



WEB COPY



W.P.No.3661 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.3661 of 2023 and W.M.P. Nos.3749 and 3750 of 2023

A.Sivaprakash

...Petitioner

Vs

1.The Secretary to Government,
Animal Husbandry, Dairying and
Fisheries Department,
Fort St. George,
Chennai – 600 009.

2.The Commissioner for Milk Production and
Dairying Development,
Madhavaram Milk Colony,
Chennai – 600 051.

3.The Deputy Registrar (Dairying),
Salem.

4.The President,
SMD 17 Vellerivelli Milk
Producers Co-operative Society,
Vellerivelli Post,
Edappadi Taluk,
Salem – 637 101.

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the entire records relating to the impugned suspension order dated 21.10.2019 made in Na.Ka.1/2019-2020 passed by the fourth respondent and connected disposal order dated 20.11.2019 unilaterally disposing the petitioner's explanation to charges without conducting domestic enquiry, quash the same as null and void and consequently directing the fourth respondent to reinstate the petitioner as Secretary of SMD 17 Vellerivelli Milk Producers Co-operative Society with salary and other attendant benefits from the date of suspension on 21.10.2019.

For Petitioner : Mr.R.Sethu Pandian

For Respondents : Mr.S.Rajesh,
Government Advocate
for R1 to 3

Mr.E.Sundaram,
Government Advocate for R4

ORDER

Heard Mr.R.Sethu Pandian, learned counsel for the petitioner, Mr.S.Rajesh, learned Government Advocate for respondents 1 to 3 and Mr.E.Sundaram, learned Government Advocate for the fourth respondent.



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2.The writ petition has been filed, challenging the impugned suspension order dated 21.10.2019 made in Na.Ka.1/2019-2020, passed by the fourth respondent and connected disposal order dated 20.11.2019.

3.In contemplation of a departmental action, the petitioner, who had served as a Secretary of the fourth respondent Society, was placed under suspension through the impugned order dated 21.10.2019. The suspension order is now challenged on the ground of prolonged suspension.

4.The learned counsel for the petitioner submitted that the Charge Memo dated 04.11.2019 was made on frivolous accusations and till date, the departmental action has not been concluded and therefore, the suspension order requires to be set aside. He further submitted that the fourth respondent has not paid the subsistence allowance to the petitioner for the period of suspension.

5.The learned Government Advocate appearing for the fourth respondent submitted that an Enquiry Officer has now been appointed



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and that the enquiry would be concluded in due course. He also submitted that since the Commissioner for Milk Production and Dairying Development has passed orders on 02.08.2022 for further action on the suspension order, it is deemed to be an approval for extension of the suspension period.

6.Rule 31(3) of the Societies Special By-laws provides that when an employee of the Society is continued under suspension for more than one year, the permission of the Commissioner for Milk Production and Dairying Development requires to be obtained.

7.Admittedly, the petitioner herein is under suspension from 21.10.2019 and no such permission has been granted by the Commissioner till date. The fourth respondent has attempted to refer to the proceedings of the Commissioner dated 02.08.2022, which only authorises the fourth respondent to proceed further in connection with the petitioner's suspension proceedings.



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8. Such a letter can, noway be construed to be a permission for extension or continuation of the suspension order. Even otherwise, this is a letter dated 02.08.2022, which is more than two years. Since the Special By-laws mandates permission for extension of suspension period on completion of one year, the present letter, even if construed to be a permission for extension of period, would be barred by time prescribed under Rule 31(3). On this ground, the suspension order cannot be sustained.

9. The learned counsel for the petitioner submitted that the petitioner is not being paid with the subsistence allowance. Such a submission is not opposed by the fourth respondent.

10. It is also not disputed that the petitioner would be entitled for payment of subsistence allowance during the period of suspension.

11. While that being so, this Court is of the view that the petitioner would be entitled for arrears on the subsistence allowance.



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12.In the result, the impugned suspension order dated 21.10.2019 made in Na.Ka.1/2019-2020, passed by the fourth respondent is quashed. Consequently, there shall be a direction to the fourth respondent herein to forthwith pay subsistence allowance to the petitioner from 21.10.2019 till date together with interest at the rate of 6% per annum, within a period of two weeks from the date of receipt of a copy of this order.

13.With the above observation and direction, this writ petition stands allowed. Consequently, connected W.M.Ps stand closed. No costs.

05.06.2023

Index:Yes/No

Neutral Citation:Yes/No

Speaking order/Non-speaking order

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To

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