

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.11630 of 2014 &
M.P.No.2 of 2014

P.Sundaramoorthy

...Petitioner

Vs.

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

2.The President,
(the Then Special Officer),
H.H.488, Mekkalur Primary Agricultural
Co-operative Credit Society,
Mekkalur Post,
Thiruvannamalai Taluk & District.

... Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for issuance of Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned order passed by the first respondent in his Revision Petition No.8/2013/Sa.Pa.(Na.Ka.4492/2013/Sa.Pa, dated 24.02.2014 and quash the same and consequently direct the respondents to disburse the subsistence allowance for the suspended period from 01.06.2003 to 28.02.2007 together with interest to the petitioner.

For Petitioner :Mr.C.Prakasam

For Respondents :Ms.T.Girija
Government Advocate for R1

Mr.D.Venkatachalam
Additional Government Pleader for R2

O R D E R

The Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus to quash the order passed by the first respondent, dated 24.02.2014 and for direction to the respondents to disburse the subsistence allowance for the suspended period from 01.06.2003 to 28.02.2007 together with interest to the petitioner.

2. The case of the petitioner is that he was initially appointed as Salesman in the H.H.488, Mekkalur Primary Agricultural Co-operative Credit Society on 17.09.1975 and thereafter he was promoted as Clerk in the year 1978 and further promoted as Secretary on 22.03.1980. While so, on 17.12.2002, the second respondent suspended the petitioner from service from 17.12.2002 to 28.02.2007 and thereafter, he was reinstated in service on 01.03.2007, without passing any punishment. However, the second respondent has not paid subsistence allowance for the period from 01.06.2003 to 28.02.2007. According to the petitioner, he is entitled to get salary for the period from 17.12.2002 to 28.02.2007, by deducting the subsistence allowances for the five months period. Hence, the petitioner made a request for deducting the subsistence allowance for the five months period, but the same was rejected by the second respondent on 11.02.2009 on the ground that he has not furnished the non-employment certificate during the said period and also the representation was made belatedly. Aggrieved over the dismissal order passed by the second respondent, the petitioner preferred a Revision by invoking the provision under Section 153 of the Tamil Nadu Co-operative Societies Act and the said Revision was also dismissed by the second respondent on 24.02.2010, on the ground that the revision is barred by limitation. Hence, the petitioner approached this Court by filing Writ Petition in W.P.No.9940 of 2011, challenging the order passed by the first respondent. This Court, on 18.04.2013, while setting aside the order passed by the first respondent, directed the petitioner to represent the revision papers before the first respondent within a period of two weeks. After receipt of the order, the petitioner approached the first respondent within the stipulated time, however, the first respondent vide order dated 24.02.2014 rejected the claim of the petitioner on the ground that the petitioner was terminated from service on 19.08.2008 and further the petitioner did not make any application for disbursement of subsistence allowance and therefore, he was not entitled to get subsistence allowance as per Tamil Nadu Subsistence Allowance Act.

3. According to the learned counsel for the petitioner, the petitioner made request to the second respondent for disbursement of subsistence allowance, however, the second respondent refused to receive the said request.

4. The learned Government Advocate appearing for the respondents would submit that the charges against the petitioner had been proved in the disciplinary proceedings and hence, he was dismissed from service on 19.09.2008. It is further submitted that the second respondent did not pay the subsistence allowance from 01.06.2003 to 28.02.2007 to the petitioner for the reason that he did not produce non-employment certificate during the abovesaid period. It is further stated that the petitioner did not make any claim within one year and made representation to the second respondent, claiming subsistence allowance for the abovesaid period only on 10.12.2008, i.e., after one and half years. According to the learned Government Advocate, though the petitioner had been reinstated in service on 01.03.2007, he did not choose to claim subsistence allowance and made claim only after he removed from service, i.e., on 19.08.2008. Hence, the petitioner is not entitled for the relief sought for in the Writ Petition and prays for dismissal of the Writ Petition.

5. On a perusal of the impugned order, it is seen that the first respondent has considered the petitioner's revision holding that the petitioner has received subsistence allowance for the period from 17.12.2002 and 31.05.2003, however, subsistence allowance for the period from 01.06.2003 to 28.02.2007 was not paid to him as he did not make any claim during the enquiry, but made a request only after dismissal from service on 10.12.2008. Though the contention of the petitioner is that the representation sent by him was refused to receive by the first respondent, there was no proof for such denial and nothing prevented the petitioner to send an application through post.

6. At this juncture, it is useful to refer para 7 of the judgment of the Honourable Supreme Court reported in (2004) 1 SCC 281 [Indra Bhanu Gaur Vs. Committee, Management of M.M.Degree College and others], :-

" 7. From the Judgment of the High Court, in the writ petition it appears that there is no reference to the alleged infirmity on account of subsistence allowance having not been paid. There was also no specific finding recorded for the question of bias as alleged presently. We find that there was total lack of cooperation from the appellant as the factual background highlighted above would go to show. Ample

opportunity was granted to the appellant to place case. He did not choose to do so. It is only a person who is ready and willing to avail of the opportunity given, who can make a grievance about denial of any opportunity and not a person like the appellant who despite repeated opportunity given and indulgence shown exhibited defiance and total indifference to extending cooperation. Therefore, on that score the appellant cannot have any grievance. So far as the effect of not paying the subsistence allowance is concerned, before the authorities no stand was taken that because of non-payment of subsistence allowance, he was not in a position to participate in the proceedings, or that any other prejudice in effectively defending the proceedings was caused to him. The appellant could not plead or substantiate also that the non-payment was either deliberate or to spite him and not due to his own fault. It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employee is handicapped because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as absolute proposal in law that non-payment of subsistence allowance amounts to denial of opportunity and vitiates departmental proceedings."

Further, as per clause 29(4) of Common Cadre Service Regulations, no payment of subsistence allowance shall be made unless the member has furnished a certificate of non employment and authority passing the order of suspension is satisfied that the suspended employee was not engaged in any other employment, business, profession or vocation and other employment and that he had not earned remuneration during the period of his suspension.

7. Admittedly, in this case, the petitioner did not produce non-employment certificate during the period from 01.06.2003 to 28.02.2007 and it is also seen that the petitioner has approached the Authority belatedly.

8. Therefore, in the light of the judgment of the Hon'ble Supreme Court and also considering the order passed by the first respondent, this Court does not find any valid ground to interfere with the order passed by the first respondent.

9. Accordingly, the Writ Petition fails and the same is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

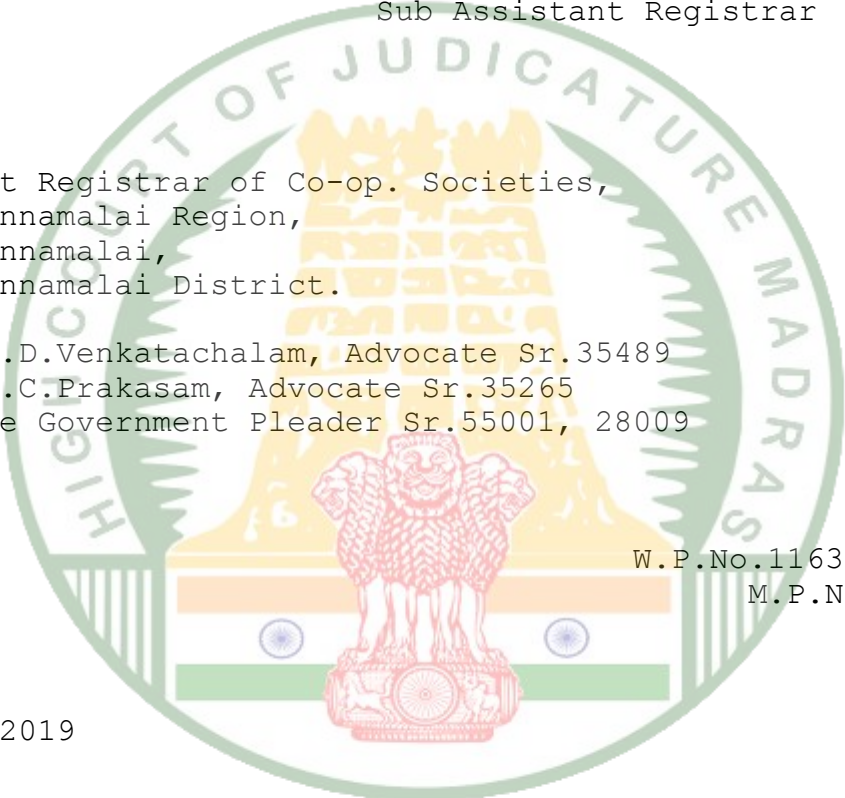
To

The Joint Registrar of Co-op. Societies,
Thiruvannamalai Region,
Thiruvannamalai,
Thiruvannamalai District.

+1cc to Mr.D.Venkatachalam, Advocate Sr.35489
+1cc to Mr.C.Prakasam, Advocate Sr.35265
+1cc to the Government Pleader Sr.55001, 28009

W.P.No.11630 of 2014 &
M.P.No.2 of 2014

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srg 18/06/2019



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