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W.P.No.4304 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.4304 of 2017

And

W.M.P.Nos.4500 and 4501 of 2017

The Secretary,
VL.SPL 117, Kamadhenu Primary Agricultural
Credit Society,
Kalavai, Arcot Taluk,
Vellore District.

... Petitioner

Vs.

1.The Principal Labour Court,
Vellore,
Vellore District.

2.N.Rajagopal (Died)
3.R.Suseela
4.R.Saravanan
5.Sarala
6.Gomathi

(R3 to R6 substituted as LR's. of
deceased second respondent vide
order dated 18.07.2023 made in
WMP No.9586/2023 in
WP.No.4304/2017 by MDIJ)

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to
issue a Writ of Certiorari calling for the records in C.P.No.122/2015



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dated 21.12.2016 on the file of the first respondent herein and quash the same.

For Petitioner : Mr.P.S.Sivashanmugasundaram
For Respondents : Mr.VK.R.Balakrishnan for R3 to R6

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the records in C.P.No.122/2015 dated 21.12.2016 on the file of the first respondent and to quash the same.

2.The case of the petitioner is that the second respondent worked as Secretary in the petitioner society and while he was in service, he committed irregularities including misappropriation of funds which caused serious financial loss to the society. Hence, he was suspended from service on 22.07.2005 and charge memo dated 03.12.2005 was served on him and after due enquiry, the second respondent was dismissed from service vide order dated 29.06.2006.

3.The further case of the petitioner is that, challenging the order of dismissal, the second respondent filed W.P.No.30765 of 2007



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this Court vide order dated 14.02.2012 dismissed the said writ petition. Thereafter, the second respondent filed claim petition in C.P.No.122 of 2015 before the first respondent and the first respondent vide order dated 21.12.2016 allowed the claim petition and directed the petitioner society to pay a sum of Rs.1,33,400/- to the second respondent. Challenging the same, the petitioner has filed this writ petition.

4.The learned counsel appearing for the petitioner submitted that the second respondent was suspended from service on 22.07.2005 and after due enquiry, he was dismissed from service vide order dated 29.06.2006. Challenging the order of dismissal, the second respondent filed W.P.No.30765 of 2007 and this Court vide order dated 14.02.2012 dismissed the said writ petition. Hence, the suspension order merge with the dismissal order and the second respondent is not entitled to claim subsistence allowance, however, the first respondent without considering the same, mechanically passed the impugned order in favour of the second respondent, which is not sustainable one.



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5.Per contra, the learned counsel appearing for the respondents 3 to 6 who are the legal heirs of the deceased second respondent submitted that subsistence allowance was not paid to the second respondent from the date of suspension. Thereafter, dismissal order was passed. Mere dismissal from service will not deprive the right of the second respondent from claiming subsistence allowance and the same was elaborately discussed in paragraph 9 of the impugned order and was rightly entertained by the first respondent and passed impugned order in favour of the second respondent, which warrants no interference.

6.Heard the arguments advanced on either side and perused the materials available on record.

7.The facts in the present case is not in dispute. Admittedly, the the second respondent worked as Secretary in the petitioner society and while he was in service, he committed irregularities including misappropriation of funds and hence, he was suspended from service on 22.07.2005 and charge memo dated 03.12.2005 was



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served on him and after due enquiry, the second respondent was dismissed from

service vide order dated 29.06.2006. Challenging the order of dismissal, the second respondent filed W.P.No.30765 of 2007 and this Court vide order dated 14.02.2012 dismissed the said writ petition.

8.The question that arise for consideration in this writ petition is whether the first respondent can entertain the claim petition of the employee even after his dismissal was confirmed by this Court.

9.In the present case, the second respondent was suspended from service on 22.07.2005 and was dismissed from service vide order dated 29.06.2006. Challenging the order of dismissal, the second respondent filed W.P.No.30765 of 2007 and this Court vide order dated 14.02.2012 dismissed the said writ petition. Hence, the suspension order merge with the dismissal order and the second respondent is not entitled to claim subsistence allowance, however, the first respondent without considering the same, mechanically passed the impugned order in favour of the second respondent, which is perverse, arbitrary, not sustainable one. Hence, the impugned



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order passed by the first respondent in C.P.No.122/2015 dated 21.12.2016 is liable to be set aside and the same is set aside.

M.DHANDAPANI,J.

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10.The writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

18.07.2023

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1.The Principal Labour Court,
Vellore,
Vellore District.

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And

**W.M.P.Nos.4500 and
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