



W.P.(MD)No.6087 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

W.P.(MD).No.6087 of 2020

and

W.M.P.(MD)No.5268 of 2020

A.Subbaiah

... Petitioner

Vs

(R1 is deleted vide Court
order dated 09.03.2023.)

2.The Joint Registrar,
Co-operative societies,
No.39, T.T.R.Naidu street,
First Floor, Tuticorin - 626 002.

3.The President,
Thili Thani 118 Kazhugumalai Primary
Agriculture Co-operative Credit Society,
Kazhugumalai, Tuticorin District.

... Respondents

Prayer:- Writ Petition is filed under Article 226 of Constitution of India to issue a writ of Certiorarified Mandamus Calling for the records of the impugned order dt.22/01/20 on the file of the 3rd respondent and quash the same and further directing the 3rd respondent to disburse the arrears of



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subsistence allowance to the petitioner for the period from 15.04.2017 to 11.03.2019.

For Petitioner : Mr.V.O.S.Kalaiselvam
For R2 and R3 : Mr.K.S.Selvaganesan
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2. The petitioner is presently working as Secretary in the third respondent society. He was suspended on 01.02.2017. The trajectory of the disciplinary proceedings does not require to be retraced. The only question that calls for consideration is whether the petitioner is entitled to subsistence allowance for the period during which he was under suspension or not. The answer can only be in the affirmative. It is true that the petitioner was terminated and the order of termination was set aside and the petitioner was directed to be reinstated. It is quite possible that the petitioner gave an informal undertaking that he would not press for payment of Subsistence



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Allowance in lie of reinstatement. But even then, such an undertaking would be contrary to law. The authority could not have acted on the said undertaking. An employee who is placed under suspension is entitled to payment of subsistence allowance. In Labour jurisprudence, courts have gone to the extent of holding that if an enquiry is conducted without payment of subsistence allowance, even the enquiry is vitiated.

3. In this view of the matter, the order impugned in this writ petition is set aside and this writ petition is allowed. The third respondent is directed to pay the arrears of subsistence allowance payable to the petitioner herein. No costs. Consequently, connected miscellaneous petition is closed.

09.03.2023

NCC : Yes/No
Index :Yes/No
Internet :Yes / No
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G.R.SWAMINATHAN, J.

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To

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