



W.P.No.5666 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:05.06.2023

Delivered on: 09.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.5666 of 2016

V.P.Rajendran

... Petitioner

Vs.

1.The Joint Registrar of Co-op Societies
Tiruvallur Region, Collectorate Campus
Tiruvallur, Tiruvallur District

2.The President
V.K.N.Kandigai Primary Agricultural
Cooperative Credit Society
V.K.N. Kandigai Post
Thiruthani Taluk
Tiruvallur District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.2829 of 2015/A3, dated 12.10.2015 and quash the same and consequently directing the respondents to disburse 100% subsistence allowance together with arrears to the petitioner within stipulated time.



W.P.No.5666 of 2016

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For Petitioner : Mr.C.Prakasam

For Respondents : Mr.T.Chezian, AGP for R1

Mr.L.P.Shanmugasundaram for R2

ORDER

Writ petition has been filed for issuance of Writ of Certiorarified Mandamus calling for records in Na.Ka.2829 of 2015/A3, dated 12.10.2015 on the file of the 1st respondent and quash the same and to consequently direct the respondents to disburse 100% subsistence allowance together with arrears to the petitioner.

2. The case of the petitioner is that he was appointed as a Clerk in the 2nd respondent Society in the year 1993 and subsequently he was directed to work as Secretary Incharge of Suriyanagaram PACSS on deputation. The 2nd respondent suspended the petitioner from service on 01.01.2014 on the ground of irregularities of the 2nd respondent Society employees.



W.P.No.5666 of 2016

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3. The petitioner was constrained to file W.P.No.26782 of 2014 to redress his grievance regarding non furnishing of documents before proceeding with the domestic enquiry. This Court was pleased to dispose of the said Writ Petition on 17.11.2014 and directed the 2nd respondent to furnish copies of the documents relied upon by them, in support of the charges levelled against the petitioner. It is the specific case of the petitioner that despite the said order, the relevant documents have not been furnished to the petitioner. The petitioner's specific case is that the respondents have not disbursed 100% subsistence allowance as per their own bye laws and and per the Tamil Nadu Subsistence Allowances Act, 1981 despite several representations including final representation given by the petitioner on 03.02.2015. The 2nd respondent rejected the representation of the petitioner on 09.02.2015 holding that the petitioner is entitled to get 75% of subsistence allowance as the petitioner had caused delay exceeding a period of 90 days. It is the case of the petitioner that the petitioner has never dragged the proceedings and there has been no fault on his part. The petitioner approached this Court in W.P.No.4966 of 2015 seeking for issuance of Writ



W.P.No.5666 of 2016

of Certiorarified Mandamus to quash the rejection order dated 09.02.2015.

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However, the said Writ Petition was withdrawn on the representation of the respondents that they will settle the subsistence allowance if the petitioner withdrew the Writ Petition. However, despite withdrawing the Writ Petition, the respondents have not kept their promise. Subsequently, the petitioner filed W.P.No.18567 of 2015. In the said case, this Court directed the petitioner to file a Revision U/s. 153 of the Tamil Nadu Cooperative Societies Act, 1983 which was directed to be disposed of expeditiously. In compliance with the direction the petitioner also filed a Revision on 06.07.2015. However, it is the case of the petitioner that the 1st respondent has not passed final orders in the said revision and he was again constrained to approach this Court in W.P.No.22866 of 2015 seeking early disposal of the Revision Petition. This Court directed that orders be passed in the said Revision within a period four weeks. Pursuant thereof, the 1st respondent passed final order on 12.10.2015, rejecting the Revision Petition, as against which the present Writ Petition is filed.



W.P.No.5666 of 2016

WEB COPY

4. The substantial ground on which the impugned order is challenged is that the petitioner has not been the cause for any delay and disallowing the subsistence allowance on the ground of delay is wholly unjust and improper. The 1st respondent has filed a counter justifying the order passed and also stating that the petitioner has time and again filed Writ Petitions and delayed the proceedings. According to the respondents, the petitioner has deliberately protracted the proceedings and hence, it is not open to the petitioner to claim that he has not been the cause for the delay and consequently approach this Court seeking to set aside the impugned order.

5. Heard Mr. C.Prakasam, learned counsel appearing for the petitioner and Mr.T.Chezian, learned AGP for the 1st respondent and Mr.L.P.Shanmugasundaram, learned counsel appearing for the 2nd respondent.

6. The narrow compass to be decided in the present Writ Petition is as to whether the delay beyond 90 days is attributable to the Writ Petitioner.



W.P.No.5666 of 2016

WEB COPY
thus:

Sec.3 of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 reads

“3. Payment of subsistence allowance- (1) An employee who is placed under suspension shall, during the period of such suspension, be entitled to receive payment from the employer as subsistence allowance, an amount equal to fifty per centum of the wages which the employee was drawing immediately before suspension, for the first ninety days reckoned from the date of such suspension:

Provided that where the period of suspension exceeds ninety days but does not exceed one-hundred and eighty days, the employee shall be entitled to receive, after the said period of ninety days, a subsistence allowance equal to seventy-five per centum of the wages which the employee was drawing immediately before his suspension:

Provided also that where the enquiry or.



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W.P.No.5666 of 2016

criminal proceeding is prolonged beyond the period of ninety days for reasons directly attributable to the employee, the subsistence allowance shall, for the period exceeding ninety days, be reduced to fifty percentum of the wages, which the employee was drawing immediately before his suspension.

(2) An employee shall not be entitled to receive any subsistence allowance if he accepts any other employment during the period of his 3 suspension in any establishment other than the establishment where he had been working immediately before his suspension.

(3) An employee shall not, in any event, be liable to refund or forfeit any part of the subsistence allowance admissible to him under subsection (1) :

Provided that where the employee is exonerated of the charge based on which his



W.P.No.5666 of 2016

suspension was ordered, the subsistence allowance paid to him for any period shall be adjusted against the full wages admissible to him for the period of suspension.

(4) The subsistence allowance under subsection (1) shall be paid by the employer to the employee on the date or dates on which the wages due to the employee, but for his suspension, would have become payable.

3rd Proviso extracted herein above clearly stipulates that only when the enquiry or criminal proceedings prolong beyond 90 days for reasons directly attributable to the employee, the subsistence allowance shall be reduced to 50%. This indicates that if the delay was not clearly attributable to the Writ Petitioner, then the Writ Petitioner would be justified in claiming 100% subsistence allowance.



W.P.No.5666 of 2016

WEB COPY

7. Coming to the facts of the present case, the filing of Writ Petitions do not in anyway indicate that the petitioner was attempting to delay or protract the proceedings. Infact, on the contrary he has only shown eagerness to have the proceedings completed once and for all and that was one of the reasons why Writ Petition No.22866 of 2015 was filed seeking issuance of a Writ of Mandamus to direct the 1st respondent to dispose of the statutory revision U/s. 153 of the Tamil Nadu Co-operative Societies Act, 1983 within a stipulated time and this Court also directed that the said Revision be disposed of within a period of four weeks.

8. This Court has perused the materials on record including the typed set of papers filed on behalf of the 1st respondent. The objections raised by the 1st respondent is with regard to the petitioner not submitting his explanation to the charges etc., which have been set out in the counter affidavit of the 1st respondent. These aspects may not be really germane for deciding the present case because subsequent to the said dates referred to in the counter affidavit, the petitioner has approached this Court for direction on couple of occasions



W.P.No.5666 of 2016

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and also succeeded in getting a direction for early disposal of the Revision filed U/s. 153 of the Act. This Court does not find any willful act or omission on the part of the petitioner being cause for delay or to protract the proceedings beyond the period of 90 days. In such circumstances, this Court finds that the petitioner is entitled to relief.

9. In fine, the Writ Petition is allowed. The impugned order passed by the 1st respondent in his proceedings Na.Ka.2829 of 2015/A3, dated 12.10.2015 is quashed and consequently the respondents are directed to disburse 100% subsistence allowance together with arrears to the petitioner within a period of 12 weeks from the date of receipt of a copy of this order. No costs.

09.06.2023.

Internet:Yes
Index:Yes/No
Speaking order
Neutral Citation:Yes/No
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W.P.No.5666 of 2016

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To

1.The Joint Registrar of Co-op Societies
Tiruvallur Region, Collectorate Campus
Tiruvallur, Tiruvallur District

2.The President
V.K.N.Kandigai Primary Agricultural
Cooperative Credit Society
V.K.N. Kandigai Post
Thiruthani Taluk
Tiruvallur District



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W.P.No.5666 of 2016

P.B.BALAJI, J.,
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Pre-delivery order in
W.P.No.5666 of 2016

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