

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.01.2021
CORAM
THE HONOURABLE MR.JUSTICE R.MAHDEVAN
W.P.No.21831 of 2014

R.Karuppusamy

... Petitioner

Vs.

1. The Joint Registrar of Cooperative Societies,
Coimbatore Region, Coimbatore,
Coimbatore District

2. The Special Officer,
Senjeri Malaiyadi Palayam Farmers Service,
Coop.Society, Malaiyadi Palayam,
Sulthanpet Via, Sulur Taluk,
Coimbatore District.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents to disburse the subsistence allowance to the petitioner for the period under suspension from 20.04.2006 to 21.05.2007.

For Petitioner : Mr.C.Prakasam

For Respondents : Mrs.Girija, AGP - R1
Mr.E.M.S.Natarajan - R2

ORDER

Heard both sides and perused the materials placed before this Court.

2.Seeking a direction to the respondents to disburse the subsistence allowance to the petitioner for the suspended period, the present writ petition came to be filed.

3.According to the petitioner, while he was working as Assistant Secretary in the second respondent cooperative bank, he was suspended from service on 20.04.2006 for the alleged misappropriation to the tune of Rs.15,71,027/- and he was ultimately, terminated from service on 21.5.2007, without conducting any enquiry and furnishing the relevant documents to substantiate his case. It is the grievance of the petitioner that during the suspended period, he was not paid subsistence allowance, which vitiated the entire disciplinary proceedings initiated against him. The representation submitted by him in this regard, was not considered by the respondents. Hence, this writ petition.

4.It is an admitted fact that the petitioner, at the time of working as Assistant Secretary, was suspended from service on 20.04.2006 and was terminated on 21.05.2007; and during that period, he was not granted subsistence allowance, stating that the petitioner was not an employee as defined under Section 2(a) of the Payment of Subsistence Allowance Act, 1981, and the managerial / supervisory post stands excluded from the applicability of the said Act.

5.At the outset, it is to be stated that the word "subsistence" itself denotes that the payment is for survival of the employee and his family. So long as the Cooperative Society keeps an employee under suspension, it has an obligation to pay subsistence allowance. Also, it is well settled that denial of subsistence allowance is deprivation of livelihood and therefore, it is in violation of Article 21 of the Constitution of India. Hence, the action of the respondents in not paying the subsistence allowance is arbitrary, illegal and unconstitutional.

6.The Supreme Court in Capt. M.Paul Anthony v. Bharat Gold Mines Ltd., and another [(1999) 3 SCC 679], while considering the payment of subsistence allowance in a case of Government Servant, was of the view that "an act of non payment of subsistence allowance could be linked to slow poisoning and if the employee is not permitted to sustain himself on account of non payment of subsistence allowance, he would gradually be starved to death". In another case in Jagdamba Prasad Shukla V. State of U.P. and others [(2000) 7 SCC 90], it was held by the Supreme Court that the "payment of subsistence allowance is a matter of right and not a bounty".

7.Furthermore, the learned counsel for the petitioner at the time of hearing, drawing the attention of this Court to the judgment of a Division Bench of this Court dated 10.02.2020 rendered in WA.No.1352 of 2019 in the Registrar, Co-operative Society, Chennai and others v. M.Elango, submitted that the issue involved herein is squarely covered by the said judgment, which has been fairly conceded on the side of the respondents. In the said judgment, the Division Bench of this Court, after having considered the rival submissions and elaborately examined the legal proposition, concluded that the total denial of subsistence allowance to a suspended employee of the secretarial or managerial cadre, would be violative of Article 21 of the Constitution of India and hence, the appellants therein were directed to consider his claim of subsistence allowance. The relevant passage of the said judgment is gainfully extracted hereinbelow:

"31. To "subsist" means to manage to stay alive, especially with limited resources or money. The state of living as such is known as subsistence, which is indicative of the fact that one has enough resources to sustain life with basic minimum needs. This means of existence or continuance with meagre resources of livelihood for a salaried employee is known as a subsistence allowance, which is an advance payment to cover immediate living expenses while being kept away from service. It is, therefore, an income that is sufficient to provide bare necessities and is an adequacy of support that exists as a reality while undergoing a compulsory distress. The idea is to preserve sustenance at the minimum economic level to sustain a minimum standard of living. It is practically an allowance for maintenance granted under special circumstances. An employee of whatever rank, if is surviving only on his salary, then whatever be the standard or status of employment, a minimum sustenance is required for all employees. A managerial or secretarial cadre employee also has to maintain himself and may be his family, if he has one. It is in reality a surviving need, when employment is put in suspended animation, that is necessary whether it be an ordinary employee or one who may be enjoying a managerial capacity. This also depends upon the emoluments that are received by an employee and, therefore, it is a matter of assessment, as in the present case, as to what salary was the Secretary being paid. Thus, an universal application of the rule of not paying any subsistence allowance to an employee of the secretarial or managerial cadre may not be a correct approach to the fundamental of the necessity of subsistence allowance. It cannot be accepted by applying a universal logic that a Secretary or a Manager ceases to have the need of basics to continue to live at the bare minimum on being suspended.

32. The underlying principle for making payment of subsistence allowance is to allow an individual to sustain himself. In the present context of the suspension of an employee, one has to keep in mind that services of an employee have not been snapped and the employer-employee relationship during suspension continues to subsist. There is a possibility of the employee being exonerated and he may in such circumstances be entitled to his entire emoluments of the said period. On the other hand, an employee can be found partially guilty and the employer may choose to deduct part of the emoluments by imposing a condition

that the employee would not be entitled to any further emoluments, apart from what he has received during his period of suspension. It is, therefore, the discretion of the employer according to the Bye- Laws and Rules applicable, but, at the same time, it is the right of sustenance of an employee to receive subsistence allowance. As to what would be the ratio to which an employee may be entitled in the present context will have to be left to the discretion of the employer, as Bye-Law 31(2) indicates that the employer may pay subsistence allowance as he may deem fit. This discretion, however, should be exercised reasonably and may be subject to any such deductions in the event an employee is found to be ultimately guilty of heavy financial irregularities or misappropriations. On this ground, we therefore find favour with the respondent/writ petitioner that his representation for payment of subsistence allowance also deserves consideration in the background aforesaid. A total denial of subsistence allowance to a suspended employee, in our opinion, would be violative of Article 21 of the Constitution of India, unless it can be shown that payment of subsistence allowance is not warranted on the facts of a particular case, as illustrated above. We are conscious that a possible sense of injustice or inconvenience resulting in a temporary hardship by itself cannot be a ground to claim a right bereft of the statutory provisions, but where the very sustenance is a single salaried source, a total denial thereof may result in an abrupt punishment with hardly any justification thereby violating basic fundamental rights.

33. We, therefore, without approving the reasoning in paragraph (5) of the impugned judgment for grant of subsistence allowance, uphold the conclusion drawn by the learned Single Judge, but, at the same time, modify the impugned judgment dated 25.10.2018 in the light of the conclusions drawn herein above with liberty to the appellants to pass an appropriate order on this count relating to the claim of the subsistence allowance of the respondent/writ petitioner, in the event no such order has been finally passed while passing the final order of termination. The said exercise be completed within six weeks from the date of receipt of a copy of this order."

8. That apart, as per Regulation 29(d) (i) of the Tamil Nadu Primary Agricultural Cooperative Banks Common Cadre Service

Regulations, 2000, and in terms of G.O.Ms.No.55, Cooperation, Food and Consumer Protection Department, dated 24.03.2000, relating to common cadre employee, which would govern the field of payment of subsistence allowance, the petitioner is entitled to receive subsistence allowance, as he was suspended from service on 20.04.2006, i.e., prior to the date of abolition of the common cadre, vide G.O.Ms.No.122, Cooperation Food and Consumer Protection (CN1) Department, dated 04.07.2008.

9.In such perspective of the matter, this Court has no hesitation to direct the respondents to consider the claim of the petitioner seeking subsistence allowance during the suspended period and pay the same to him, if not already paid, within a period of four weeks from the date of receipt of a copy of this order.

10.With the above direction, this writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Joint Registrar of Cooperative Societies,
Coimbatore Region, Coimbatore,
Coimbatore District
2. The Special Officer,
Senjeri Malaiyadi Palayam Farmers Service,
Coop.Society, Malaiyadi Palayam,
Sulthanpet Via, Sulur Taluk,
Coimbatore District.

+1 cc to Spl Government Pleader Sr.No. 3547

W.P.No.21831 of 2014

RLD CO
A.SK(03.03.2021)