

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2021

CORAM

THE HON'BLE MR. JUSTICE S.S.SUNDAR

W.P.No.12903 of 2021
and
W.M.P.Nos.13709 & 13711 of 2021

R.Kumar

..Petitioner

Vs

1. The Deputy Registrar,
Tamil Nadu Co-Operative Societies,
Krishnagiri Region,
Krishnagiri.

2. The President / Board Directors,
No.KK 45, Sapparthi PACCS,
Sapparam - Pagaimuddlu,
Krishnagiri District - 635 106.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the order dated 29.05.2021 passed by the 2nd respondent and quash the same and consequently forbear the respondents to proceed with departmental enquiry without payment of subsistence allowance to the petitioner from the date of order of suspension till this date.

For Petitioner : Mr.G.Ethirajulu

For R 1 : Ms.C.Selvaraji

For 2 : Mr.M.S.Palanisamy

O R D E R
(Through video conferencing)

This Writ Petition is filed for issuing a Writ of Certiorarified Mandamus, to call for the records relating to the order dated 29.05.2021 passed by the 2nd respondent and quash the same and consequently forbear the respondents from proceeding

with the departmental enquiry without payment of subsistence allowance to the petitioner from the date of order of suspension till this date.

2. Brief facts that are necessary for disposal of this writ petition are as follows:

The petitioner was appointed as a Peon, Fertilizer Salesman in 2nd respondent Society in the year 1989. The petitioner was later promoted to the post of Senior Clerk from 01.11.1996. Thereafter, the petitioner was promoted to the post of Assistant Secretary from 05.07.2000. While the petitioner was working as Assistant Secretary, on the allegations of misappropriation of funds, an order of suspension was passed by the 2nd respondent Society on 26.06.2019. Subsequently, the 2nd respondent issued a charge memo dated 23.12.2020 containing 15 charges to the petitioner and also directed the petitioner to submit his explanation within 7 days.

3. It is to be seen that the petitioner has made several representations to the respondents expressing his inability to give explanation to the charge memo in the absence of production of some of the documents. From the typed set of papers produced by the learned counsel appearing for the respondents, it is seen that, on every occasion the petitioner was asked to come to the office of the 2nd respondent and collect the documents which he requires for submitting explanation. Atleast on 3 occasions when opportunities were given to the petitioner, the petitioner did not avail the opportunity by going to the office of the 2nd respondent to collect the documents on the basis of which charges were framed by the 2nd respondent. On every occasion, the petitioner has expressed his inability to collect the papers on the ground that he was not even given the subsistence allowance.

4. It is to be noted that the petitioner earlier filed a writ petition for issuance of a writ of certiorarified mandamus to call for the records and quash the proceedings of the 2nd respondent dated 16.12.2020 and to direct the respondents 1 and 2 to pay subsistence allowance including the arrears with effect from 26.06.2019 till the completion of the enquiry and to furnish the copies of the documents mentioned by the petitioner in his representation dated 04.01.2020 to the 2nd respondent.

5. It is to be noted that the writ petition was disposed of with a direction that the petitioner can approach the appropriate Authority or this Court, if any remedy is available, only after the final orders are passed in the enquiry proceedings and he is not entitled to knock the doors of either this Court or any authorities to stall the enquiry proceedings.

6.It is thereafter the petitioner submitted a representation to the respondents for disbursement of subsistence allowance. Without referring to the orders passed by this Court, the petitioner in his representation questioned the notice for enquiry on the ground that such notices are unsustainable before law on account of failure to pay subsistence allowance for more than 23 months by then. This representation of the petitioner is dated 24.04.2021. The application from the petitioner for subsistence allowance was rejected on the ground that the petitioner is not staying in the headquarters as per the instructions given in the order of suspension and that he is gainfully employed elsewhere. Even though the details of the employment of the petitioner is not stated in the order of the 2nd respondent, the fact that the petitioner is not staying in the head quarters as per the instructions given to the petitioner in the order of suspension is not seriously disputed.

7.Whether the petitioner is gainfully employed or not, is a factual issue which cannot be resolved in this writ petition.

8.When the learned counsel for the respondents submitted that the petitioner may be allowed to file a revision petition under Section 153 of the Tamil Nadu Co-operative Societies Act, the learned counsel appearing for the petitioner has no serious objection to seek effective alternative remedy.

9.This Court is of the view that alteration remedy is effective as the appellate authority can go into the factual issues based on evidence, both oral and documentary. Hence, this Court disposes of this writ petition with liberty to the petitioner to seek alternative remedy of filing a revision petition before the appropriate authority under Section 153 of the Tamil Nadu Co-operative Societies Act. Consequently, the connected miscellaneous petitions are also closed. No costs.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The Deputy Registrar,
Tamil Nadu Co-Operative Societies,
Krishnagiri Region,
Krishnagiri.
2. The President / Board Directors,
No.KK 45, Sapparthy PACCS,
Sappram - Pagaimuddlu,
Krishnagiri District - 635 106.

+1cc to Mr.M.S.Palanisamy, Advocate SR.No.29478

+1cc to the Government Pleader, SR.No.29747

W.P.No.12903 of 2021

GPL(CO)
RLP(29/07/2021)