



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

C.R.P.(PD)(MD)No.1570 of 2014

and

M.P.(MD)No.1 of 2014

WEB COPY

The Management,
A 1174, Velur Primary Agricultural
Co-Operative Thrift Society,
Velur, Chatrapatti (Po),
Oddanchatram Taluk,
Dindigul District

... Petitioner/Respondent

vs.

S.Kannan

... Respondent/Petitioner

PRAYER: Petition filed under Article 227 of the Constitution of India against the order passed in the preliminary issue in P.S.A.No.1 of 2013, dated 28.03.2014, on the file of the Assistant Commissioner of Labour, Dindigul.

For Petitioner : Mr.V.O.S.Kalaiselvam

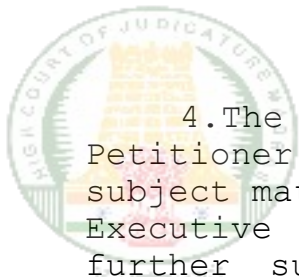
For Respondent : Mr.R.Saravanan
for Mr.G.Murugan

ORDER

This Civil Revision Petition is filed challenging the order dated 28.03.2014 in P.S.A.No.1 of 2013.

2.The Respondent herein was suspended on 04.04.2012 and subsequently relieved from service without being permitted to retire by order dated 30.05.2012. Subsequently, he filed P.S.A. No.1 of 2013 on the file of the Assistant Commissioner of Labour, Dindigul, for payment of subsistence allowance during the period of suspension and the said petition was allowed by order dated 28.03.2014, which is impugned herein.

3.I heard the learned counsel for the Revision Petitioner and the learned counsel for the Respondent.



4.The main contention of the learned counsel for the Revision Petitioner is that the Respondent herein was the Secretary of the subject matter Co-operative Society and, therefore, he was the Chief Executive Officer of the said Society and not an employee. He further submitted that the bye-law 31(4) of the said Society specifically provides that an employee shall not be entitled for subsistence allowance after the age of superannuation. In this case, he further submitted that subsistence allowance was ordered to be paid even for the period subsequent to the date of superannuation. He further submitted that under the said bye-laws it is stated that the Secretary is the Chief Executive Officer of the Society. Accordingly, he submitted that the Secretary is not entitled to receive subsistence allowance under the Payment of Subsistence Allowance Act. In this connection, he referred to a judgment of this Court in **the Management, Elavadi Primary Agricultural Cooperative Bank Vs. the Assistant Commissioner fof Labour [2017 (2) LLN 256 (Mad)]**, wherein it was held that the Secretary in the Co-operative Bank cannot be construed as an employee within the meaning of Section 2(a) of the Payment of Subsistence Allowance Act, 1981, because he is an Officer within the meaning of Section 2(19) of the Tamil Nadu Cooperative Societies Act, 1983. By relying on the said judgment, he submitted that the Assistant Commissioner of Labour, Dindigul did not have jurisdiction to grant subsistence allowance to the Respondent under the said order and that, therefore, the impugned order is patently erroneous and liable to be set aside.

5.On the contrary, the learned counsel for the Respondent reiterated that an appellate remedy is provided in 5A of the Payment of Subsistence Allowance Rules, 1981. With regard to the specific contention that the Secretary is not an employee and is, consequently, not entitled to subsistence allowance, he relied upon the judgment of the Division Bench of this Court in **M.Kanagasabapathy Vs. Special Officer, Namakkal District [(2008) 1 MLJ 270]**, where, at paragraphs 62 to 65, the Division Bench of this Court held that the definition of 'officer' under Section 2(19) of the Tamil Nadu Cooperative Societies Act, 1983 cannot be applied to a claim for payment of subsistence allowance under the Payment of Subsistence Allowance Act, 1981, because the Payment of Subsistence Allowance Act is a special enactment, whereas the Tamil Nadu Cooperative Societies Act, 1983 is a general enactment. On that basis, it was held therein that it should be independently examined whether the person concerned is an employee as defined under Section 2(a) of the Payment of Subsistence Allowance Act, 1981. The learned counsel for the Respondent also relied upon another decision of the Division Bench of this Court in **Special Officer Vs. M.Srinivasan and others in W.A.No.1264 of 2009**, wherein, by order dated 07.10.2009, the Division Bench held, in paragraph 6, that an employee of a Cooperative Bank is entitled to subsistence allowance under the Payment of Subsistence Allowance Act. By relying upon the



said judgments, the learned counsel for the Respondent contended that the Respondent is entitled to subsistence allowance as correctly held by the Authority and that the Civil Revision Petition is liable to be dismissed.

6.The records were examined and the oral submissions were considered carefully.

7.On examining the order of the Assistant Commissioner of Labour, Dindigul, it is clear that the said Authority has not independently examined whether the Secretary is an employee as per Section 2(a) of the Payment of Subsistence Allowance Act, 1981. Instead, the Division Bench judgment of this Court in ***M.Kanagasabapathy Vs. Special Officer, Namakkal District*** was misconstrued as if it was held in the said judgment that a Secretary in the Cooperative Society is entitled to subsistence allowance under the said Act. As stated supra, it was held in the said judgment that it should be independently examined as to whether the employee concerned is an employee as per S.2(a) of the Payment of Subsistence Allowance Act notwithstanding the fact that he may not be an employee for the purposes of the Tamil Nadu Cooperative Societies Act. Consequently, the said finding is patently erroneous. Therefore, the said order is liable to be set aside. However, the case is liable to be remitted back to the Authority for fresh adjudication. At such fresh adjudication, both parties are at liberty to submit relevant documents with regard to the question as to whether the Secretary is an employee as per Section 2(a) of the Payment of Subsistence Allowance Act. The said Assistant Commissioner of Labour, Dindigul is further directed to decide this question independently by examining whether the Secretary qualifies as an employee as per the Payment of Subsistence Allowance Act.

8.For the reasons aforesaid, the order dated 28.03.2014 in P.S.A.No.1 of 2013 is set aside and the matter is remitted to the Assistant Commissioner of Labour, Dindigul, for fresh adjudication. Such fresh adjudication shall be concluded within a period of two months from the date of receipt of a copy of this order.

9.In the result, the Civil Revision Petition is allowed on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar(CS-)



To

The Assistant Commissioner of Labour, Dindigul.

Copy To:

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai **(2 copies)** .

+1 CC to M/s.R.SARAVANAN, Advocate (SR-84031[F] dated 29/08/2019)
+1 CC to M/s.V.O.S.KALAISELVAM, Advocate (SR-84134[F]dated 29/08/2019)

Order made in
C.R.P. (PD) (MD)No.1570 of 2014
and
M.P (MD)No.1 of 2014
28.08.2019

Ls/rrg
ES/16.10.2019/4P/6C