



WP.No.15430 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No.15430 of 2016

& WMP.No.13455 of 2016

The Management, Thiru Murugan
Primary Agricultural Cooperative
Bank Ltd., Pandalur, The Nilgiris
District.

...Petitioner

Vs

1.The Appellate Authority under
the Tamil Nadu Payment of
Subsistence Allowance Act-cum-
Deputy Commissioner of Labour,
Office of the Deputy Commissioner
of Labour, Coonoor, The Nilgiris
District.

2.The Controlling Authority under
the Tamil Nadu Payment of
Subsistence Allowance Act-cum-
Assistant Commissioner of Labour,
Office of the Assistant Commissioner
of Labour, Coimbatore.

3.Ramar

...Respondents

PETITION under Article 226 of The Constitution of India praying for
the issuance of a Writ of Certiorari to call for the records relating to the



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order dated 17.2.2015 made in A.P.S.A.No.1/2013 on the file of the first respondent and quash the same.

For Petitioner : Mr.T.M.Naveen
For R1 & R2 : Mr.M.S.Prem Kumar, GA
For R3 : Mr.V.Ajoy Khose

ORDER

This is a petition filed by the petitioner seeking to quash the order dated 17.2.2015 in A.P.S.A.No.1/2013 on the file of the first respondent.

2. The facts leading to filing of this case are as follows :

(i) Claiming that he was employed in the petitioner bank as a salesman and that he was suspended from service from 26.11.1984, after ten long years, the third respondent filed P.S.A.No.7 of 1994 before the second respondent claiming a sum of Rs.31,830/- and it was allowed by an ex parte order dated 02.5.1995. For the subsequent period till 07.7.1995, he also filed P.S.A.No.30 of 1995 before the second respondent and it was also allowed. Pursuant to that, the District Collector concerned initiated recovery action against the petitioner.



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(ii) Challenging the recovery action, the petitioner filed W.P.No. 7021 of 1997 seeking to quash the same. However, this Court dismissed the said writ petition. Thereafter, the petitioner was constrained to enter into an agreement with the third respondent and pay the amount of Rs.41,730/-.

(iii) Once again the third respondent filed P.S.A.No.32 of 2005 before the second respondent seeking to pay subsistence allowance to the tune of Rs.2,29,312/- for the period from 08.7.1995 to 25.10.2004. However, it was dismissed on 19.1.2006 by the second respondent. After a lapse of more than two years, the third respondent filed an appeal before the first respondent along with I.A.No.1 of 2008 to condone the delay of 590 days in filing the appeal. The enormous delay was condoned and the appeal was taken on file as A.P.S.A.No.1 of 2013. But, the first respondent, by the impugned order, allowed the appeal filed by the third respondent. Challenging, the same, the petitioner is before this Court.

3. Learned counsel appearing for the petitioner would submit that the 3rd respondent was not a “paid employee” of the petitioner Co-operative



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Bank within the meaning of the Act 1983 and the Rules 1988. However, without considering and deciding as to whether the 3rd respondent was a paid employee of the Co-op Bank, his claim of suspension from service is true, and the Application filed by him for subsistence allowance is maintainable, the 2nd respondent/Controlling Authority has mechanically passed an ex-parte order dated 02.5.1995 in P.S.A.No.7 of 1994. As per First Proviso to Section 4 of the TNPSA Act, 1981, the Application for subsistence allowance has to be made within one year from the date on which the money became due to him, however, in the present case, the 3rd respondent had filed the Application claiming subsistence allowance, only after a long period of ten years which is not maintainable. Subsequently, the 3rd respondent filed another P.S.A.No.32 of 2005, claiming subsistence allowance from 08.07.1995 to 25.10.2004 which was dismissed on the ground that the 3rd respondent has not produced the alleged appointment order, the alleged suspension order etc in the above PSA and that the 3rd respondent has produced the fabricated documents relating to his employment in the petitioner co-operative bank, against which, the 3rd respondent had preferred an appeal in A.P.S.A.No.1 of 2013 along with the



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application for condoning an inordinate delay of 590 days which appeal has been allowed. Accordingly, he prayed for allowing the Writ Petition.

4. Per Contra, learned counsel appearing for the 3rd respondent would submit that admittedly, the 3rd respondent was employed in the petitioner cooperative bank as a salesman through employment exchange for which, he was issued an appointment order by the Secretary and that he was suspended from service from 26.11.1984. He fairly submitted that except the appointment order issued by the Secretary, no other document is available with him. He further submitted that though the workman had been repeatedly taken steps to obtain the records relating to his employment in the petitioner society, however, the petitioner society did not furnish the same. The above facts have been elaborately considered by the 1st respondent while passing orders in A.P.S.A.No.1 of 2013 and hence, the same requires no interference. Accordingly, he prayed for dismissing the Writ Petition.

5. On the above contention, this Court heard the learned Government Advocate appearing for respondents 1 & 2 and perused the materials



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available on record.

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6. It is the case of the petitioner that the 3rd respondent was not appointed by the petitioner society in accordance with the procedures prescribed under Rules 149(2) of the Rule 1988 and that he was not placed under suspension as alleged by the 3rd respondent and the said suspension was also not extended in accordance with Section 76(3) of the Act 1983 and therefore, the 3rd respondent is not a “paid employee” of the petitioner co-operative bank within the meaning of the Act 1983 & the Rules 1988 for the purpose of claiming the subsistence allowance.

7.A perusal of the entire materials available on record reveals that the Appellate Authority without considering as to whether the 3rd respondent is a “paid employee”, has mechanically passed the impugned order by allowing the appeal in A.P.S.A.No.1 of 2013 as against the dismissal of P.S.A.No.32 of 1995 which was filed by the 3rd respondent seeking subsistence allowance for the period from 08.07.1995 to 25.10.2004. Though the 3rd respondent claims to have been placed under suspension, however, no documents have been placed by him as to the alleged



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suspension and the alleged appointment order. Such being the case, this Court is inclined to set aside the impugned order of the appellate authority in A.P.S.A.No.1 of 2013 and the same is accordingly set aside. The matter is remanded back to the 1st respondent/Appellate Authority and the 1st respondent is directed to decide the issue by considering as to whether the 3rd respondent is a “paid employee” of the petitioner co-operative bank and pass appropriate orders on the same within a period of six weeks from the date of receipt of a copy of this order. However, the 3rd respondent is at liberty to canvass all those points before the 1st respondent.

8. This Writ Petition is allowed in the above terms. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No

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To

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