

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.09.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.9558 of 2019

&

W.M.P.No.10175 of 2019

The Management,
S.836, Rayakottai Primary Agricultural
Co-operative Credit Society Ltd.,
Rep by its President,
Rayakottai Village & Post,
Denkanikottai Taluk,
Krishnagiri District.

...Petitioner

..Vs..

1.The Authority under the
Tamil Nadu Payment of Subsistence
Allowance Act, Salem.

2.R.Murugesan

...Respondents

Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the first respondent in PSA.No.2 of 2017 dated 14.02.2018 and quash the same.

For Petitioner	: Mr.M.S.Palaniswamy
For Respondent	: Mr.J.Ramesh, AGP (for R.1) Mr.C.Prakasam (for R.2)

ORDER

The order passed by the first respondent in PSA.No.2 of 2017 dated 14.02.2018 is under challenge in the present writ petition.

2.The writ petitioner is the Management, Rayakottai Primary Agricultural Co-operative Credit Society Ltd., which is Co-operative Society registered under the provisions of the Tamil Nadu Co-operatives Societies Act. The second respondent was employed as Secretary of the petitioner/society. He was placed

under suspension on 12.12.2014, on account of the allegation of misappropriation of the funds of the Co-operative society. A sum of Rs.22,93,735.25/- was recovered from the second respondent and the balance amount of Rs.53,36,939.19/- is yet to be recovered. The petitioner/society initiated surcharge proceedings under Section 87(1) of the Tamil Nadu Co-operative Societies Act and a criminal case was also registered against the second respondent. It is brought to the notice of this Court that the second respondent was terminated from service on 12.09.2019 and the criminal case was also ended with an order of conviction against which Criminal Appeal is filed, which is pending for adjudication.

3.The learned counsel appearing on behalf of the petitioner states that the second respondent approached the first respondent claiming subsistence allowance. In this regard it is contended that the first respondent has no jurisdiction or authority to entertain the petition under the Subsistence Allowance Act, as the second respondent was holding the post of the Secretary, which is a managerial cadre, who is not a workman. Therefore, the first respondent had erroneously entertained the application and passed an order, which is untenable.

4.The learned counsel appearing on behalf of the petitioner further contended that the Co-operative Society is a registered society under the provisions of the Co-operative Societies Act and therefore, the Co-operative Societies Rules as well as the Special byelaws in this regard are to be followed and the same will prevail over the General Law.

5.The learned counsel appearing on behalf of the writ petitioner mainly contended that the petition under the provisions of the Subsistence Allowance Act is not applicable, in view of the fact that the byelaw itself provide for payment of subsistence allowance and the byelaw has already been approved by the Registrar of Co-operative Societies under the Act.

6.This Court is of an opinion that undoubtedly the special enactment will prevail over the general Law. The co-operative societies are registered under the Tamil Nadu Co-operative Societies Act, 1983. Rule 149 of the Tamil Nadu Co-operative Societies Rules provides service conditions of the employees of the Co-operative Societies. Based on Rule 149, byelaws are approved by the Board of Directors or Manager of the concerned co-operative society and the said byelaws are approved by the Registrar of Co-operative Societies under the Act itself. Thus,

the byelaws approved by the Registrar will prevail over in the matter of service conditions of the employees of the Co-operative Societies and whenever there is a provision for payment of subsistence allowance under the byelaws which was approved by the Competent Authority namely the Registrar, the General Law would have no application and therefore, an application entertained by the first respondent under the provisions of the Subsistence Allowance Act is without jurisdiction. It is not as if the employees are remedy less, whenever the disciplinary proceedings are initiated and an employee is placed under suspension.

7.The byelaw 22 states that;

(1)An employee of the Bank may be placed under suspension from the service where;

(i)an inquiry into grave charges against him is contemplated or pending; or

(ii)a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest or in the interest of the bank

(2)The authority competent to suspend an employee shall grant to the employee suspended, subsistence allowance in accordance with the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981.

8.Thus, the byelaw stipulates that the subsistence allowance is to be paid with reference to the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981. Thus, the quantum of subsistence allowance and the provisions contemplated under the Tamil Nadu Payment of Subsistence Allowance Act, is to be followed for the purpose of payment of subsistence allowance. However, in respect of the dispute arising out of the payment of subsistence allowance, the employees are bound to approach the competent authority under the provisions of the Tamil Nadu Co-operative Societies Act for the purpose of redressing their grievances.

9.Subsistence allowance is a Fundamental Right of an employee. It is the livelihood of an employee, who is under suspension, as he is not entitled to accept any other employment during the period of suspension. Thus, the payment of subsistence allowance is considered as a right to life enunciated under Article 21 of the Constitution of India. Such a right cannot be denied to an employee, who is under suspension and pending enquiry. Thus, the right of subsistence allowance cannot be denied to an employee when the employer has taken a

decision to place an employee under suspension on account of any misconducts or pendency of criminal case.

10.This being the principles to be followed, this Court is of an opinion that the writ petitioner is bound to pay subsistence allowance to the second respondent at the rate prescribed under the provisions of the Tamil Nadu Payment of Subsistence Allowance Act. The learned counsel appearing on behalf of the petitioner states that some amount has already been deposited before the first respondent during the pendency of application. In this regard, the writ petitioner is entitled to withdraw the said amount. However, the subsistence allowance, due to the second respondent is to be paid and the 50% of the salary is contemplated under the Subsistence Allowance Act, is directed to be paid.

11.Accordingly, the order passed by the first respondent in PSA.No.2/2017 dated 14.02.2018 is quashed mainly on the ground as the remedy is available to the suspended employee under the byelaws as well as under the provisions of the Tamil Nadu Co-operative Societies Act. The petition filed before the Competent Authority under the payment of Subsistence Allowance Act cannot be entertained.

12.However, this Court cannot deny the right of subsistence allowance to the employee, who was placed under suspension, though the petition filed before the Authority under the Subsistence Allowance Act, cannot be entertained in view of the special enactment namely Tamil Nadu Co-operative Societies Act, the employee is entitled to get the subsistence allowance under the provisions of the byelaws approved by the Registrar as well as under the Provisions of the Tamil Nadu Co-operative Societies Act and Rules.

13.In this regard, the writ petitioner is directed to pay the subsistence allowance of 50% of the salary, calculate the same and accordingly settle the subsistence allowance in favour of the third respondent within a period of twelve weeks from the date of receipt of copy of this Order. The writ petitioner is permitted to withdraw the deposited amount from the first respondent by filing an appropriate application.

14.With the above directions, this writ petition stands partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mrm

To

The Authority under the
Tamil Nadu Payment of Subsistence
Allowance Act, Salem.

+1cc to Mr.M.S.Palaniswamy, Advocate sr.81631
+1cc to Mr.C.Prakasam, Advocate sr.82186

W.P.No.9558 of 2019
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nmi(co)
nr 05/11/2019