

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.01.2021

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.512 of 2021
and
W.M.P.Nos.576 & 578 of 2021

(Heard through VC)

M.Jagadheesan .. Petitioner

-vs-

- 1.The Joint Registrar of Co-operative Societies,
Namakkal Region,
Namakkal.
- 2.The Deputy Registrar of Co-operative Societies,
Namakkal Circle,
District Collector Office Complex,
Namakkal.
- 3.The President,
S.1286, R.Pudupalayam Primary Agricultural
Credity Co-operative Society,
R.Pudupalayam,
Namakkal District. .. Respondents

Prayer: Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relates to the impugned order of suspension dated 07.11.2020 passed by the third respondent and quash the same as illegal, unauthority of law and consequently direct the respondents to reinstate the petitioner into service with all back wages and other benefits including promotion.

For Petitioner : Mr.A.V.Raja

For Respondents : Mr.R.Balaramesh
Special Government Pleader

O R D E R

The writ petition has been filed challenging the impugned order of suspension dated 07.11.2020 passed by the third respondent and consequently direct the respondents to

reinstate the petitioner into service with all back wages and other benefits including promotion.

2. Mr.R.Balaramesh, learned Special Government Pleader takes notice on behalf of the respondents. By consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

3. According to the petitioner, he was placed under suspension pursuant to the order dated 07.11.2020 and in the said order, there was no mention about the payment of subsistence allowance. A reading of the provisions of the Subsistence Allowance Act, 1981 makes it very clear that the order of suspension should contain the modality of payment of subsistence allowance. However, in the present case, the subsistence allowance is said to be paid to the employee, within the stipulated time under the said Act.

4. It is represented by Mr.Balaramesh, learned Special Government Pleader that the charge memo has already been issued.

5. It is needless to mention that in case the Subsistence Allowance is not paid, the petitioner will have a better case, as the entire enquiry would be a futile exercise, as non-payment of subsistence allowance would vitiate the enquiry. Hence, this Court, while declining to interfere with the order passed by the authority, more particularly, the writ petition is not maintainable, as the relief is sought against the Co-operative Society, directs the respondents to proceed with the enquiry on a day-to-day basis without adjourning the matter beyond seven working days at any point of time. In case the respondent wants to consider the case of the petitioner for reinstatement, the principle laid in Ajay Kumar Choudhary vs. Union of India through its Secretary and another, reported in 2015 (3) CTC 119 and State of TN vs. Promod Kumar IPS and another, reported in AIR 2018 SC 4060 shall be taken note of. In similar circumstances, this Court has elaborately dealt with the issue in W.P.No.13 of 2021 (V.Mohanraj vs. The Secretary and two others), and passed a detailed order on 06.01.2021. For the sake of convenience, the relevant Paragraph Nos.6 to 10 are extracted hereunder:

"6. Considering the facts and circumstances of this case, this Court is not going to direct the respondents to promote the petitioner to the post of Inspector by including him in the panel and it is for the respondents to consider the same. It is needless to mention that if any departmental proceedings have been commenced or initiated, it is open to the respondents to proceed with the same so as to bring the proceedings to a logical end, dehors pendency of the criminal case, as both criminal proceedings as well as departmental proceedings can go on simultaneously and the

criminal case should be proved beyond reasonable doubt by adducing oral and documentary evidence, whereas charges in the departmental proceedings should be established on the basis of preponderance of probabilities. If Criminal Proceedings are not initiated or concluded within one year from the date of FIR, there is no hindrance on the part of the employer to proceed with the departmental proceedings on day to-day basis and bring the issue to a logical end at the earliest point of time and the employee will have to participate in the departmental proceedings and shall not attempt to adopt dilatory tactics.

7. In this regard, the Hon'ble Supreme Court in the case of Stanzen Toyotetsu India Private Limited vs. Girish v. and others, reported in (2014) 3 SCC 636, has clearly laid down a dictum as under:

"19. In the circumstances and taking into consideration all aspects mentioned above as also keeping in view the fact that all the three Courts below have exercised their discretion in favour of staying the on-going disciplinary proceedings, we do not consider it fit to vacate the said order straightaway. Interests of justice would, in our opinion, be sufficiently served if we direct the Court dealing with the criminal charges against the respondents to conclude the proceedings as expeditiously as possible but in any case within a period of one year from the date of this order. We hope and trust that the Trial Court will take effective steps to ensure that the witnesses are served, appear and are examined. The Court may for that purpose adjourn the case for no more than a fortnight every time an adjournment is necessary. We also expect the accused in the criminal case to co-operate with the trial Court for an early completion of the proceedings. We say so because experience has shown that trials often linger on for a long time on account of non-availability of the defense lawyers to cross-examine the witnesses or on account of adjournments sought by them on the flimsiest of the grounds. All that needs to be avoided. In case, however, the trial is not completed within the period of one year from the date of this order, despite the steps which the Trial Court has been

directed to take the disciplinary proceedings initiated against the respondents shall be resumed and concluded by the Inquiry Officer concerned. The impugned orders shall in that case stand vacated upon expiry of the period of one year from the date of the order.

20. In the result, we allow these appeals but only in part and to the extent indicated above. The parties are left to bear their own costs."

8. For the purpose of brevity, this Court makes it very clear that if any criminal proceedings have been initiated after commencement of the departmental proceedings, the one year time limit mentioned supra will not apply to those cases and the departmental proceedings shall go on uninterruptedly. Invariably, the offenders, who have committed grave offences, are being acquitted on the ground of benefit of doubt, owing to missing link in the chain of events and are trying to get back the entire backwages and for those persons, employment itself is a lottery.

9. In the present case on hand, even according to the petitioner, a charge memo has been issued as early as on 18.12.2015 and in case any departmental proceedings had already commenced, the same shall be proceeded on a day to-day basis without adjourning the matter beyond seven working days at any point of time and brought to a logical conclusion at the earliest. The petitioner shall co-operate for early attainment of the proceedings.

10. With the above observation, this writ petition is disposed of. No costs."

6. In the result, the writ petition is dismissed and the respondents shall take a decision in the light of the judgments of the Hon'ble Supreme Court and the judgment of this Court dated 06.01.2020 (especially Paragraph No.6). Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Joint Registrar of Co-operative Societies,
Namakkal Region,
Namakkal.

2.The Deputy Registrar of Co-operative Societies,
Namakkal Circle,
District Collector Office Complex,
Namakkal.

+1cc to Mr.R. BALARAMESH, Advocate, S.R.No.2009

+1cc to the Government Pleader, S.R.No.1967

VG11(CO)
SM/01/03/2021

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