



WEB COPY

W.P.(MD).No.7329 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2019

CORAM:

THE HONOURABLE MR. **JUSTICE S.S.SUNDAR**

W.P. (MD) .No.7329 of 2015

and

M.P. (MD) .No.1 of 2015

and

W.M.P. (MD) No.8358 of 2017

P.Subramani

.. Petitioner

Vs.

- 1.The Registrar of Co-Operative Societies,
170, E.V.R.High Road, Kelpauk, Chennai.
- 2.The Joint Registrar of Co-Operative Societies,
Collectorate, Thanthunimalai, Karur District.
- 3.The President,
R-240, K.N.Pudur Primary Agricultural
Co-Operative Credit Society,
N.Pudur, Nanniyoor Post, Karur District. ... Respondents

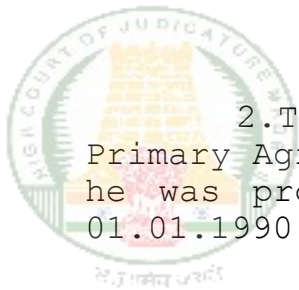
Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the third respondent in his Proceedings No. Nil, dated 31.03.2015 and to quash the same as illegal and consequently to direct the respondents either to reinstate the petitioner in service or to pay 100% subsistence allowance within the period that may be stipulated by this Court.

For Petitioner	: Mr.M.Ajmal Khan Senior Counsel for M/s.Ajmal Associates
For R1 and R2	: Mr.M.Jeyakumar Additional Government Pleader
For R3	: Mr.R.Anandraj Additional Public Prosecutor

ORDER

This writ petition is filed challenging the order passed by the third respondent in his proceedings, dated 31.03.2015 and consequently, to direct the respondents either to reinstate the petitioner into service or to pay 100% subsistence allowance within the period that may stipulated by this Court.

<https://hcservices.ecourts.gov.in/hcservices/>



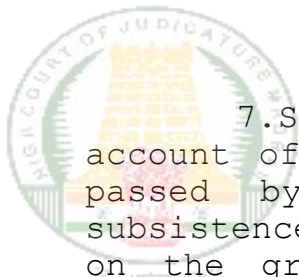
2.The petitioner was appointed as a Clerk in the K.N.Pudur Primary Agricultural Co-Operative Credit Society, Karur District and he was promoted as Secretary of the third respondent Society on 01.01.1990.

3.The third respondent Society, as part of their duty, was lending agricultural loan and other assistance to the members of the Society. At the time of sanctioning loan, part of loan will be given to the farmers by way of agricultural inputs, like, fertilizers, pesticides, etc. The third respondent is supplying the fertilizer to the farmers, who are all the members of the Society on the subsidised price. The third respondent is getting fertilizer from TANFED, which is the nodal agency for supplying fertilizer throughout the State. A commercial crime was found, involving the third respondent and Tamil Nadu Paper Mills (TNPL), Pugaloor, and the Commercial Crime Investigation Wing, Karur, has registered a case in Cr.No.1 of 2011 for the offence punishable under Sections 406, 408, 467, 468, 471 and 477(a) of Cr.P.C., against eight named persons.

4.A charge memo was also issued to the petitioner on 11.05.2013 on two counts alleging that the petitioner, who was serving as a Secretary, in the third respondent Society, purchased fertilizer from TANFED for the value of Rs.3,72,632/- and sold the same to the TNPL for a sum of Rs.15,44,281/- by preparing forged sales bills in the name of farmers. The petitioner, in his representation, dated 29.05.2013, requesting the third respondent to furnish certain documents, which are required to submit valid explanation by the petitioner to the charge memo.

5.It is not in dispute that the petitioner's name was also included in the charge sheet in C.C.No.1 of 2013, which is now pending before the Judicial Magistrate Court No.I, Kulithalai, Karur. The petitioner was also arrested on 21.11.2012 and he was placed under suspension from the date of arrest. Though the petitioner challenged the order of suspension in a writ petition in W.P.(MD)No.9 of 2013, it was dismissed on 10.01.2013 and the further appeal by the petitioner in W.A.(MD)No.137 of 2013 was also came to be dismissed.

6.Since the petitioner was placed under suspension on 21.11.2012, he was paid subsistence allowance pursuant to the direction of this Court in terms of Tamil Nadu Payment of Subsistence Allowance Act, 1981. It is not in dispute that the petitioner was given 50% of salary as subsistence allowance for the first 90 days from the date of suspension and again at the rate of 75% of pay for the subsequent 90 days. It is also admitted that the petitioner has received 100% of salary after 180 days from the date of suspension. It is also admitted that the departmental proceedings initiated against the petitioner is pending from 2013



7. Stating that the delay in completing the proceedings is on account of non-cooperation of the petitioner, an order came to be passed by the third respondent on 21.05.2014 reducing the subsistence allowance at the rate of 50% from the month of May-2014, on the ground that the petitioner had not cooperated with the disciplinary proceedings. Challenging the said order, the petitioner filed a writ petition in W.P.(MD)No.18291 of 2014 and this Court allowed the said writ petition. Paragraph 7 of the said order read as follows:

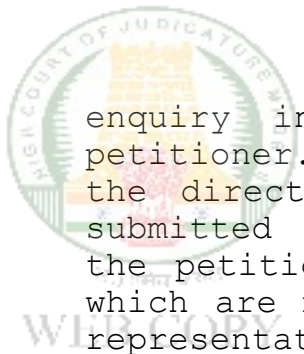
"7. Considering the above stated facts and circumstances and considering the fact that the grievance of the petitioner is that not all the documents as sought for by the petitioner were furnished to him and only few documents alone were furnished, I am of the view that the matter has to be re-considered by the third respondent once again by taking note all all the above stated facts and circumstances.

8. Accordingly, the writ petition is allowed; the impugned order is set aside and the matter is remitted back to the third respondent for passing fresh orders, after giving due opportunity of hearing to the petitioner. Such exercise shall be done by the third respondent within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently connected Miscellaneous petition is closed."

8. Thereafter, a notice was issued by the third respondent to the petitioner and the petitioner also submitted a representation along with list of documents sought for by him. Considering the representations of the petitioner, the impugned order was passed by the third respondent on 31.03.2015. The third respondent held that the petitioner has unnecessarily delayed the disciplinary proceedings and that he is responsible for the delay in completing the enquiry by deliberately avoiding participation. As against the said impugned order, the present writ petition has been filed.

9. The learned Senior Counsel for the petitioner after referring to Section 3 of Tamil Nadu Payment of Subsistence Allowance Act, 1981, submitted that the enquiry is prolonged beyond the period of 90 days for several reasons and hence the reduction of subsistence allowance to 50% of the wages cannot be sustained. The learned Senior Counsel further pointed out that the order of reduction of subsistence allowance was passed without any prior notice or giving sufficient opportunity.

10. Though several incidents and the conduct of the petitioner was stated as reason, which caused delay, the learned Senior Counsel relying upon the order passed by this Court, dated 04.09.2014, in W.P.(MD)No.11571 of 2013 and submitted that the third respondent was directed to furnish all the documents to the petitioner and kept the



enquiry in abeyance till the documents are furnished to the petitioner. Since the third respondent is acted quiet contrary to the direction of this Court, the learned Senior Counsel further submitted that the disciplinary proceedings cannot go on, unless, the petitioner is furnished with the copies of all the documents, which are mentioned in his representation. The petitioner, in his representation in response to the notice issued by the third respondent, has referred to more than 17 documents. It is, therefore, contended that the third respondent, who has not disputed the non-furnishing of copies of documents, cannot reduce the petitioner's subsistence allowance from 100% to 50% of the pay without a hearing or notice to the petitioner.

11.The learned Senior Counsel for the petitioner further submitted that the documents, which are sought by the petitioner are relevant, as the third respondent himself has framed charges and proceed with enquiry against the petitioner only on the basis of those documents. Hence, it is submitted that the enquiry cannot be completed in accordance with law without furnishing the copies of documents sought by the petitioner.

12.The learned Special Government Pleader, however, relied upon the independent counter affidavit filed by the second respondent as well as the third respondent. Though the third respondent has engaged an independent Advocate, the second respondent is represented by the learned Special Government Pleader. From the reading of entire counter affidavit filed by the respondents 2 and 3, the specific case of the respondents is that the enquiry was delayed by the petitioner and the petitioner is wholly responsible for the delay. It is pointed out that the petitioner had never appeared before the Enquiry Officer even though the matter is pending for a long number of years. The learned Special Government Pleader relied upon para 12 of the counter affidavit, which reads as follows:

"12.The allegations are levelled by the petitioner in para 8 to the effect that he was not properly given the Documents pertaining to the charges levelled against him are all devoid of truth. The documents which are available in the Society were given to the Petitioner. Particularly, the invoices pertaining to the supply of fertilizers by TANFED and some other documents were given to the petitioner on his petition to the Respondent Society under Right to Information Act. The documents as required by the Petitioner have been furnished to him under his Right to Information Act Applications on 17.04.2014, 03.06.2014 and 11.08.014. Furthermore, as ordered by the Hon'ble High Court in W.P.(MD)No.11571 of 2013, the remaining documents were furnished to the petitioner on 10.10.2014. In this connection, it is submitted that only the following two documents, as



required by the petitioner have not been furnished to him.

i.General Ledger Page No.1 to 201 from 03.04.2010 to 11.03.2011.

ii.The deposition of witness numbering 72 as found in the Charge Sheet of the Police Department.

Among the above documents, the Document mentioned Sl.No.i, not at all connected to the charge memo issued as against the petitioner. The document under Sl.No.ii, has already been furnished to him by the Police Department along with the Charge Sheet.:

13.The statement of the third respondent in paragraph 12 of the counter affidavit is corroborated by other respondents. The fact remains that the petitioner was furnished with documents, which are relevant. From the stand taken by the petitioner, this Court is unable to find that any prejudice is likely to be caused to the petitioner, even if some of the documents, which are cited by the petitioner, are not served on the petitioner, by mistake. The order passed by this Court earlier has to be understood in the present context. More than 17 documents had been filed by the respondents to prove the charges. The petitioner knew the nature of charges, as he was the Secretary and having acquaintance with the documents. It is unfortunate in this case that the petitioner has successfully prevented the enquiry being completed against him for all these years. The third respondent has taken a specific stand that the further documents, which are relied upon by the respondents, have been furnished to the petitioner. It was, therefore, submitted that the disciplinary proceedings need not be kept in abeyance, when the petitioner himself has obtained the required documents under Right to Information Act by making application repeatedly.

14.The learned Special Government Pleader would submit that the whole stalemate in the enquiry proceedings was caused only by the petitioner. The petitioner has not come with any specific reference to the documents, except saying that the documents are not served on the petitioner. All the documents, which are required by the petitioner have been furnished to him under Right to Information Act. In such circumstances, the fact that some of the documents were not furnished to the petitioner cannot be a sole ground to allow this writ petition.

15.Having regard to the specific averments and the stand in the counter affidavit filed by the respondents 1 and 2, this Court find some justification for the accusation that the petitioner is responsible for the delay. In this context, Section 3 of Tamil Nadu Payment of Subsistence Allowance Act, 1981, is relevant and the same read as follows:

"3.Payment of subsistence allowance- (1) An employee who is placed under suspension shall, during the period of such suspension, be entitled to receive payment



from the employer as subsistence allowance, an amount equal to fifty percentum of the wages which the employee was drawing immediately before suspension, for the first ninety days reckoned from the date of such suspension:

Provided that where the period of suspension exceeds ninety days but does not exceed one-hundred and eighty days, the employee shall be entitled to receive, after the said period of ninety days, a subsistence allowance equal to seventy-five percentum of the wages which the employee was drawing immediately before his suspension:

Provided also that where the enquiry or criminal proceeding is prolonged beyond the period of ninety days for reasons directly attributable to the employee, the subsistence allowance shall, for the period exceeding ninety days, be reduced to fifty per centum of the wages, which the employee was drawing immediately before his suspension.

(2) An employee shall not be entitled to receive any subsistence allowance if he accepts any other employment during the period of his suspension in any establishment other than the establishment where he had been working immediately before his suspension.

(3) An employee shall not, in any event, be liable to refund or forfeit any part of the subsistence allowance admissible to him under sub-section (1) :

Provided that where the employee is exonerated of the charge based on which his suspension was ordered, the subsistence allowance paid to him for any period shall be adjusted against the full wages admissible to him for the period of suspension.

(4) The subsistence allowance under sub-section (1) shall be paid by the employer to the employee on the date or dates on which the wages due to the employee, but for his suspension, would have become payable."

16. As per Section 3 of the Tamil Nadu Payment of Subsistence Allowance Act, 1981, the employee against whom, criminal proceedings or departmental action is prolonged beyond the period of 90 days for reasons directly attributable to the employer, his subsistence allowance can be reduced to 50% of the wages, which the employee was drawing during suspension. The language employed under Section 3 of the Act gives an indication that the object, behind the proviso to Section 3 of the Act, was to prevent any mischief. As pointed out earlier, the delay in completing the proceedings is on account of the petitioner and no explanation is offered by the petitioner. He himself admitted in the affidavit before this Court that he did not appear before the Disciplinary Authority for want of documents. The reasons are not germane. Having regard to the stand taken by the

<https://www.services.equestion.in/home/revise/> this Court is unable to see any justification in



avoiding the enquiry for a period more than six years for want of records.

17.This Court do not find any *bona fide* in contending that the delay was on account of non-furnishing of materials. The very object behind the Tamil Nadu Payment of Subsistence Allowance Act, 1981, is to protect the interest of the employee. The petitioner availed the benefit of getting 100% subsistence allowance, after 180 days from the date of original memo. However, the correspondence and communications, as indicated in the pleadings, will definitely show that the petitioner was in the habit of delaying the proceedings for extraneous reasons. The delay has caused serious prejudice to the respondents in completing the disciplinary action and to proceed against the other officials.

18.In view of the admitted facts and the conduct of the petitioner, this Court is unable to take contrary view or interfere with the order passed by the third respondent. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Cs-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The Registrar of Co-Operative Societies,
170, E.V.R.High Road, Kelpauk, Chennai.
- 2.The Joint Registrar of Co-Operative Societies,
Collectorate, Thanthunimalai, Karur District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate SR-87041.
+1 CC to SPL GP SR-87568.

W.P. (MD) .No.7329 of 2015
17.09.2019

CS (14.10.2019) 7P 5C