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W.P.No.440 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.440 of 2020

G.Thamburaj

/vs/

...

Petitioner

1. The Joint Registrar of Co-operative Societies,
Cuddalore zone, Cuddalore.

2. The Deputy Registrar of Co-operative Societies,
Cuddalore, Cuddalore District.

3. The President,
E-2610, Vasantharayanpalayam Urban,
Co-op. Credit Society Ltd.,
Cuddalore.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the third respondent to pay the subsistence allowance to this petitioner in the light of the bye-laws of the third respondent herein.



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For Petitioner ... Mr.P.K.Harinath Baby
for Mr.V.Balamurugane

For Respondents ... Mr.T.Arunkumar
Additional Govt. Pleader for R1 & R2
Mr.R.P.Shanmugasundaram for R3

ORDER

This writ petition has been filed for the issuance of a Writ of Mandamus directing the third respondent to pay the subsistence allowance to the petitioner in the light of the bye-laws of the third respondent herein.

2. The learned counsel for the petitioner submitted that the petitioner was placed under suspension on 13.07.2018 and disciplinary proceedings are still pending; however, he is eligible to get the subsistence allowance in the following manner:

July 2018 to December 2018	: 50%
January 2019 to March 2019	: 75%
April 2019 to October 2019	: 100%

3. The learned Additional Government Pleader submitted that the subsistence allowance is paid only in accordance with the dates as tabulated below:



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Sl.No.	Details of Subsistence Allowance	Eligibility amount in Rs.
1	Date of suspension 13.07.2018 Pay last drawn preceding suspension Rs31,221/-	-
2	Subsistence allowance payable For First 90 days pay x 50% (from 13.07.2018 to 12.10.2018)	46,831.50
3	From 91 days to 180 days 13.10.2018 to 12.01.2019 @ 75% (Rs.31,221 pay) x 75	70,247.25
4	From 12.01.2019 to 04.11.2019 (date of dismissal) @ 50% reduced as the Petitioner directly attributable for prolonging suspension	46,831.50
5	Total amount eligible as Subsistence allowance	1,63,910.25
6	Sub. Allowance so far disbursed on 05.04.2019 vide Cheque No.014736	69,443
7	Net amount payable to the petitioner as Subsistence allowance [5-6=7]	94,467.25

4. The first respondent has invoked 2nd proviso to Section 3 of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 in order to reduce the subsistence allowance from 75% to 50%; in view of the delay attributable to the action of the petitioner himself in delaying the disciplinary proceedings. For the sake of clarity Section 3 of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 is extracted hereunder:

“ 3. Payment of Subsistence allowance – (1) An employee who is placed under suspension shall, during the period of such suspension, be



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entitled to receive payment from the employer as subsistence allowance, an amount equal to fifty percentum of the wages which the employee was drawing immediately before suspension, for the first ninety days reckoned from the date of such suspension:

Provided that where the period of suspension exceeds ninety days but does not exceed one-hundred and eighty days, the employee shall be entitled to receive, after the said period of ninety days, a subsistence allowance equal to seventy-five percentum of the wages which the employee was drawing immediately before his suspension.

Provided also that where the enquiry or criminal proceeding is prolonged beyond the period of ninety days for reasons directly attributable to the employee, the subsistence allowance shall, for the period exceeding ninety days, be reduced to fifty percentum of the wages, which the employee was drawing immediately before his suspension.”

5. The criminal proceedings in Cr.No.4 of 2018 on the file of the learned Judicial Magistrate, Cuddalore is pending for trial. In criminal cases it is duty of the prosecution to bring the witnesses and finish the trial as expeditiously as possible. If the first respondent attributes the delay on the part of the petitioner, he ought to have given notice to the petitioner before reducing the subsistence allowance and hear him.



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6. It is submitted that the petitioner is not co-operative even for the disciplinary proceedings and he had not chosen to give his explanation for the charge memo served on him. The charge memos have been furnished with a time limit for giving explanation and in the absence of submission of the explanation of the delinquent, nothing will prevent the disciplinary authority from proceeding the disciplinary proceedings. The first respondent has to work out the subsistence allowance only in accordance with the rules and not out of his own assumption of attributing the delay without giving any reasonable opportunity to the petitioner to make his submissions before reduction.

7. Hence the third respondent is directed to grant subsistence allowance to the petitioner during the pendency of the disciplinary proceedings in accordance with the rules without any reduction and the arrears of subsistence allowance worked out accordingly to the above direction has to be disbursed to the petitioner within a period of six weeks from the date of receipt of a copy of this order.



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8. In view of the above observation and direction, this Writ Petition is

disposed. No costs.

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Index: Yes / No

Speaking order / Non-speaking order

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To:

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Cuddalore zone, Cuddalore.
2. The Deputy Registrar of Co-operative Societies,
Cuddalore, Cuddalore District.



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R.N.MANJULA ,J.

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