



W.P.No.16205 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.07.2024

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

W.P.No.16205 of 2015

and

W.M.P.Nos.10990 & 10991 of 2016

and

M.P.No.1 of 2015

S.512-Vilangamudi Primary Agricultural.
Co-op. Credit Society,
Vilangamudi Post, Pochampalli Taluk,
Krishnagiri District,
Rep by its President
G.Santhamoorthy.

... Petitioner

-Vs-

1.The Authority under Tamil Nadu
Payment of Subsistence Allowance Act &
The Assistant Commissioner of Labour,
Salem

2.V.Arumugam

3.The Deputy Registrar of
Co-op. Societies,
Krishnagiri.

4.The Joint Registrar of
Co-op. Societies, Krishnagiri

...Respondents



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Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for the entire records of the impugned order passed by the 1st respondent in P.S.A.No.08/14 dated 27.3.2015 and quash the same.

For Petitioner : M/s.K.Ashok Kumar

For Respondents : M/s.P.Ganesan, Govt. Advocate [R1]

: M/s.K.A.Ravindran [R2]

: M/s.T.D.Murugan Raja,
Govt. Advocate [R3 and R4]

ORDER

Challenging the order passed by the 1st respondent dated 27.03.2015 in and by which the petitioner Society herein has been directed to pay a sum of Rs.75,961/- being the subsistence allowance due to the 2nd respondent for the periods 25.10.2013 to 22.01.2014 at 50%, 23.01.2014 to 24.04.2014 at 75% and 21.04.2014 to 25.05.2014 at 100%, the petitioner Society is before this Court.

2. The case of the petitioner Society is that their main function is lending agricultural and agriculture oriented loans and jewels loans.



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The petitioner Society was going through a severe financial crisis. The petitioner Society would submit that the Society was being managed by a Special Officer appointed by the Government of Tamilnadu for over 15 years and only recently the election for the Board of Members were conducted. During the management by the Special Officer, one Mr.M.Srinivasan, the Secretary of the Society was placed under suspension on various charges of misappropriation of funds. The said M.Srinivasan had absconded with all the registers and files of the Society.

3. By an order dated 23.06.2012, the 2nd respondent who was an Attender was given charge of the post of Secretary and his duties were mentioned in the said order. He had also taken charge on 27.06.2012. The petitioner Society found that he also indulged in a lot of misappropriation independently and in collusion with the said M.Srinivasan. Subsequently, the 2nd respondent, apprehending disciplinary enquiry and criminal proceedings against him, absented himself from the office from 26.03.2013 and absconded with all the



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petitioner Society's records and the duplicate keys of the iron safe entrusted to him.

4. An enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act had been instituted against the 2nd respondent and it was found that he was guilty of misappropriation of funds. After the enquiry report dated 18.10.2013 was received by the petitioner Society, an order suspending the 2nd respondent from service was issued on 25.10.2013. He was also served with a charge sheet on 09.06.2014 which contained 8 charges. In the disciplinary proceedings, the 2nd respondent remained ex parte and all the 8 charges leveled against him were proved. After receiving the enquiry report dated 10.03.2018, the petitioner Society had issued a second show cause notice dated 08.04.2015 to the 2nd respondent along with the enquiry report giving him an opportunity to explain as to why he should not be removed from service. Parallely criminal proceedings were also pending against the 2nd respondent in Cr.No.2/2014.



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5. As soon as the charge memo dated 09.06.2014 was issued to the 2nd respondent, he had preferred a petition before the 1st respondent seeking the following reliefs; (i) salary for the period 01.01.2013 to 27.03.2013; (ii) salary for an alleged Medical Leave period from 28.03.2013 to 25.10.2013; and (iii) subsistence allowance for the period under suspension from 26.10.2013 to 25.05.2014. He had sought a total sum of Rs.2,13,726/-. The said petition was filed under Section 4 of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 (hereinafter referred to as the "Act").

6. The petitioner Society had taken a defence that the 2nd respondent was not an "Employee" under the Act as he was posted as the in-charge Secretary of the Society carrying on managerial and administrative duties and was drawing a monthly salary of Rs.13,400/- and sought for the dismissal of the petition. However, the 1st respondent had proceeded to pass the impugned order dated 27.03.2015 which is the subject matter of challenge in the above Writ Petition.



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7. The 3rd respondent had filed a counter in which they would submit that as per the provisions of the special bye-laws relating to the service conditions of the employees of the Society, Chapter VI Disciplinary matters S.No.31(2), the authority competent to suspend an employee may grant subsistence allowance to the employee in accordance with the Act. In the instant case, the competent authority is the Board to grant subsistence allowance to the suspended employee and not the Deputy Registrar. The 3rd respondent had also taken a defence that the Writ Petition is not maintainable as Cooperative Societies are Corporate Bodies and not Government Department within the meaning of Article 12 of the Constitution of India. They therefore sought to have the Writ Petition dismissed.

8. The 2nd respondent had filed a counter in which he would state that even in the enquiry notice issued to him, he was addressed only in his capacity as an Attender. Therefore, as per the definition of Section 2(a) of the Act, he is termed an "Employee" and the petitioner Society is bound to pay him the subsistence allowance due to him.



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Consequently, the contention of the petitioner Society that the 2nd respondent is not an “Employee” under the Act and the 1st respondent has no jurisdiction to entertain his petition is not maintainable and has to be rejected.

9. Thereafter, the 1st respondent had held that the 2nd respondent was entitled to claim the subsistence allowance and since the petitioner had not produced any documents to show that the 2nd respondent's last drawn pay was a sum of Rs.13,419/- and therefore taking into account the monthly salary drawn by the 2nd respondent on the date of his dismissal i.e. Rs.15,409/-, the 1st respondent had directed the petitioner to pay subsistence allowance for the period 25.10.2013 to 25.05.2014 which was a sum of Rs.75,961/-. Challenging the above order the petitioner is before this Court.

10. Heard the learned counsels on either side.

11. The petitioner Society has not questioned the jurisdiction of the 1st respondent when the matter was pending before the 1st



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respondent and the same cannot be raised at this point in time. That

apart, the 2nd respondent would fall within the contours of the Act in

as much as even as per the communication issued by the petitioner, he

has been referred to only as an Attender which falls within the

definition of an Employee under the Act. Therefore, the order passed

by the 1st respondent dated 27.03.2015 is very much in order and I see

no reason to interfere with the same.

12. Accordingly, the Writ Petition is dismissed. No costs.

Consequently, the connected Miscellaneous Petitions are closed.

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(shr)

Index : Yes/No

Speaking / Non Speaking Order

Neutral Citation : Yes/No



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WEB COPY

To

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- 3.The Joint Registrar of
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Dindigul Electricity Distribution Circle,
Dindigul.



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P.T.ASHA. J.,

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