



W.A.No.2081 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.08.2023

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

W.A.No.2081 of 2023
and
C.M.P.No.17805 of 2023

The President
represented by Muniyammal,
K.K.41, Thumbalahalli Primary Agricultural
Co-operative Credit Society,
Kendiganahalli Post, Karimangalam Taluk,
Dharmapuri District-635 205.

.. Appellant

Vs.

1.P.Mathaiyan,
S/o.K.Ponnusamy,
Velampatti Village and Post,
Pochampalli Taluk,
Krishnagiri District-635 204.

2.The Registrar of Co-operative Societies,
170, N.V.Natarajan Maaligai,
Periyar EVR High Road,
Kilpauk, Chennai-600 010.



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3.The Joint Registrar of Co-operative Societies
Common Cadre Authority,
Dharmapuri Circle, Dharmapuri.

4.The Deputy Registrar of Co-operative Societies
Dharmapuri Circle, Dharmapuri.

5.H.S.Palani
Co-operative Sub-Registrar/Field Officer/
Domestic Enquiry Officer, Dharmapuri.

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the
order dated 09.02.2023 passed in W.P.No.3590 of 2023 on the file of this
Court.

For Appellant : Mr.J.Kamaraj

For R1 : Mr.M.Sedhumadhavan

For RR 2 to 4 : Mrs.Mythreye Chandru
Special Government Pleader

JUDGMENT

[Judgement of the Court was delivered by R.MAHADEVAN, J.]

This writ appeal has been filed by the appellant herein, challenging
the order passed by the learned single Judge in W.P.No.3590 of 2023 on
09.02.2023.



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2.The first respondent herein is the writ petitioner. The facts involved

in this case are that the first respondent was appointed as Secretary in the S.974 Thindal Primary Agricultural Cooperative Credit Society, Dharmapuri District on 07.01.1991 and after a period of 30 years, he was transferred to the appellant Society by order dated 03.02.2021 and he joined the appellant Society on 11.02.2021. He applied for medical leave on 05.03.2021. While he was on medical leave, a Secretary-in-charge was appointed in his place. Even after the first respondent assumed duty after medical leave, charges were not handed over to him by the Secretary-in-charge. While so, the first respondent was suspended from service by order dated 24.03.2022 pending disciplinary proceedings and subsequently on 18.05.2022, charge memo was also issued. The grievance of the first respondent is that since the date of his suspension, he was not paid with subsistence allowance and that apart, he was not able to defend his case effectively, as he was not furnished with the documents relied upon by the appellant Society.

3.With the above background, the first respondent filed a writ petition in W.P.No.3590 of 2023 to set aside the charge memo and for a direction to



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pay subsistence allowance from the date of suspension and to furnish the documents relied upon by the second respondent in the charge memo dated 18.05.2022. Considering the arguments advanced on either side, the learned Judge passed the following order:

“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).”*

4. Aggrieved by the aforesaid order, the present writ appeal has been filed by the Society.

5. Heard the learned counsel on either side and perused the materials available on record.



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6.The main point that has been stressed by the learned counsel for the appellant Society is that the bye-law of the Society is against the provision of Tamil Nadu Payment of Subsistence Allowance Act, 1981 and that the learned Judge has erred in allowing payment of subsistence allowance because the first respondent was employed mainly in managerial or administrative capacity and according to the bye-laws of the Society, he is not eligible to be paid subsistence allowance. In this connection, this Court would only say that the learned Judge has properly analysed the issue and held that the enquiry proceedings itself will get vitiated if the subsistence allowance is not paid and that, when a delinquent employee is under suspension, the payment of subsistence allowance enables the employee to sustain himself and to take care of his livelihood and if it is not paid, it will amount to violation of rights guaranteed under Article 21 of the Constitution of India. Further, if any such bye-law is framed against the provision of Tamil Nadu Payment of Subsistence Allowance Act, 1981, then such a bye-law is unsustainable in law. Therefore, we find no error or infirmity in the order so passed by the learned Judge, warranting interference.



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7.In the result, the writ appeal stands dismissed with a direction to the appellant to comply with the order passed by the learned Judge in letter and spirit, having regard to the time limit in disbursing subsistence allowance and furnishing copies of documents to the respondent. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
11.08.2023

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No
nsd

To

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/,
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