



WP.No.17865 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.17865 of 2017

P.Sakthi

...Petitioner

Vs.

1.The Joint Registrar of Co-operative Society,
Revision Officer,
Cuddalore.

2.The President,
2588, Nandhi Mangalam Primary Agricultural Co-operative
Society Ltd.,
Poolamedu & Post-608 302,
Chidambaram Taluk,
Cuddalore District.

3.E.Sivasubramanian,
Co-operative Sub-registrar/Retired,
Domesic Enquiry Officer,
46/16, Theradip Pillaiyar Koil Street,
Chidambaram-608 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of writ of Mandamus, praying to call for the records of the



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suspension order dated nil of the 2nd respondent issued to the petitioner and in consequent there to the termination order dated 02.08.2016 of the 2nd respondent issued to the petitioner and in consequent there to the Revisional order Na.Ka.No.6753 of 2016 thu. va. Tha. 1 order dated 08.02.2017 of the 1st respondent/Joint Registrar of Co-operative Societies/Revisional Officer, Cuddalore and quash all the above

For Petitioner : M/s.C.Prakasam

For Respondents : Mr.S.Arumugam

Government Advocate for R1

Mr.L.P.Shanmug Sundaram for R2

No appearance for R3

ORDER

This writ petition has been filed aggrieved by the order dated 02.08.2016 passed by the 2nd respondent terminating the services of the petitioner as sales women and the order dated 08.02.2017 passed by the 1st respondent in a Revision petition filed by the petitioner under Section 153 of the Tamil Nadu Co-operatives Act, 1983.

2.The brief facts of the case are that, on certain allegations the petitioner was placed under suspension with effect from 16.02.2016 and thereafter, a charge memo, dated 24.03.2016 was issued to the petitioner and thereafter, an Enquiry



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Officer was appointed and after conducting an enquiry the impugned order dated 02.08.2016 came to be passed terminating the services of the petitioner.

3.Mr.C.Prakasam, learned counsel appearing for the petitioner contended that though petitioner was placed under suspension on 16.02.2016 no subsistence allowance was paid inspite of the specific request made by the petitioner by submitting a representation dated 20.05.2016 and without paying any subsistence allowance, the enquiry proceedings have taken place and the impugned order was passed on 02.08.2016. It is the further contended that for want of payment of subsistence allowance, the petitioner was disabled from effectively participating in the enquiry proceedings, and therefore, the entire enquiry proceedings resulting in passing of the impugned order stands vitiated. He also placed reliance on an order passed by this Court in W.P.No.10823 of 2009 dated 12.07.2019 and also the decision of the learned Division Bench in W.A.No.3895 of 2019 confirming the orders passed in W.P.No.10823 of 2019. The 1st respondent filed a counter affidavit. However, there is no dispute that the petitioner has not been paid the subsistence allowance prior to passing of the impugned order. On the other hand, it is admitted that the subsistence allowance for the period of suspension from 16.02.2016 to 01.08.2016 was paid to the petitioner only on 15.11.2024. Thus, the



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non-payment of subsistence allowance to the petitioner at the relevant point of time, prior to passing of the impugned order dated 02.08.2016, is admitted. It is settled law that non payment of subsistence allowance, having kept an employee under suspension, and conducting an enquiry into the charges levelled against the employee is illegal and not permissible, as the employee would be incapacitated from effectively contesting or participating in the enquiry. The law in this regard is well settled. A co-ordinate Bench of this Court also in W.P.No.10283 of 2009 has taken the same view and the relevant paragraph from the said order reads as under:

"7.From the materials on record it is seen that the petitioner was suspended from service with effect from 05.11.2004. The petitioner was not paid subsistence allowance and on the Writ Petition filed by him, this Court by the order dated 05.08.2005, directed the respondents therein to pay the subsistence allowance. The Special Officer of the Bank filed W.A.No.2091 of 2005 before this Court and subsequently withdrew the same. Even after withdrawing the same, subsistence allowance was not paid to the petitioner regularly. The subsistence allowance was paid on 10.12.2005 in one lump sum for the period from 05.11.2004 to 30.11.2005 and subsequently for two years, the petitioner was not paid subsistence allowance. The Special Officer paid the subsistence allowance for the period from 01.12.2005 to 31.10.2007 on 10.12.2007 in lump sum for two years. Thereafter



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no subsistence allowance was paid to the petitioner. The order of dismissal was passed on 12.02.2008. After the said order of dismissal only the petitioner was paid subsistence allowance on 30.04.2008, for the period from 01.11.2007 to 11.02.2008. When an employee is suspended from service, the employer must pay the subsistence allowance every month. But in this case, the petitioner was paid subsistence allowance in lump sum on three occasions, firstly for 13 months, secondly for 2 years and thirdly for 4 months, after dismissing the petitioner from service. The petitioner has filed W.P.No.24438 of 2005, alleging that non-payment of subsistence allowance is greatly prejudiced. In spite of the order of this Court dated 05.08.2005 made in W.P.No.24438 of 2005 directing the respondents therein to pay the subsistence allowance, the petitioner was not paid subsistence allowance. In view of the same, the contention of the learned Government Advocate appearing for the respondents that entire subsistence allowance was paid to the petitioner and the domestic enquiry was not vitiated is contrary to the facts.

8.It is well settled that conducting domestic enquiry without payment of subsistence allowance is vitiated when the employee was greatly prejudiced by non-payment of subsistence allowance and he could not effectively put forth his case in domestic enquiry and could not participate in the domestic enquiry. In view of well settled principles of law, conducting



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domestic enquiry without payment of subsistence allowance is erroneous and the contention of the learned counsel appearing for the petitioner is acceptable and the contention of the learned Government Advocate appearing for the respondents is not valid."

4.The said order of the learned Single Judge was also confirmed by the learned Division Bench of this Court in W.A.No.3895 of 2019 wherein it was held as under:

"8. In the above factual backdrop, we do not think we could hear the contention of Mr.G.Nanmaran, learned Special Government Pleader that the respondent is not entitled to subsistence allowance, relying upon Sub~section 19 of Section 2 of the Tamil Nadu Co~operative Societies Act. Adverting to the contention that the subsistence allowance was paid and thereafter an enquiry was conducted, we find that after the order of the Writ Court in WP.No.24438 of 2005, the subsistence allowance for the period from 05.11.2004 to 30.11.2005 was paid on 10.12.2005. Thereafter, there was a re~enquiry and the enquiry was conducted between 01.12.2005 and 28.02.2007 and subsequently, the enquiry officer furnished the report. We find that the subsistence allowance for the period 01.12.2005 to 31.10.2007 was paid after completion of the enquiry and after



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the report of the Enquiry Officer was filed, on 10.12.2007. The subsistence allowance payable for the period from 01.11.2007 to 11.02.2008 was paid after passing of the final order on 30.04.2008.

9. On the above established facts, the Writ Court came to the conclusion that the subsistence allowance was not paid during the crucial period when the second enquiry was conducted. As rightly pointed out by the Writ Court, it is the fundamental principle of Service Law that conduct of enquiry without payment of subsistence allowance is impermissible and illegal. The Writ Court has just declared such an enquiry is illegal and exonerated the respondent from the charges. We do not think we could interfere with the said findings of the Writ Court, which is just on the sound principle of Service Law. If the subsistence allowance is not paid and enquiry is conducted without payment of subsistence allowance, it would amount to oppression. This Court cannot shut its sight to such kind of oppressive treatment on an employee. No doubt a person who has been accused of misappropriating the funds of the Society goes free, but it is the making of the officials of the Society by not paying him the subsistence allowance. We therefore do not see any merit in the appeal and the appeal fails and it is accordingly dismissed. However, in the circumstances without cost."



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5. In the light of the settled legal position and admitted fact situation, this Court is of the considered view that the impugned order of termination dated 02.08.2016 and the enquiry proceedings that were conducted against the petitioner stands vitiated. Though this aspect was brought to the notice of the 1st respondent, by filing revision under Section 153 of Act 1983, the 1st respondent failed to take into consideration these aspects and passed the order dated 08.02.2017 in a mechanical manner confirming the order passed by the 2nd respondent. In the circumstances, both the impugned orders are unsustainable and accordingly they are hereby quashed. The 2nd respondent is directed to treat the petitioner as continued to be under suspension and pay subsistence allowance as per Rules, and shall be reinstated into service within a period of two weeks from the date of receipt of a copy of this order. However, it is left open to the 2nd respondent take appropriate action strictly in accordance with law.

6. With the above observations, the writ petition stands allowed. No costs.

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vsn



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