



W.P.No.14893 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.14893 of 2018

M.Thangaiyan

...Petitioner

Vs

1.The Joint Registrar of Cooperative Societies,
Cuddalore Region, Cuddalore.

2.The President,
E-2602, P.Pudipettai Primary
Agricultural Cooperative Credit Society Ltd.,
Pudupettia, Panruti Taluk,
Cuddalore District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to disburse subsistence allowance to the petitioner for the period from 26.04.2001 to 30.10.2007 to regularise the period of suspension as 'duty' with full pay and allowances; to permit the petitioner to retire on 30.10.2007 with entitlement of retiral benefits and to pay all monetary benefits with interest, within a time frame.



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For Petitioner : Mr.P.Ganesan
for Mr.K.Govindaraj

For R1 : Mr.M.Shahjahan,
Special Government Pleader

For R2 : No Appearance

ORDER

Heard Mr.P.Ganesan, learned counsel appearing for the petitioner and Mr.M.Shahjahan, learned Special Government Pleader appearing for the first respondent.

2. Though notice has been served on the second respondent and their name printed in the cause list, none appears on their behalf.

3. The petitioner herein has filed the present writ petition seeking for payment of subsistence allowance for the period of suspension from 26.04.2001 to 30.10.2007 and to regularize the period of suspension.

4. The petitioner was placed under suspension on 26.04.2001 in contemplation of certain misconducts. Subsequently, charges came to be



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framed against the petitioner on 25.04.2002. When the petitioner had challenged both the suspension order, as well as the charge memo, before this Court in W.P.No.25163 of 2006, this Court, in its order dated 30.08.2006, had quashed the charge memo and directed the respondents to pay the subsistence allowance from 26.04.2001 onwards. The relevant portion of the order reads as follows:-

"12.As far as the payment of subsistence allowance to the petitioner is concerned, admittedly the petitioner was placed under suspension from 26.04.2001 and he has not been paid subsistence allowance as on date. It is not known as to why and how such allowance are not paid. Eventhough the learned counsel for the respondents would submit that there are some impediments they have not been substantiated. I do not think that there is any justification on the part of the respondents in denying the right of the petitioner to get subsistence allowance, which is infact as basic right of a delinquent employee not only for his survival during suspension but also for defending himself the charges effectively.

13.In view of the same, the respondents are directed to pass orders regarding the payment of



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subsistence allowance from the date of suspension i.e. from 26.04.2001 and pay the same to the petitioner within a period of four weeks from the date of receipt of a copy of this order, if there are no other legal impediments."

5. In the intra Court appeal filed in W.A.No.45 of 2007, the Hon'ble Division Bench, by order dated 20.10.2009, had confirmed the order of the learned single Judge, in the following manner:-

"3.It has been argued by the appellant that an order of stay had been granted by this Court on 27.11.2000 against G.O.Ms.No.55, Cooperation, Food and Consumer Protection Department dated 24.03.2000, which was subsequently vacated and the said G.O. was upheld by order dated 23.06.2003. However, it is relevant to point out that the said G.O. was not in force from 27.11.2000 to 23.06.2003. Therefore, we hold that the charge memo dated 25.04.2002 and the show cause notice dated 06.08.2003 passed by the appellant herein suffer from want of jurisdiction as they have been passed not by the 'cadre authority', but by the Special Officer.



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4. In these circumstances, we find no illegality or infirmity in the order passed by the learned Single Judge and we find no reason to cause our interference into the well considered and merited order passed by the learned Single Judge. But, as observed by the learned Single Judge in paragraph Nos.10 and 11 of the order dated 30.08.2006, it is open to the authorities concerned to proceed against the delinquent in accordance with law. Accordingly, the writ appeal fails and the same is dismissed."

6. Thereafter, when the petitioner had approached the respondents seeking for payment of the subsistence allowance, in line with the directions issued by the learned single Judge in W.P.No.25163 of 2006, his claim was rejected, through a letter dated 29.06.2010, on the ground that the second respondent had preferred a review petition as against the order passed by the Hon'ble Division Bench in W.A.No.45 of 2007.

7. The learned counsel for the petitioner submitted that on verification, it was found that no review petition has been preferred by the second respondent either against the order passed in W.P.No.25163 of



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2006 or against W.A.No.45 of 2007 and therefore, he would submit that in view of the earlier directions issued by this Court to pay the subsistence allowance, the second respondent is bound to pay the subsistence allowance for the relevant suspension period.

8. The learned Special Government Pleader appearing for the first respondent placed reliance on the averments in the counter affidavit filed by the second respondent and admitted that there is no review filed against the orders passed in W.A.No.45 of 2007. However, there were criminal charges against the petitioner, in which he was relieved by invoking the provisions of Probation of Offenders Act.

9. The objections of the second respondent in the counter affidavit is baseless. Even assuming that the petitioner was involved in certain other criminal cases and he was relieved, that may not entitle or enable the second respondent to deny the payment of subsistence allowance. It is needless to point out that the petitioner would be entitled for subsistence allowances, as a matter of statutory right.



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10. The earlier rejection of the petitioner's request by the second respondent on 29.06.2010 is totally in contradiction with the stand taken by the second respondent in the counter affidavit. While, in the order dated 29.06.2010, it is stated that they have preferred a review petition against the order passed in the Writ Appeal, in their counter affidavit in paragraph 7, they admit that they have not preferred any review petition against the order of the Hon'ble Division Bench.

11. When the learned single Judge had categorically ordered the second respondent to pay the subsistence allowance in the order dated 30.08.2006, there is no justification on the part of the second respondent in having not paid the subsistence allowance even after expiry of 16 years. In view of this gross disobedience on the part of the second respondent in failing to obey the directions of this Court, I am of the view that the petitioner would be entitled for payment of interest on the amounts due.

12. In the light of the above findings, there shall be a direction to the second respondent to forthwith disburse the subsistence allowance to



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the petitioner for the period between 26.04.2001 and 30.10.2007, together with interest at the rate of 6% per annum. The second respondent, while disbursing the subsistence allowance, shall also pass appropriate orders, regularizing the period of suspension of the petitioner. Such orders shall be passed by the second respondent atleast within a period of two weeks from the date of receipt of a copy of this order.

13. Accordingly, the writ petition stands allowed. No costs.

12.01.2023

Index:Yes/No

Neutral Citation:Yes/No

Speaking order/Non-speaking order

hvk



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M.S.RAMESH,J.

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