.)

For R2 : No appearance

O R D E R

Writ Petition is filed for issuance of a writ of Certiorarified Mandamus calling for the records of the 1st respondent in and by his proceedings Na.Ka.No.17588/2007/Ve.4, dated 09.11.2007, quash the same and consequently directing the



respondents to reinstate the petitioner into service with all consequential service and monetary benefit.

2. The petitioner has challenged the impugned order of dismissal passed by the 1st respondent. According to the petitioner, the impugned order is liable to be set aside on the following grounds:

(i) The petitioner was not paid subsistence allowance for the period of suspension from 17.05.2002 to 09.11.2007;

(ii) The documents sought for by the petitioner were not furnished;

(iii) The 2nd respondent has not furnished enquiry report along with 2nd show cause notice;

(iv) The 1st respondent without conducting any enquiry passed the impugned order based on the domestic enquiry conducted as per the order of the 2nd respondent.

3. The learned counsel appearing for the petitioner contended that on 31.07.2008, the petitioner retired from service on attaining the age of superannuation.

4. Though the 2nd respondent entered appearance through the counsel, when the matter is taken up for hearing, there is no representation on behalf of the 2nd respondent. The 2nd respondent in the counter affidavit filed by them, denied all the allegations and stated that subsistence allowance was paid to the petitioner from 18.05.2002 to 31.03.2004 and could not pay the subsistence allowance from that date onwards due to financial constraints of 2nd respondent. All the documents required by the petitioner were furnished to him. The 1st respondent conducted enquiry and gave sufficient opportunity to the petitioner to put forth his case.

5. The learned Government Advocate appearing for the 1st respondent contended that after furnishing the documents to the petitioner, 1st respondent conducted enquiry and gave sufficient opportunity to the petitioner to put forth his case. The petitioner appeared before the 1st respondent for enquiry and admitted the charges levelled against him and paid part of the amount misappropriated, in several instalments.

6. The petitioner filed reply affidavit denying the averments made in the counter affidavit and stated that the 2nd respondent has not paid subsistence allowance as alleged in the counter affidavit, but adjusted the subsistence allowance of Rs.1,93,558/- along with 17 days salary from 01.05.2002 to 17.05.2002 amounting to Rs.2,00,500/- towards alleged misappropriation from 1998-1999 to 2000-2001 without his knowledge and consent. The 2nd respondent has not paid even a single paise towards subsistence allowance and the petitioner



was put to irreparable hardship and inability to defend the case before the competent authority. In support of his contentions, he relied on the following judgments:

(i) 1999 (3) SCC 679 (Capt.M.Paul Anthony vs. Bharat Gold Mines Ltd. and another);

"30.If, therefore, even that amount is not paid, then the very object of paying the reduced salary to the employee during the period of suspension would be frustrated. The act of non-payment of subsistence allowance can be likened to slow-poisoning as the employee, if not permitted to sustain himself on account of non-payment of subsistence allowance, would gradually starve himself to death.

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.. ..

33.Since in the instant case the appellant was not provided any subsistence allowance during the period of suspension and the adjournment prayed for by him on account of his illness, duly supported by medical certificates, was refused resulting in ex-parte proceedings against him, we are of the opinion that the appellant has been punished in total violation of the principles of natural justice and he was literally not afforded any opportunity of hearing. Moreover, as pleaded by the appellant before the High Court as also before us that on account of his penury occasioned by non-payment of subsistence allowance, he could not undertake a journey to attend the disciplinary proceedings, the findings recorded by the enquiry officer at such proceedings, which were held ex-parte, stand vitiated.

(ii) 2007 (3) MLJ 164 (A.Asokan v. The II 558 Kudhiraichandal Primary Agricultural Co-op. Bank Ltd., rep. by its Special Officer, Kudhiraichandal and another);

"14. It is seen that G.O.Ms.No.55, Co-operation, Food and Consumer Protection Department, dated 24.3.2000 only creates a common cadre service for all the Secretaries of the Primary Agricultural Co-operative Banks. Automatically, such a cadre is not provided under the Payment of Subsistence Allowance Act because such a person does not come within the definition of the word 'employee' within the meaning of Section 2(a) of the said Act. Therefore, when the Government frames a statutory regulation in terms of Section 75 of the Tamil Nadu Co-operative Societies Act, it must be aware of the provisions



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of the Payment of Subsistence Allowance Act. Therefore, the reference to the Payment of Subsistence Allowance Act under Regulation 29(d) is with a conscious understanding that though the said Act does not apply to the cadre of Secretaries, still the Government wanted to adopt the rates provided under the said Act. Therefore, it is a case of an incorporation of an earlier legislation.

15. In the light of the above finding, it must be stated that the respondent-Society will have to work out the rate of subsistence allowance to be paid to the petitioner as per the provisions of the Payment of Subsistence Allowance Act."

(iii) (1986) 3 SCC 454 (Sawai Singh vs. State of Rajasthan);

"17. The application of those principles of natural justice must always be in conformity with the scheme of the Act and the subject matter of the case. It is not possible to lay down any rigid rules as to which principle of natural justice is to be applied. There is no such thing as technical natural justice. The requirements of natural justice depend upon the facts and circumstances of the case, the nature of the enquiry, the rules under which the Tribunal is acting, the subject-matter to be dealt with and so on. Concept of fair play in action which is the basis of natural justice must depend upon the particular lis between the parties. (See K.L. Tripathi v. State Bank of India & Ors., [1984] 1 S.C.C. 43) Rules and practices are constantly developing to ensure fairness in the making of decisions which affect people in their daily lives and livelihood. Without such fairness democratic governments cannot exist. Beyond all rules and procedures that is the sine qua non."

7. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the 1st respondent and perused the materials available on record.

8. From the materials available on record, it is seen that the petitioner was kept under suspension from 18.05.2002 and the same had been extended from time to time. The petitioner was requesting the 2nd respondent in writing to pay his subsistence allowance as he is not able to maintain himself and his family due to non payment of subsistence allowance. The petitioner has also written to the 1st respondent in this regard and requested for payment of subsistence allowance. In addition to the said



letter, the petitioner by his letter dated 21.07.2007 addressed to the 2nd respondent has stated that the subsistence allowance from 18.05.2002 to 29.02.2004 amounting to Rs.2,00,560/- was paid to him on 24.03.2004 and immediately, the 2nd respondent took back the money and adjusted towards the amounts alleged to have been misappropriated by the petitioner under receipt No.4638. The respondents have not produced any document to show that these statements are not correct or they have not received any of the letters as mentioned in the typed set of papers. Further, the 2nd respondent in his counter affidavit has admitted that after 01.04.2004, no subsistence allowance was paid to the petitioner. The petitioner has specifically stated in his letter that on the failure of 2nd respondent to pay the subsistence allowance, he was not in a position to maintain himself and his family and he is unable to defend the domestic enquiry. The petitioner proved that non-payment of subsistence allowance has greatly caused prejudice to him in properly defending himself in the domestic enquiry. The 1st respondent has passed the order of dismissal based on the report of the domestic Enquiry Officer and report of Common Cadre Inspection Committee, Coimbatore, Office of the Deputy Registrar. The 1st respondent has not conducted any independent enquiry with regard to the charges levelled against the petitioner. The judgments relied on by the learned counsel for the petitioner are squarely applicable to the facts of the present case. For the above reason, the order of the 1st respondent is liable to be set aside and it is hereby set aside.

9. In the result, the writ petition is allowed as prayed for. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Registrar of Co-operative
Societies/Chairman
Common Cadre Service Committee
Coimbatore Region
Coimbatore District.



2.The Special Officer
K248 Karanipalayam Primary
Agricultural Co-operative Bank Ltd.,
Karanipalayam, Velayutham Palayam (Post)
Avinashi Taluk 641 654.
Coimbatore District.

+1cc to Mr.P.Thangavel, Advocate, S.R.No. 53574
+1cc to the Government Pleader, S.R.No. 53981

W.P.No.7534 of 2008

VSN II (CO)
GN(19/08/2019)