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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2021

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.1335 of 2021
(Heard through VC)

G.Jambulingam

... Petitioner

vs

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

2.The Deputy Registrar of Co-operative Societies,
Thiruvannamalai,
Thiruvannamalai District.

3.The President,
H.H.521, Melpallipattu,
Primary Agriculture Co-operative Credit Society,
Chengam Taluk,
Thiruvannamalai District.

.. Respondents

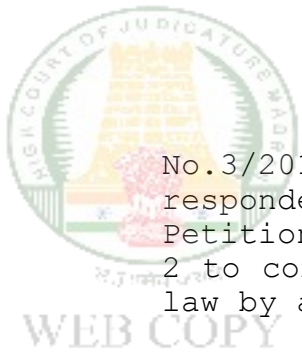
Prayer: Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus calling for records in pursuant to the impugned order passed by the 1st respondent in proceedings dated 29.01.2016 in Revision Petition No.3/2015/SaPa to quash the said order and consequently direct the respondents 1 and 2 to conduct the enquiry in Revision Petition in accordance with law by affording opportunity to put forth the petitioner's case.

For Petitioner : M/s.R.Nirmala Devi

For Respondents : Mr.L.P.Shanmugasundaram

O R D E R

The petitioner has come forward with this writ petition, challenging the impugned order passed by the 1st respondent in proceedings dated 29.01.2016 in Revision Petition



No.3/2015/SaPa, in and by which, the dismissal order of the 3rd respondent has been confirmed by the 1st Respondent. The Petitioner also sought for a direction to the Respondents 1 and 2 to conduct enquiry in the Revision Petition in accordance with law by affording opportunity to put forth his case.

2. Mr.L.P.Shanmugasundaram, learned Standing Counsel 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. The case of the petitioner is that he was appointed as Secretary in the third respondent-Society and on, 07.12.2012, he was suspended by the Special Officer on the ground of misappropriation of money. Thereafter, a charge memo was issued and Disciplinary proceedings commenced. The further case of the petitioner is that on 24.12.2014, the Enquiry Officer had passed an order of dismissal against the petitioner, against which, he preferred a statutory Revision under Section 153 of the Tamil Nadu Co-operative Society Act, 1983 before the second respondent as early as in the year 2015 in Revision Petition No.3 of 2015. Since the 1st Respondent / Joint Registrar of Co-Operative Society / Revision Authority has not disposed of the matter, the petitioner filed a writ petition in W.P.No.2882 of 2018 before this Court. Even though this Court, by an order dated 09.02.2018, directed the 1st Respondent to pass orders on the Revision Petition filed by the petitioner dated 06.04.2015, the said Revision Petition was already disposed on 29.01.2016 itself, much prior to the disposal of the Writ Petition and the same has also been communicated to the petitioner.

4. The Respondents have contended that after conduct of a detailed domestic enquiry, charges have been established and it was the petitioner, who had not produced any documents to disprove the charges, pursuant to which, the charges against the petitioner have been duly established. It was further contended that even though an opportunity has been given to the petitioner for cross examination, he has not cross examined the witnesses.

5. Learned counsel for the petitioner contended that for the misconduct committed by the cashier, the petitioner, being the Secretary of the Society at the relevant point of time, morally accepted the mistake and paid the amount.

6. The only consideration in this case is, as to whether any subsistence allowance has been paid in time and if not, whether any prejudice has been caused to the petitioner. It is seen that the petitioner was placed under suspension on 07.12.2012 till the date of order of dismissal by the 3rd Respondent, viz., 24.12.2014. According to the petitioner, charge memos were



issued on 28.03.2013 and 11.02.2014 and the enquiry commenced in 2014 and concluded on 21.06.2014 and the petitioner was paid subsistence allowance only for three months belatedly and the remaining amount has not been paid. The Respondents produced various vouchers to show that subsistence allowance has been paid periodically on various dates in the year, 2016. The third respondent had decided to pay subsistence allowance by Resolution dated 07.04.2016 after adjusting the amount already paid. Admittedly, the subsistence allowance was paid belatedly and that it is mandatory to pay the subsistence allowance during enquiry.

7. The petitioner has relied upon a judgment of the Apex Court in Civil Appeal No.2693 of 2013 (UCO Bank & Others vs. Rajendra Shankar Shukla) dated 15.02.2018 to contend that non-payment of subsistence allowance vitiates the entire enquiry. For the sake of convenience, the relevant portion of the judgment is extracted below:

"15. An employee is entitled to subsistence allowance during an inquiry pending against him or her but if that employee is starved of finances by zero payment, it would be unreasonable to expect the employee to meaningfully participate in a departmental inquiry. Access to justice is a valuable right available to every person, even to a criminal, and indeed free legal representation is provided even to a criminal. In the case of a departmental inquiry, the delinquent is at best guilty of a misconduct but that is no ground to deny access to pension (wherever applicable) or subsistence allowance (wherever applicable). As far as Shukla is concerned he was denied his pension as well as subsistence allowance which prevented him from effectively participating in the disciplinary inquiry. On this ground as well, the proceedings against Shukla are vitiated."

8. In the present case on hand, the subsistence allowance from 07.12.2012 to 28.02.2013 was paid on 21.06.2014 and from 01.03.2013 till 24.12.2014, the subsistence allowance to the tune of Rs.2,24,821/- was paid on 30.05.2016. Of course, it is true that it is a duty cast upon the employer to subsistence allowance, but at the same time, the petitioner has not adduced any iota of evidence to show that he was highly prejudiced in effectively defending his case, on account of non-payment of subsistence allowance. Since it is a case of misappropriation of funds, probably the petitioner would not have evinced any interest to claim subsistence allowance.

9. A reading of the order dated 29.01.2016 makes it very



clear that the petitioner was mentally affected due to initiation of action against him and that he was not in a position to give proper explanation. The issue of non payment of subsistence allowance was for the first time raised before the Revisional Authority and the same has been referred to in the order. The only plea taken by the petitioner that he was not paid any subsistence allowance, due to which, he was not in a position to give proper explanation in the enquiry, cannot be taken to be the ground to blindly interfere with the impugned order, as it is obligatory on the part of the petitioner to disclose as to how he was prejudiced owing to non payment of subsistence allowance.

10. In this case, the petitioner has misappropriated the funds along with another person and that the amount has been paid by both together with interest. Even though no prejudice has been shown by the petitioner on account of non payment of subsistence allowance, it has been decided to pay subsistence allowance and it was the petitioner, who did not appear for enquiry on 17.05.2014, 29.05.2014, 09.06.2014, 07.12.2012 to 28.02.2013. The petitioner should have appeared before the Enquiry Officer and made an endorsement in the proceedings (at least one day before the conclusion of the disciplinary proceedings) to the effect that he was not paid subsistence allowance and only after payment of subsistence allowance, he would be in a position to participate in the enquiry, which was admittedly not done by the petitioner and this Court would have certainly extended its helping hand to the petitioner, if the situation is otherwise. The petitioner was given enough opportunity to examine and cross examine witnesses and he had not effectively utilized / availed the said opportunity.

11. The decision quoted by the petitioner is not applicable to the facts of this case, as in that case, inspite of request made by the employee therein to pay subsistence allowance, it was not paid to him and even after the retirement, no amount of subsistence allowance was paid and therefore, the Apex Court rightly held that non payment of subsistence allowance would cause great prejudice and it is mandatory for the employer to pay the amount.

12. In the present case on hand, as already stated supra, the petitioner did not show any prejudice caused to him on account of non payment of subsistence allowance and that the entire amount has been subsequently received by the petitioner belatedly. Taking note of the serious charges levelled against the petitioner, this Court is not inclined to grant the relief sought for by the petitioner and the Writ Petition is liable to be dismissed.



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13. Accordingly, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

rsi

To

1.The Joint Registrar of Co-operative societies,
Thiruvannamalai Region,
Thiruvannamalai.

2.The Deputy Registrar of Co-operative societies,
Thiruvannamalai,
Thiruvannamalai District.

+1cc to M/s. R. Nirmala Devi, Advocate Sr.No.20907

+1cc to the Government Pleader, Co-Operative, Sr.No.20800

W.P.No.1335 of 2021

VSN-II(CO)
GN(16/07/2021)