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W.P.(MD)Nos.19206 of 2015 and 5624 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.19206 of 2015 and 5624 of 2016 and

M.P.(MD)Nos.1 to 3 of 2015

W.P.(MD)No.19206 of 2015:

V.Lingappan (Died)
Malarkodi

... Petitioner

vs.

1.The Deputy Registrar of Cooperative Societies,
Ramanathapuram Region,
Ramanathapuram District.

2.The President,
NN.558, Arasoor Primary Agriculture
Cooperative Credit Society,
Arasoor @ C.K.Mangalam,
Thiruvadanai Taluk,
Ramanathapuram District.

... Respondents

***(Petitioner substituted, vide Court order,
dated 06.02.2023, in W.M.P.(MD)No.20984 of
2022 in W.P.(MD)No.19206 of 2015)***



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W.P.(MD)Nos.19206 of 2015 and 5624 of 2016

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records on the file of the 2nd respondent in connection with the impugned resolution passed in Resolution Nos. 2 and 1, dated 09.10.2015 and 15.10.2015 respectively and to quash both as illegal and ultravires.

W.P.(MD)No.5624 of 2016:

V.Lingappan (Died)
Malarkodi

... Petitioner

vs.

1.The Deputy Registrar of Cooperative Societies,
Ramanathapuram Region,
Ramanathapuram District.

2.The President,
NN.558, Arasoor Primary Agriculture
Cooperative Credit Society,
Arasoor @ C.K.Mangalam,
Thiruvadanai Taluk,
Ramanathapuram District.

... Respondents

***(Petitioner substituted, vide Court order,
dated 06.02.2023, in W.M.P.(MD)No.20990 of
2022 in W.P.(MD)No.5624 of 2016)***



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W.P.(MD)Nos.19206 of 2015 and 5624 of 2016

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents to disburse the petitioner's salary for the period from April 2015 to 16.10.2015 and subsistence allowance payable after suspension to till now with interest based on his representation, dated 23.12.2015.

<u>In both cases:</u>	For Petitioner	: Mr.G.Thalaimutharasu
	For R1	: Mr.A.Baskaran Additional Government Pleader
	For R2	: Mr.S.Seenivasagan

COMMON ORDER

Both the writ petitions are filed by the same petitioner. After the demise of the petitioner his legal heir is substituted in both the writ petitions.

2.The writ petition in W.P.(MD)No.19206 of 2015 is filed for issuance of writ of Certiorari, to quash the impugned resolution passed in Resolution Nos.2 and 1, dated 09.10.2015 and 15.10.2015 respectively as illegal and ultra vires.



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3.The respondents have directed the deceased petitioner to handover the charge he was handling. The second resolution, dated 15.10.2015, is passed for issuing suspension order.

4. The contention of the petitioner is that such resolution was never passed but the respondents have issued a resolution copy. Therefore, the petitioner termed the resolution as fake. However, the respondents submitted that the suspension order passed against the petitioner is not fake. Moreover, the resolution cannot be challenged under Article 226.

4. This court is of the considered opinion that the resolution cannot be challenged. However, any consequential order which is passed based on the resolution can be challenged. Therefore the writ petition in W.P.(MD)No.19206 of 2015 is not maintainable and hence, the writ petition W.P.(MD)No.19206 of 2015 is dismissed. No costs. Consequently, connected miscellaneous petitions are



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closed.

5. The writ petition in W.P.(MD)No.5624 of 2016 is filed for issuance of a writ of Mandamus, to direct the respondents to disburse the deceased petitioner's salary for the period from April 2015 to 16.10.2015 and subsistence allowance payable from the date of suspension until now with interest based on his representation, dated 23.12.2015.

6.The contention of the respondents is that the deceased petitioner was working as Secretary in the second respondent Society. The Secretary will come under the administrative cadre. Hence, they are not eligible for subsistence allowance. However, the learned Counsel for the petitioner submitted that subsequently, the Secretary post was also brought under the Common Cadre Service. Hence, the Secretary is also entitled to subsistence allowance, based on the by-laws passed by the Society. As per the by-law, the petitioner is entitled to



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the same.

7. The learned Counsels appearing for the respondents further submitted that a charge memo was issued against the deceased petitioner and he was facing disciplinary proceedings. The allegation that subsistence allowance was not paid is false and the cheque No.022323 was drawn on the Ramanathapuram District Central Cooperative Bank, Thiruvadanai Branch for Rs.41,775/- and the same was sent through post. However, the said envelope was returned as refused by the petitioner.

8. Considering rival submissions, this Court is directing the respondents to pay the said amount of Rs.41,775/- and also to pay the further amount of subsistence allowance that is payable to the deceased employee. The respondents shall pay the same to the legal heir of the deceased employee within a period of 4



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(four) weeks from the date of receipt of a copy of this order.

9. Since the resolution was stayed before this Court, the respondents did not proceed further in the disciplinary proceedings. However, when the writ petition was taken up for final hearing, it was reported that the petitioner died. Therefore, this Court is of the considered opinion that further disciplinary proceedings cannot be proceeded with since it is abated on the death of the employee. The respondents are directed to pay the terminal benefits to the legal heir of the petitioner and the same shall be paid with a period of 8 (eight) weeks from the date of receipt of the copy of the order.

9. With the above said observation, the writ petition W.P.(MD)No.5624 of 2016 is disposed of. No costs.

Index : Yes / No
Internet : Yes

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To

The Deputy Registrar of Cooperative Societies,
Ramanathapuram Region,
Ramanathapuram District.



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S.SRIMATHY, J

Tmg

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