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Writ Petition No.3590 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No. 3590 of 2023

and

WMP.Nos.3653, 3654 and 3657 of 2023

P.Mathaiyan

S/o.K.Ponnusamy

...Petitioner

Vs

1. The Registrar of Co-operative Societies,
170, N.V.Natarajan Maaligai,
Periyar EVR High Road, Kilpauk,
Chennai – 600 010.
2. The Joint Registrar of Co-operative Societies/
Common Cadre Authority,
Dharmapuri Region, Dharmapuri.
3. The Deputy Registrar of Co-operative Societies,
Dharmapuri Circle, Dharmapuri.
4. The President,
K.K.41, Thumbalahalli Primary Agricultural
Co-operative Credit Society,
Kendiganahalli Post,
Karimangalam Taluk,
Dharmapuri District – 635 205.

5. H.S.Palani

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Co-operative Sub-Registrar/Field Officer/
Domestic Enquiry Officer, Dharmapuri.

... Respondents

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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, call for the records relating to the impugned charge memo issued by the 2nd respondent in Na.Ka.No.6690/2021 Thosa (1) dated 29.11.2022 and to quash the same and consequently direct the respondents to make payment of subsistence allowance to the petitioner from the date of suspension and to furnish the documents relied on in the charge memo of the 2nd respondent in Na.Ka.6690/2021 Thosa dated 18.05.2022 to enable the petitioner to offer his explanation before proceeding with departmental enquiry.

For Petitioner : Mr.J.Jayamalan

For Respondents : Mr.Ru.Dinesh Raj Kumar
Additional Government Pleader [R1 to R3]

Mr.V.Jeevagiridharan
Additional Government Pleader [R4]

ORDER

This writ petition has been filed challenging the charge memo issued by the second respondent dated 29.11.2022 and for a direction to the respondents to pay the subsistence allowance to the petitioner from the date of suspension and to furnish the documents relied upon in the charge memo,



before proceeding further with the enquiry.

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2. Heard Mr.J.Jayamalan, learned counsel for petitioner, Mr.Ru.Dinesh Raj Kumar, learned Additional Government Pleader, appearing for respondents 1 to 3 and Mr.V.Jeevagiridharan, learned Additional Government Pleader, appearing for fourth respondent.

3. The petitioner was working as a Secretary in the fourth respondent Society. He absented himself and during his medical leave period, an in-charge Secretary was appointed. Even after the petitioner assumed duty, charges were not handed over to him. While so, an order of suspension came to be passed on 24.03.2022 by the second respondent pending disciplinary proceedings. Subsequently, on 18.05.2022, charge memo was also issued against the petitioner. The grievance of the petitioner is that he has been kept under suspension from 24.03.2022 and he has not been paid any subsistence allowance till date. That apart, charges were framed by relying upon certain documents and copies of those documents were not furnished to the petitioner and hence, the petitioner was not able to effectively defend himself in the disciplinary proceedings. Aggrieved by the same, the present



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writ petition has been filed seeking for appropriate directions.

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4. In the considered view of this Court, the petitioner cannot be deprived of payment of subsistence allowance. It has been repeatedly held by the Apex Court that the enquiry proceedings itself will get vitiated if the subsistence allowance is not paid and the payment of subsistence allowance, when a delinquent employee is under suspension, enables the employee to sustain himself and to take care of his livelihood. If the same is not paid, the same will amount to violation of rights guaranteed under Article 21 of the Constitution of India. Therefore, the respondents cannot be allowed to take a stand that the petitioner will not be paid subsistence allowance since the petitioner was drawing salary more than Rs.3,500/- and the bylaw of the concerned Society enables non-payment of subsistence allowance for persons drawing salary of more than Rs.3,500/-. Such a bylaw is unsustainable in law and it actually runs contrary to the Tamil Nadu Payment of Subsistence Allowance Act, 1981.

5. If the petitioner has to defend himself effectively, he has to be provided with the copies of the documents relied upon by the disciplinary



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authority. The petitioner has made representations in this regard and the grievance of the petitioner is that he has not been furnished with the documents.

6. In order to ensure that a fair enquiry is conducted against the petitioner, this Writ Petition is disposed of with the following directions:

- (a) the fourth respondent is directed to pay subsistence allowance to the petitioner from 24.03.2022 to 24.01.2023, within a period of four (4) weeks from the date of receipt of a copy of this order;
- (b) there shall be a further direction to the fourth respondent to furnish the copies of documents that are relied upon to substantiate the charges against the petitioner and such copies shall be given to the petitioner within a period of four (4) weeks from the date of receipt of a copy of this order.
- (c) on compliance of directions (a) and (b), the disciplinary proceedings can continue and it shall be completed within a period of three (3) months after the compliance of the directions issued in (a) and (b).

N.ANAND VENKATESH, J

gm



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This Writ Petition is disposed of with the above direction. No costs.

Consequently, connected miscellaneous petitions are closed.

09.02.2023

Index : Yes/No

Speaking order: Yes/No

Neutral citation: Yes/No

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To

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