



W.A.No.3895 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2023

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.A.No.3895 of 2019
and CMP.No.24492 of 2019

1. The Additional Registrar of Coop Societies,
Sales, Planning and Development,
O/o, Registrar of Coop. Societies,
Kilpauk, Chennai 600 010.
2. The Chairman,
Common Cadre Authority /
Joint Registrar of Coop Societies,
Villupuram Region, Villupuram,
Villupuram District.
3. The Special Officer,
CL.Spl. 121, Jakkampettai Primary
Agricultural Co-op. Society,
Jakkampettai Village, Thenpasar Post,
Tindivanam Taluk,
Villupuram District.

...appellants

Vs.

K.Ulaganathan

...respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the
order dated 12.07.2019 made in WP.No.10823 of 2009 passed by the Single
Judge of this Court.



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For appellants : Mr.G.Nanmaran,
Special Government Pleader
For respondent : Mr.C.Prakasam

JUDGMENT

(The Judgment of the Court was delivered by R.SUBRAMANIAN, J)

The appellant is aggrieved by the order of the Writ Court allowing the Writ Petition filed by the respondent seeking a Writ of Certiorarified Mandamus to quash the proceedings of the first appellant dated 16.10.2008 confirming the proceedings of the second appellant dated 12.02.2008 with a direction to reinstate the Writ Petitioner into service with all attendant benefits.

2. The respondent/writ petitioner, who was working as secretary of the third appellant Agricultural Co-operative Credit Society, was accused of with misappropriation of funds of the Society running to several lakhs. He was placed under suspension on 05.11.2004. Enquiry proceedings were initiated under Section 87 of the Act. After completion of enquiry, the Enquiry Officer filed a report concluding that the charges have been proved. The respondent was visited with the punishment of dismissal from service.



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The said punishment was appealed against and the appellate authority also confirmed the same. The orders imposing punishment were challenged by the respondent in WP.No.10823 of 2009 primarily on the ground that the entire enquiry is vitiated because it was conducted without payment of the subsistence allowance, despite the directions of this Court. This contention was found favour with the Writ Court and the Writ Petition was allowed on the sole ground that the conduct of the enquiry without payment of subsistence allowance is improper and illegal. Hence, this Writ Appeal.

3. Mr.G.Nanmaran, learned Special Government Pleader appearing for the appellant would vehemently contend that being the Secretary of a Co-operative Society and the Officer of the Society as defined under Sub-section 19 of Section (2) of the Tamil Nadu Co-operative Societies Act, the respondent is not entitled to subsistence allowance. He would also submit that the Tamil Nadu Payment of Subsistence Allowance Act 1981 would not apply to him since he is in the supervising cadre drawing a salary of more than Rs.15,000/- per month.

4. Mr.G.Nanmaran, learned Special Government would also add that even on merits, the subsistence allowance had been paid and re-enquiry was



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conducted after the subsistence allowance payable was paid. Therefore the premise on which the Writ Petition was allowed is erroneous.

5. Contending contra, Mr.C.Prakasam, learned counsel appearing for the respondent would submit that since the subsistence allowance was not paid to him, he was forced to file WP.No.2438 of 2005 seeking a mandamus directing payment of subsistence allowance. The plea that the respondent is not entitled to subsistence allowance was raised in the said Writ Petition also as a defence to the claim.

6. The Writ Court rejected the said contention and directed payment of subsistence allowance. Though the appellants filed an appeal against the said order, they chose to withdraw the same. Therefore, according to Mr.C.Prakasam, learned counsel, an order having been passed as between the parties and the same having become final, we cannot sit in appeal in collateral proceedings test the correctness of the order directing payment of subsistence allowance. He would invoke the principle that an order intra party even if it is wrong is binding on the parties. We find ourselves in agreement with the contentions of Mr.C.Prakasam, learned counsel on this ground.



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7. Admittedly, a Writ Petition was filed by the respondent herein in WP.No.24438 of 2005 seeking a simple mandamus directing the respondent therein to pay subsistence allowance. The claim that the respondent being an officer of the Society is not entitled to subsistence allowance was raised by the appellants before the Writ Court in WP.No.24438 of 2005. The said contention was specifically rejected and it was held that the respondent would be entitled to subsistence allowance. Though an appeal was filed against the order, it was subsequently withdrawn. Therefore the order in WP.No.24438 of 2005 has become final and it was binding on the parties to the said Writ Petition.

8. In the above factual backdrop, we do not think we could hear the contention of Mr.G.Nanmaran, learned Special Government Pleader that the respondent is not entitled to subsistence allowance, relying upon Sub-section 19 of Section 2 of the Tamil Nadu Co-operative Societies Act. Adverting to the contention that the subsistence allowance was paid and thereafter an enquiry was conducted, we find that after the order of the Writ Court in WP.No.24438 of 2005, the subsistence allowance for the period from 05.11.2004 to 30.11.2005 was paid on 10.12.2005. Thereafter, there



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was a re-enquiry and the enquiry was conducted between 01.12.2005 and

28.02.2007 and subsequently, the enquiry officer furnished the report. We

find that the subsistence allowance for the period 01.12.2005 to 31.10.2007

was paid after completion of the enquiry and after the report of the Enquiry

Officer was filed, on 10.12.2007. The subsistence allowance payable for the

period from 01.11.2007 to 11.02.2008 was paid after passing of the final

order on 30.04.2008.

9. On the above established facts, the Writ Court came to the conclusion that the subsistence allowance was not paid during the crucial period when the second enquiry was conducted. As rightly pointed out by the Writ Court, it is the fundamental principle of Service Law that conduct of enquiry without payment of subsistence allowance is impermissible and illegal. The Writ Court has just declared such an enquiry is illegal and exonerated the respondent from the charges. We do not think we could interfere with the said findings of the Writ Court, which is just on the sound principle of Service Law. If the subsistence allowance is not paid and enquiry is conducted without payment of subsistence allowance, it would amount to oppression. This Court cannot shut its sight to such kind of oppressive treatment on an employee. No doubt a person who has been



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accused of misappropriating the funds of the Society goes free, but it is the making of the officials of the Society by not paying him the subsistence allowance. We therefore do not see any merit in the appeal and the appeal fails and it is accordingly dismissed. However, in the circumstances without cost.

(R.S.M.J.) (K.G.T.J.)
15.02.2023

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