



W.P.Nos.27379 & 27641 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 06.12.2022

Orders delivered on 16.03.2023

CORAM :

THE HON'BLE Mrs.Justice J.NISHA BANU

W.P.No.27379 & 27641 of 2014

and

M.P.Nos.5066 of 2018

and

M.P.No.2 of 2014 & M.P.No.1 of 2015

W.P.No.27379 of 2014

Special Officer,
Z-156, Palayapalayam Primary
Agricultural Co-operative Credit Society,
Palayapalayam Post,
Sirkazhi Taluk,
Nagapattinam District.

... Petitioner

Vs

1. T.Mohan

2. The Assistant Commissioner of Labour/
The Authority under the Payment of
Subsistence Allowance Act,
Trichy - 20.

..Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorari to call for the records in Claim Petition No.7 of 2012 dated 27.09.2012 under the Payment of Subsistence Allowance Act, on the file of the 2nd respondent and quash the same.

For Petitioner	: Mr.S.Sadasharam
For Respondents	: Mr.C.Prakasam for R1 Mr.T.Arunkumar Addl.Govt.Pleader for R2

W.P.No.27641 of 2014

Special Officer,
Z-156, Palayapalayam Primary
Agricultural Co-operative Credit Society,
Palayapalayam Post,
Sirkazhi Taluk,
Nagapattinam District.

... Petitioner

Vs

1. T.Mohan

2. The Assistant Commissioner of Labour/
The Authority under the Payment of
Subsistence Allowance Act,
Trichy – 20.

..Respondents



W.P.Nos.27379 & 27641 of 2014

Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorari to call for the records in Claim Petition No.6 of 2011 dated 24.01.2012 under the Payment of Subsistence Allowance Act, on the file of the 2nd respondent and quash the same.

For Petitioner : Mr.S.Sadasharam
For Respondents : Mr.C.Prakasam for R1
Mr.S.Ravichandran
Addl.Govt.Pleader for R2

COMMON ORDER

These writ petitions have been filed challenging the order passed by the 2nd respondent, in which, the petitioner was directed to pay the subsistence allowance of Rs.16,53,795.40/- and Rs.9,06,391/- to the 1st respondent/workman respectively.

2. The case of the petitioner is that the first respondent in W.P.No.27379/2014 was employed as Secretary in the petitioner society on a monthly salary of Rs.14,263/- and the 1st respondent in W.P.No.27641 of 2014 was employed as Accountant in the petitioner society on a monthly salary of Rs.12,572/- and on account of certain irregularity in the maintenance of accounts, a criminal case has been filed against the 1st



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respondent in both the writ petitions and the same was pending before the learned Judicial Magistrate, Sirkazhi. Pending criminal case, the 1st respondent in both the writ petitions were suspended with effect from 20.06.2001 and 26.06.2002 respectively. The 1st respondent in W.P.No.27379/2014 was removed from service after departmental enquiry with effect from 11.04.2011 and the 1st respondent in W.P.No.27641/2014 was reinstated in service on 28.01.2008, but with a punishment of reversion from the post of Accountant to the post of Clerk and subsequently, retired from service. The 1st respondent in both the writ petitions filed Claim Application No.7 of 2012 and Claim Application No.6 of 2011 with a delay of 3590 days and 2501 days respectively, claiming subsistence allowance and the 2nd respondent allowed the said applications holding that they are entitled for subsistence allowances and directed the petitioner to pay the subsistence allowance to the tune of Rs.16,53,795.40/- and in respect of 1st respondent in W.P.No.27379 of 2014 and Rs.9,06,391/- in respect of 1st respondent in W.P.No.27641 of 2014. Hence, these writ petitions are filed.

3. Heard the learned counsel for the petitioner and the learned counsel



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appearing for the 1st respondent and the learned Additional Government Pleader appearing for the 2nd respondent.

4. Learned counsel for the petitioner would submit even assuming that the 1st respondent is entitled to claim subsistence allowance, the application claiming subsistence allowance should have been filed within one year from the date when the suspension order was passed and there is no reason and justification for the 1st respondent to keep quiet for 10 years and then make a claim for subsistence allowance. Further, a person employed in a Managerial capacity, supervising the society is not eligible to claim any subsistence allowance and if at all, he is eligible to get any allowance, it is only as per the Society's rules and regulations, for which, the Special Officer has already passed an order on 26.06.2002.

5. Per contra, the learned counsel appearing for the 1st respondent in both the writ petitions would submit that the petitioner had suspended the 1st respondents on 20.06.2001 and 26.06.2002 respectively and the enquiry was pending for a long time and in respect of 1st respondent in W.P.No.27379/2014 only on 11.04.2011, the final order has been passed



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removing the 1st respondent from service, and in respect of 1st respondent in W.P.No.27641/2014, only on 28.01.2008 he was reinstated in service but reverting from the post of Account to the post of Clerk, and for the said delay, the 1st respondents cannot be found fault with. The petitioner has paid subsistence allowance for 72 days and thereafter, did not pay the same. The 1st respondent is entitled for subsistence allowance during the period of suspension pending enquiry. The 2nd respondent Tribunal had considered all the aspects and has rightly condoned the delay in filing the claim petition and also passed the order directing the petitioner to pay the subsistence allowance to the 1st respondents. The order passed by the 2nd respondent Tribunal need not be interfered with.

6. This Court, considered the submissions made on either side and perused the materials available on records.

7. It is an admitted fact that the 1st respondents were suspended from service on 20.06.2001 and 26.06.2002 respectively and after conduct of enquiry, the 1st respondent in W.P.No.27379/2014 was removed from service on 11.04.2011 and the 1st respondent in W.P.No.27641/2014 was



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reinstated in service on 28.01.2008 but punished by reverting from the post of Accountant to the post of Clerk. The 1st respondent in W.P.No.27379/2014 was paid subsistence allowances initially, for a period of 72 days and thereafter, the petitioner has stopped paying the same. Admittedly, the 1st respondents are Secretary and Accountant respectively, of the Agricultural Cooperative Bank. It is the cardinal principle that deprivation of payment of subsistence allowance is considered by this Court, time and again, and held that the payment of subsistence allowance is a fundamental right guaranteed under Article 21 of the Constitution of India. The question of payment of subsistence allowance to the employee, who engaged in a managerial or administrative capacity is no longer res integra in view of the decision of the Division Bench of this Court reported in **(2009) 1 MLJ 18 (Kuthiraichandal Primary Co-op. Bank Ltd. vs. A.Asokan)** and the ruling of this Court in paragraph Nos. 23 and 24 of the said decision reads as follows:

"23. In the case on hand the petitioner seeks to enforce his right in terms of the Government Order in G.O.Ms.No.55 Co-operation, Food and Consumer Protection Department, dated



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12.03.2000, which are statutory in character, as the said order was issued in exercise of the power under Section 75 of the Tamil Nadu Co-operative Societies Act, 1983. Therefore, the argument that the writ petitioner is not maintainable to enforce the bye-laws of the Co-operative Society is untenable. The issue of writ being discretionary and when the employee of the Bank approaches the Court for direction to implement the Regulation on the ground of non compliance of statutory provisions, the power of judicial review is not excluded and consequently Writ Petition is maintainable. This view is supported by the Larger Bench in Sub clause (iv) of 21 of the judgment in K.Marappan v. Deputy Registrar of Co-operative Societies, Namakkal Circle, Namakkal 636 001 and Another .

24. For all the above reasons, we hold that the Secretary of Primary Agricultural Co-operative Bank belonging to Common Cadre Service is entitled to payment of subsistence allowance in terms of G.O.Ms.No.55 Co-operation, Food and Consumer Protection Department, dated 12.03.2000, during the period of his suspension and consequently, we find no infirmity in the order dated 23.03.2007 made in W.P.No.40249 of 2006. Accordingly, the writ appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed. Time for payment of subsistence allowance is



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three months from to-day."

8. Further, the 1st respondent in both the writ petitions had made several representations to the petitioner, seeking for payment of subsistence allowance, during the period of suspension. But the petitioner did not give any reply. Since the 1st respondent, in the capacity the Secretary and Accountant respectively, were not having the power to grant leave, fix the pay, fix the seniority and grant increment or impose punishment, it cannot be stated that they were in supervisory and managerial capacity. Thus, the 1st respondents are entitled for subsistence allowance. Only after considering the legal objections raised by the petitioner society, the 2nd respondent/Tribunal allowed the applications filed by the 1st respondent by condoning the delay. There is also no material to show as to who is responsible for such an inordinate delay in completing the enquiry. Further, it is also seen that the interim order granted by this Court on 15.10.2014 with a condition to deposit 25% of the amount, as ordered by the 2nd respondent, has not been complied with till date. Therefore, this Court finds no infirmity or illegality in the order passed by the 2nd respondent.



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9. In the result, both the Writ Petitions are dismissed. The petitioner is directed to comply with the order passed by the 2nd respondent within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

16.03.2023

Index :Yes/No
Speaking/Non-speaking order
vsi

To

The Assistant Commissioner of Labour/
The Authority under the Payment of
Subsistence Allowance Act,
Trichy - 20.



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J.NISHA BANU, J.

(vsi)

Pre-delivery order in
W.P.Nos.27379 & 27641 of 2014

16.03.2023