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W.P.(MD)NO.13028 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.13028 of 2023 AND
W.M.P.(MD)Nos.11029 & 11031 of 2023

G.Aruna

... Petitioner

Vs.

1. The Joint Registrar of Co-operative Societies,
Ramanathapuram,
Ramanathapuram District.
 2. The Deputy Registrar of Co-operative Societies,
Vandikaratheru,
Ramanathapuram.
 3. The Managing Director,
Ramanathapuram District Central Co-operative Bank,
Ramanathapuram.
- ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the impugned order passed by the 3rd respondent in Na.Ka. No.003411/2017/E3 dated 10.05.2023 and quash the same as illegal and consequently directing the 3rd respondent to receive share amount of the petitioner of Rs.12,44,903/- in surcharge proceedings and drop all the disciplinary proceedings against the petitioner.



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For Petitioner : Mr.M.Sricharan Rangarajan,
Senior Counsel,
for Mr.C.Jeganathan.

For R-1 & R-2 : Mr.S.Shanmugavel,
Additional Government Pleader.

For R-3 : Mr.D.Shanmugaraja Sethupathy

* * *

ORDER

Heard the learned Senior counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for respondents 1 and 2 and the learned Standing counsel appearing for the third respondent bank.

2. The petitioner is a suspended employee. She had also been visited with an order of surcharge. She has not been paid Subsistence Allowance since July 2020. That led to the filing of W.P.(MD)No.5615 of 2023. It was disposed of on 15.03.2023. The operative portion of the said order is as follows:-



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“ 4. There cannot be any dispute that a suspended employee is entitled to subsistence allowance. It is true that the petitioner had been saddled with surcharge order and she has not obtained any interim order in her favour in the pending Civil Revision Petition. Be that as it may, the disbursement of subsistence allowance cannot be withheld for whatever reason. The petitioner is entitled to claim and receive subsistence allowance and since it is stated that from July 2020, she has not been paid any subsistence allowance, the management is directed to pay the same.

5. The petitioner cannot be kept under suspension for indefinitely long period. 5½ years is certainly a long enough period to qualify as prolonged suspension. The petitioner has given a representation in this regard. The learned senior counsel on instructions submits that the petitioner would remit her share of liability as quantified in the surcharge proceedings in lieu of dropping of disciplinary action.



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The petitioner is ready to contest the criminal case on merits. This offer made by the learned senior counsel sounds more like a plea bargain. The management can very well consider the same and take a call in the matter. This is not a matter in which this Court will be justified in issuing any direction and this Court can only nudge the management to consider the offer from a holistic perspective. The learned senior counsel for the petitioner submits that the petitioner will submit an appropriate representation before the third respondent within a period of one week from the date of receipt of a copy of this order and the third respondent is directed to pass order thereon within a period of four weeks thereafter. The petitioner is given liberty to move the management in this regard.

6. With this liberty to the petitioner and with the aforesaid two fold direction to the third respondent, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.”



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3. Purporting to enforce the order passed by this Court, the impugned communication dated 10.05.2023 has been issued by the third respondent. The third respondent had called upon the petitioner to pay the amount covered by the surcharge order with 18% interest.

4. Even though the learned Standing counsel appearing for the society made a valiant attempt to justify the impugned order, it is too obvious that the order passed by this Court has been completely misconstrued. I had only recorded the undertaking of the petitioner to pay her share of the liability in lieu of closure of disciplinary action. It was entirely left to the management to accept the petitioner's offer or not. In any event, the liability of the petitioner will abide by the outcome of the writ petition filed by her questioning the order of surcharge. I had also directed the management to pay the arrears of Subsistence Allowance. The petitioner had submitted an application on 21.03.2023 after her writ petition was disposed of. The order passed by this Court in W.P.(MD)No.5615 of 2023 has been understood as calling upon the petitioner to pay the entire surcharge amount. That was neither letter of the order nor spirit of the order.



5. In this view of the matter, the communication impugned in this writ petition is set aside. The parties will have to necessarily work out their rights in terms of the order dated 15.03.2023 made in W.P.(MD) No.5615 of 2023. This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

06.06.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

To:

1. The Joint Registrar of Co-operative Societies,
Ramanathapuram, Ramanathapuram District.
2. The Deputy Registrar of Co-operative Societies,
Vandikaratheru, Ramanathapuram.



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G.R.SWAMINATHAN,J.

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