

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

CORAM :
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.4446 of 2021

S.M.Syed Nazeer

... Petitioner

Vs.

1. The Joint Registrar of Co-operative Societies,
Chairman, Common Cadre Committee,
Krishnagiri Region, Krishnagiri.
 2. The Deputy Registrar of Co-operative Societies,
Krishnagiri Circle, Krishnagiri.
 3. K.K.96, Mottur Primary Agricultural
Co-operative Credit Society Ltd.,
rep. by its President,
Mottur, Kaveripattinam,
Krishnagiri District.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, forbearing the 1st Respondent from proceeding with the disciplinary proceedings against the Petitioner pursuant to the Charge Memo in Na.Ka.559/2020/Po.Pa.Ni.Thi, dated 21.09.2020, without paying Subsistence Allowance.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents : Mr.P.Balaramesh,
Addl. Government Pleader

O R D E R

Petitioner has come up with this Writ Petition seeking to forbear the 1st Respondent from proceeding with the disciplinary proceedings against him, pursuant to the Charge Memo in Na.Ka.559/2020/Po.Pa.Ni.Thi, dated 21.09.2020, without paying Subsistence Allowance.

2. According to the Petitioner, he was appointed as Secretary of the 3rd Respondent Society on 08.10.1990 and he has rendered more than 28 years of blemishless service in the

Respondent/Society. He was placed under suspension from service on 08.04.2019 by the 3rd Respondent, for the reason that, he did not attend office from 03.09.2018. It is his contention that, disciplinary proceedings against the Secretary of the Primary Agricultural Credit Societies can be taken only by the cadre Authority, i.e. the Regional Joint Registrar of Co-operative Societies, the 1st Respondent herein and that, the elected President, the 3rd Respondent herein has no power or authority to pass retrospective suspension order. Hence, the entire proceedings initiated and conducted by the 3rd Respondent is null and void. It is his further contention that, without paying Subsistence Allowance, enquiry shall not be proceeded with.

3. Learned Additional Government Pleader appearing for the Respondents submitted that, if the Petitioner is legally entitled to, he will be paid Subsistence Allowance.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. It is no doubt true that, Subsistence Allowance has to be paid to a suspended employee. But, payment of Subsistence Allowance depends upon the facts of each case, i.e. whether the employee is employed elsewhere or not staying in Headquarters, etc. In the case on hand, the Petitioner has not stated in his Affidavit as to why Subsistence Allowance has not been paid to him. A total denial of subsistence allowance to a suspended employee, would be violative of Article 21 of the Constitution of India and it would amount to gross unfairness.

6. Taking note of the submissions of the learned counsel on either side, this Court directs the Respondents herein to pay Subsistence Allowance to the Petitioner, at the earliest, if he is otherwise found eligible. The Departmental enquiry proceedings initiated against the Petitioner shall go on, on a day-to-day basis without adjourning the matter beyond five working days at any point of time. It is made clear that, the Petitioner shall not stall the enquiry proceedings, as charges against him are serious in nature.

7. It is open to the Petitioner to question the final orders passed in the Departmental proceedings, in case, he is not paid any Subsistence Allowance. If the departmental proceedings are delayed due to the action of the Petitioner, Subsistence Allowance can be reduced in terms of the Statute/Rules/By-laws/such other provisions that may be applicable. By questioning the reduction, the Petitioner cannot stall the Enquiry proceedings. If he does so, the protraction is due to the fault of the employee.

The Writ Petition is disposed of accordingly. No costs.
Consequently, connected W.M.P.No.5066 of 2021 is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

(aeb)

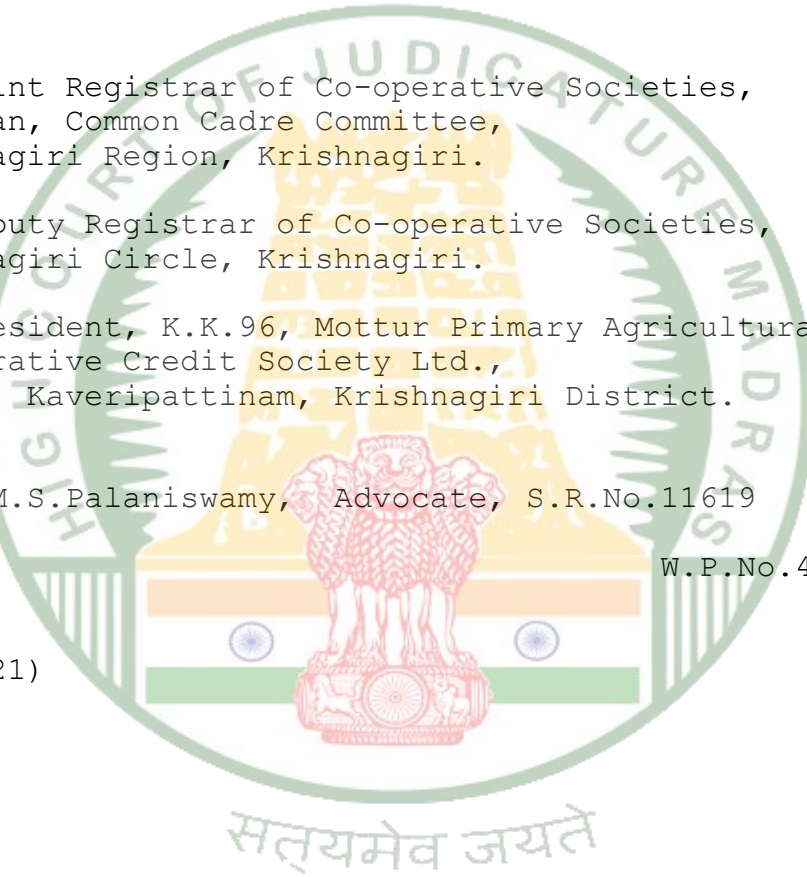
To:

1. The Joint Registrar of Co-operative Societies,
Chairman, Common Cadre Committee,
Krishnagiri Region, Krishnagiri.
2. The Deputy Registrar of Co-operative Societies,
Krishnagiri Circle, Krishnagiri.
3. The President, K.K.96, Mottur Primary Agricultural
Co-operative Credit Society Ltd.,
Mottur, Kaveripattinam, Krishnagiri District.

+1cc to Mr.M.S.Palaniswamy, Advocate, S.R.No.11619

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JPL (CO)
GN (05/07/2021)



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