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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 28.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

W.P.No.17479 of 2008

(Through Video Conference)

P.Kaligoundan

... Petitioner

Vs

1) The Joint Registrar of Co-operative
Societies,
Chairman,
Namakkal District Primary Agricultural
Co-operative Banks,
Common Cadre Authority, Namakkal.

2) The Special Officer,
S 573, Koothampoondi Primary
Agricultural Co-operative Bank,
Tiruchengodu (Taluk),
Namakkal District, Pincode - 637 202

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order bearing No.Na.Ka.No.9791/2005 bjh/nt/t/dated 15.05.2008, issued by the first respondent and quash the same, and consequently direct the respondents to pay to the petitioner a sum of Rs.2,64,017/- (Rupees Two Lakhs Sixty Four Thousand and seventeen) towards subsistence allowance payable to him for the period of suspension with reasonable rate of interest with costs.

For Petitioner : Mr.A.Kumar

For Respondents : Mr.C.Selvaraj,
Government Advocate



O R D E R

The petitioner, while working as a Secretary of the second respondent Society, was issued with a charge memo, dated 06.12.2005 for excess payment of Rupees One Lakh (Rs.1,00,000/-). When an enquiry was conducted, the petitioner was found guilty and was imposed with a punishment of "Reversion" to the post of Assistant, to which he was originally appointed. The petitioner preferred an Appeal to the first respondent wherein the first respondent has modified the punishment of "Reversion" into one of 'withholding of increment for three years without cumulative effect'. There is no dispute as to the order of the Appellate Authority in modifying the punishment.

2. The petitioner agitates the order only on two issues. Firstly, the order regularizing the period of suspension as 'leave on loss of pay' is not correct while other punishment is imposed. According to him, it amounts to double jeopardy. Secondly, during the period of suspension, he is entitled to Subsistence Allowance, as per Regulation No.29, whereas, the respondents have taken a stand that the petitioner was paid the Subsistence Allowance from 06.10.2005 to 03.04.2006 at 50% of the wages and 04.04.2006 to 31.07.2006 at 75% of the wages. As per the Regulation, the petitioner shall produce a non-employment certificate. Since he has not complied with the requirement, he was not granted Subsistence Allowance for the subsequent period from 01.08.2006.

3. Have considered the submissions.

4. At the outset, it is not disputed that the order of punishment of "stoppage of increment for three years without cumulative effect" has been filed. Insofar as the regularization of suspension period is concerned, there shall be an order on this aspect as to whether the period of suspension is regularized or not? In the instant case, the period of suspension was regularized as 'leave on loss of pay'. It is not the case of the petitioner that the Authority, who passed that order is incompetent. There is an order with regard to the suspension period that has been passed and therefore, I do not find any discrepancy in that.

5. It remains only with respect to the payment of Subsistence Allowance for a period between 01.08.2006 and 13.02.2007. On 13.02.2007, the Disciplinary Authority has passed an order of punishment of "Reversion". From that date onwards, the suspension order ceases to have effect and the petitioner was expected to join duty. Therefore, he will be entitled to Subsistence Allowance only upto 13.02.2007.



6. It is well settled Principle of Law that the duty is cast on the Management to prove that its employee is gainfully employed to deny the Subsistence Allowance. When an employee states that he is not employed elsewhere, he shall be paid the Subsistence Allowance in the appropriate period, as per the Regulations. Denial of the same will amount to violation of the Principles of Natural Justice. An employee shall survive to defend his case effectively and that will become a reality, only on payment of the Subsistence Allowance. It is not the case of the Management that the employee was gainfully employed or he was not prejudiced by non-payment of Subsistence Allowance. On the other hand, it is alleged that the petitioner has not fulfilled the procedural requirement. Therefore, the respondent Management shall not harp upon technicalities and deny the Subsistence Allowance till the disciplinary proceedings are concluded. Therefore, in that view of the matter, the petitioner is entitled to Subsistence Allowance between 01.08.2006 and 13.02.2007.

7. Accordingly, the Writ Petition is Disposed of with a direction to the respondents to pay the Subsistence Allowance for the period between 01.08.2006 to 13.02.2007 within a period of three(03) months from the date of receipt of a copy of this order and within all other aspects, the orders of the respondents stands confirmed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To:

- 1) The Chairman,
The Joint Registrar of Co-operative
Societies,
Namakkal District Primary Agricultural
Co-operative Banks,
Common Cadre Authority, Namakkal.



2) The Special Officer,
S 573, Koothampoondi Primary
Agricultural Co-operative Bank,
Tiruchengodu (Taluk),
Namakkal District, Pincode - 637 202

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+1 cc to Special Government Pleader SR.No.36917

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LN (CO)
CT (27/08/2021)