



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD).No.15029 of 2014

and

W.P. (MD)No.17098 of 2017

and

W.M.P (MD)No.13680 of 2017

and

M.P (MD)Nos.1 of 2014 and 1 of 2015

The Management,
A.2205, Veeralapatti Primary
Agricultural Co-operative Credit
Society, Veeralapatti (Post)
Chatrapatti (Via)
Oddanchatram (Taluk)
Dindigul (District)

...Petitioner in both cases

Vs.

1.The Controlling Authority,
Under the Payment of Subsistence
Allowance Act,
Assistant Commissioner of Labour,
Dindigul.

2.Smt.V.Radhamani

... Respondents in both cases

Prayer in W.P(MD)No.15029 of 2014: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned award passed by the first respondent dated 28.03.2014 in P.S.A.No.6 of 2009 and quash the same.

Prayer in W.P(MD)No.17098 of 2017: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, to call for the records of the impugned award passed by the first respondent dated 15.06.2017 in P.S.A.No.2/2014 and quash the same.

For Petitioner
in both cases

:Mr.R.Saravanan

For R2 in both cases

:M/s.N.Sathish Babu



COMMON ORDER

Writ Petition in W.P.(MD).No.15029 of 2014 is filed for issuance of a writ of Certiorari to quash the impugned order passed by the first respondent, dated 28.03.2014 in P.S.A.No.6/2009.

2.Writ Petition in W.P.(MD).N0.17098 of 2017 is filed for issuance of writ of certiorari to quash the impugned order passed by the first respondent dated 15.06.2017 in P.S.A.No.2/2014.

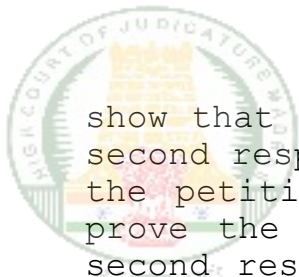
3.In both the cases, the petitioner and the second respondent are one and the same. Since the issue arises for consideration is common in both the cases, both the Writ Petitions have taken up together and disposed of by this common order.

4.The petitioner is the Co-operative Society registered under the TamilNadu Co-operative Societies Act, 1983. The second respondent was working as a clerk in the petitioner society. It is stated that the second respondent has failed to perform her duties and responsibilities and that she had also colluded with the then Secretary of the petitioner Society to cause heavy loss to the Society by misappropriation of the funds of the Society. Hence, the petitioner Society initiated disciplinary action against a few staffs including the second respondent. Pending enquiry, the second respondent was placed under suspension by an order dated 22.09.2000. Though the petitioner states that the second respondent was subsequently dismissed from service by an order dated 24.02.2003, the issue to be considered here is whether the order of dismissal was communicated or served on the second respondent at the relevant point of time.

5.The second respondent filed a petition in P.S.A.No. 6/2009 claiming subsistence allowance for the period of suspension from 22.09.2000 to 21.12.2006, under the Tamil Nadu Payment of Subsistence Allowance Act, 1981. The second respondent filed P.S.A.No. 2/2014 claiming subsistence allowance for the period of suspension from 22.12.2006 to 21.05.2014. Though the entitlement of the second respondent to receive subsistence allowance as a employee under suspension is not an issue, the petitioner contended before the first respondent that the petitioner Society is not liable to pay subsistence allowance after the second respondent was dismissed from service. In other words, it was contended by the petitioner that the first respondent has limited jurisdiction to assess the quantum of subsistence allowance payable to the second respondent for the period of suspension alone and that the petitioner is not liable after the dismissal of the second respondent from service.

6.Before the first respondent, the petitioner produced the order of dismissal dated 24.02.2003. The first respondent raised a specific issue whether the second respondent is entitled to subsistence allowance after the order of dismissal dated 24.02.2003.

The first respondent specifically found that there is no proof to



show that the order of dismissal dated 24.02.2003 was served on the second respondent. It was also observed by the first respondent that the petitioner has not produced neither records nor an attempt to prove the mode by which the order of dismissal was served on the second respondent. The petitioner has produced, before this Court, the statement of one of the salesman of the petitioner society to the effect that the second respondent had refused to receive the copy of the dismissal order dated 24.02.2003, when he tendered the order at the residence of the second respondent. Normally, the order of dismissal will be served by a registered post. The service of order through an employee of Society is not contemplated under the Rules. Since the statement obtained from one of the servants of the petitioner Society cannot be safely relied upon the issue is whether the petitioner had in fact served the order of dismissal dated 24.02.2003. No other material is produced to prove service. This Court has no reason to interfere with the findings of facts rendered by the first respondent. The order of dismissal is without following the procedure prescribed in law.

7.As a matter of fact, the Executive Officer of the petitioner society has passed the order. No Enquiry Officer was appointed to hold an enquiry, even though it is admitted that the second respondent specifically denied the charges. The charge against the second respondent is that the petitioner also colluded with the then Secretary of the Society and misappropriated a sum of Rs.1,300/- in one instance and another sum of Rs.4,500/- and a further sum of Rs.2,92,256/- alleged to have been misappropriated by the then Secretary of the society. This Court, from the records, is unable to hold that an enquiry was conducted in a fair and proper manner before terminating the services of the second respondent. This Court is unable to accept the case of petitioner that the order of dismissal was served on the second respondent at the relevant point of time. Hence, the impugned order passed by the first respondent is proper and this Court has no grounds to interfere with the impugned order. Hence these Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Sn/Ns

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To

1.The Controlling Authority,
Under the payment subsistence-
Allowance Act,
Assistant Commissioner of Labour,
Dindigul.

+2 CC to M/s.R.SARAVANAN, Advocate (SR-28559[F] & SR-28560[F]dated
08/09/2021)

+1 CC to M/s.GP (SR-28520[F] dated 08/09/2021)

W.P.(MD).No.15029 of 2014

and

W.P.(MD).No.17098 of 2017

and

W.M.P.(MD).No.13680 of 2017

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M.P.(MD)Nos.1 and 1 of 2015

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MGJ(28.09.2021) 4P 5C