



W.A.(MD)No.1258 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 18.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)No.1258 of 2016

and

C.M.P.(MD)No.2400 of 2020

The President,

M.D.Special 121, Pasukkarapatti,

Primary Agricultural Co-operative Bank Ltd.,

Boothipuram Post, Usilampatti Taluk,

Madurai District-625 532.

... Appellant / 4th Respondent

Vs.

1.A.S.Chinnasshami

... 1st Respondent / Petitioner

2.The Registrar,

Co-operative Societies,

N.V.N.Natarajan Maaligai,

Kilpauk, Chennai-10.

3.The Regional Joint Registrar,

Office of the Regional Joint Registrar of Co-op. Societies,

Madurai Region, Madurai.

1/12



W.A.(MD)No.1258 of 2016

4.The Deputy Registrar,

Co-operative Societies,

Usilampatti Circle, at Present Thirumangalam,

Madurai District.

... Respondents 2 to 4 /

Respondents 1 to 3

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 03.08.2016 made in W.P.(MD)No.11480 of 2016 on the file of this Court.

For Appellant : Mr.R.R.Kannan

For R1 : Mr.V.R.Venkatesan

For R2 to R4 : Mr.R.Ragavendran,

Government Advocate

JUDGMENT

(Judgment of the Court was delivered by ***R.SURESH KUMAR, J.***)

This Writ Appeal is directed against the order passed by the Writ Court dated 03.08.2016 made in W.P.(MD)No.11480 of 2016.

2.The 1st respondent herein filed the said Writ Petition, seeking for a Writ of Mandamus, directing the respondents therein, who are the

2/12



W.A.(MD)No.1258 of 2016

appellant and the respondents 2 to 4 herein to pay subsistence allowance for the period from 27.04.2011 to 16.06.2016, which comes to Rs.4,55,400/- (Rupees Four Lakhs Fifty Five Thousand and Four Hundred Only) immediately and also the monthly subsistence allowance regularly to the petitioner and further, to pay the arrears of salary for the period from 2004 to 26.04.2011.

3.The 1st respondent / writ petitioner was an employee of the appellant Society and he had been placed under suspension with effect from 27.04.2011 and it is the complaint of the 1st respondent / writ petitioner that though he had been under suspension from 27.04.2011 till he filed the Writ Petition in the year 2016, he was not paid subsistence allowance by the appellant Society.

4.Therefore, only to espouse the said grievance the said Writ Petition had been filed.

5.According to the learned counsel appearing for the appellant herein, the learned Single Judge, who heard the Writ Petition, has recorded



W.A.(MD)No.1258 of 2016

the statement made by the learned Additional Government Pleader on behalf of the Society and he had stated by citing financial position of the Society that the arrears of the subsistence allowance, which comes to Rs.4,55,400/- would be paid by way of six monthly installments.

6.The said statement made by the learned Additional Government Pleader on behalf of the Society was recorded by the learned Single Judge.

7.The learned Single Judge also having considered the said submission made by both sides, was inclined to give three installments within which the entire arrears of subsistence allowance of Rs.4,55,400/- should be paid by the appellant Society to the 1st respondent / writ petitioner.

8.Aggrieved over the said order passed by the Writ Court dated 03.08.2016, this Writ Appeal has been filed.

9.Assailing the said order passed by the Writ Court, the learned counsel for the appellant would submit that the said position recorded by the



W.A.(MD)No.1258 of 2016

learned Single Judge in the order impugned as stated by the learned Additional Government Pleader on behalf of the Society may not be correct, as the Society was not given proper opportunity of being heard by the Writ Court.

10.That apart he would submit that one of the conditions for paying subsistence allowance to the employee is that the employee must be in head quarters, where he supposed to be residing. However, in violation of such condition, he had left the head quarters. Therefore, that is one of the reasons for which the subsistence allowance can be denied to the employee ie., the 1st respondent herein.

11.Apart from that the 1st respondent had not co-operated with the enquiry and time and again, he had approached this Court by filing a case after case, thereby delayed the disciplinary proceedings, which could not be completed within a reasonable time. Therefore, that kind of delay caused by the employee ie., the 1st respondent, would not make him entitled to seek the subsistence allowance for a longer period that too this much of Rs.4,55,400/-.



W.A.(MD)No.1258 of 2016

WEB COPY

12.He would further submit that subsequently, enquiry was completed and the 1st respondent was found guilty, accordingly, removed from service. Accordingly, there has been no link between the 1st respondent employee and the appellant Society. Therefore, that was also one of the reasons cited by the learned counsel for the appellant to deny the subsistence allowance. Therefore, for all these reasons, he would submit that the impugned order passed by the Writ Court is liable to be interfered with.

13.We have considered the said submission made by the learned counsel appearing for the appellant Society.

14.On perusal of the impugned order passed by the Writ Court in the Writ Petition, we found that the Writ Petition was filed for a simple Mandamus, seeking a direction to the appellant Society to pay arrears of subsistence allowance to the 1st respondent / writ petitioner for the suspension period between 27.04.2011 and 16.06.2016.



W.A.(MD)No.1258 of 2016

WEB COPY

15.It is the admitted case that during the said period, the 1st respondent employee was placed under suspension.

16.Whether the employee had caused the delay in completing the disciplinary proceedings or not was not the matter that was decided by the learned Single Judge.

17.Moreover, it is settled proposition of law that so long as the employee has been in suspension, he is entitled to get subsistence allowance. That legal position is also applicable to all the Co-operative Societies even under the relevant provisions of the Act as well as the rules made thereunder under which the Societies are functioning in the State.

18.Moreover, after hearing the learned Additional Government Pleader on behalf of the Society and recorded the statement given by him on behalf of the Society that they wanted to pay arrears of subsistence allowance to the employee by having six easy installments, the learned Single Judge allowed the Society to take three installments to pay entire



W.A.(MD)No.1258 of 2016

arrears. This has been specifically stated in paragraph Nos.2 and 3 of the order impugned herein.

19.If at all the Society had got any grievance in the manner in which the learned Additional Government Pleader made such statement before the Writ Court, which has been recorded in the order impugned, the Society could have filed a Review Application. However, no such application seems to have been filed. When that being so, since the Intra-Court Appeal has been filed, challenging the impugned order passed by the learned Single Judge, this Court has to look into only the infirmity if any or erroneous approach if any that is made by the learned Single Judge in the order impugned.

20.After having gone through the impugned order, we found no such error or no such infirmity attaching with the said order and it is a simple Mandamus that has been issued to the appellant Society to pay the subsistence allowance for the suspension period between 2011 and 2016 to the 1st respondent employee and if at all any financial crisis that was faced by the Society, for which the Society wanted some more installment, they



W.A.(MD)No.1258 of 2016

could have asked the same. Even such attempt has also not been made by the Society. Therefore, we do not find any merit on the plea raised before this Court by pursuing the present Intra-Court Appeal. Therefore, we are not inclined to interfere with the order of the learned Single Judge dated 03.08.2016, which is impugned herein. Hence, this Writ Appeal is deserved to be rejected, accordingly, it is dismissed.

21.At this juncture, it is brought to our notice not by the learned counsel for the appellant but by the learned counsel for the 1st respondent that during the pendency of this Writ Appeal, a conditional stay was granted in favour of the appellant Society to deposit the arrears of subsistence allowance as directed by the learned Single Judge in the order impugned and accordingly, the said amount seems to have been deposited in Indian Bank, Madurai Bench of Madras High Court Branch, Madurai.

22.In view of the same, the 1st respondent employee is hereby permitted to make an application along with a copy of this judgment to the Manager concerned of the Bank to withdraw the said amount with accrued interest. If such application is made by the 1st respondent employee along



W.A.(MD)No.1258 of 2016

with a copy of this judgment, the Manager concerned of the Bank shall verify the deposit and after ensuring the identity of the 1st respondent employee, namely, A.S.Chinnasshami, the said deposited amount with accrued interest shall be paid to him after getting due acknowledgment under the Banking procedure. The needful as indicated above shall be undertaken by the authorities on receipt of such application from the 1st respondent within a period of one week thereafter. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) & (K.K.R.K, J.)

18.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

MYR

To

1.The Registrar,
Co-operative Societies,
N.V.N.Natarajan Maaligai,
Kilpauk, Chennai-10.

10/12



W.A.(MD)No.1258 of 2016

2.The Regional Joint Registrar,

Office of the Regional Joint Registrar of Co-op.Societies,
Madurai Region, Madurai.

3.The Deputy Registrar,

Co-operative Societies,
Usilampatti Circle, at Present Thirumangalam,
Madurai District.



WEB COPY



W.A.(MD)No.1258 of 2016

R.SURESH KUMAR, J.

AND

K.K.RAMAKRISHNAN, J.

MYR

W.A.(MD)No.1258 of 2016

18.04.2023