



W.A(MD)No.355 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2024

CORAM

**JUSTICE N. SESHASAYEE
and
JUSTICE P.VADAMALAI**

W.A(MD)No.355 of 2020
and
C.M.P(MD)No.2443 of 2020

G.Selvaraj

... Appellant/Petitioner

Vs.

1.The Deputy Registrar of Cooperative Societies,
Palani Circle,
Palani,
Dindigul District.

2.The Joint Registrar of Cooperative Societies,
Dindigul Region,
Dindigul.

3.The President,
D.D.543, Aanaipatti Primary Agricultural
Cooperative Society,
Aanaipatti, Vedasanthur Taluk,
Dindigul District.

... Respondents/Respondents



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Prayer: Appeal filed under Clause 15 of the Letters Patent, to set aside the order made in W.P(MD)No.4312 of 2015, dated 26.06.2019.

For Appellant :Mr.D.Shanmugaraja Sethupathi

For R-1 & R-2 :Mr.S.Kameshwaran,
Government Advocate

For R-3 :Mrs.S.Devasena

JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

This appeal is directed against an order of a learned Single Judge in W.P(MD)No.4312 of 2015 dated 26.06.2019. It was laid by the appellant herein seeking a direction for setting aside a proceeding of the third respondent rejecting the appellant's claim for subsistence allowance during the period when he was suspended from service.

2.1 The facts are that the appellant was working as a Secretary in the third respondent Co-operative Society. While so on 29.10.2005, he was suspended following certain allegation of misappropriation of funds. He was duly



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served with the charge-memo and enquiry on the same was stated to have been held on three different dates. It appears that the appellant has not participated in the enquiry. Eventually, the appellant was found guilty of the charges levelled against him, following which on 22.09.2009, the appellant was served with a notice to offer his explanation on the enquiry report. The appellant again chose not to respond to the same and eventually on 20.11.2009, he was terminated from service. According to the appellant, he was not served with the notice of termination whereas according to the respondents, notice was attempted to be served through postal service but as the appellant could not be found, the same was returned unserved and that, the notice was then published in a vernacular newspaper.

2.2. The effect of the enquiry held under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, directed the appellant to pay a sum of Rs.3,59,245.36/- with interest at the rate of 18% per annum and this rate of interest was later lowered to 6% by this Court in an earlier round of litigation and accordingly, the appellant was required to pay a sum of Rs.4,15,577/- as interest. The appellant is stated to have paid the entire sum.



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2.3. In this backdrop, the appellant claimed subsistence allowance for the period from 29.10.2005 till 20.11.2009. As there was no action, the appellant approached this Court and this Court had directed the authorities to consider his claim for payment of subsistence allowance. It was after considering the said claim pursuant to the direction of this Court, the third respondent herein came out with his proceedings rejecting the appellant's claim for subsistence allowance on the ground that he was in a managerial cadre and hence, he was not entitled to be paid the subsistence allowance and that was also liable to pay the sum determined as payable in the surcharge proceedings. This proceedings of the third respondent came to be challenged by the appellant before the learned single Judge in W.P(MD)No.4312 of 2015 and it came to be dismissed by the learned single Judge on the ground of availability of alternate relief and this order of the learned single Judge is now under challenge.

3. The learned counsel for the appellant submitted that availability of an alternate relief does not take away the extraordinary jurisdiction of this Court to issue appropriate writ as it is a constitutional remedy. He added that in



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fitness of things, the learned single Judge ought to have considered the claim of the appellant on its merits.

4. Per contra, the learned counsel for the respondents in unison submitted that in terms of the Tamil Nadu Payment of Subsistence Allowance Act, 1981, the appellant cannot be considered as an employee within the definition of Section 2(a) (i) of the said Act and that, in terms of Section 3, he is not entitle to subsistence allowance as the post he held was a managerial cadre. They also supported the line of reasoning of the learned single Judge and argued that in fitness of things, the appellant ought to have approached the revisional authority constituted under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 and the learned counsel for the co-operative society, however fairly made a statement that the appellant had since paid the sum he was liable to pay pursuant to the surcharge proceedings.

5. Heard both sides. There are two issues involved in this case one relates to whether the Court can entertain a petition under Article 226 of the Constitution of India when an effective alternate relief is available to the



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appellant under Section 153 of the Tamil Nadu Co-operative Societies Act and the other is whether the appellant would be entitled to subsistence allowance as per Tamil Nadu Payment of Subsistence Allowance Act, 1981.

6. The question as to the availability of alternate relief is concerned, *ipso facto* it cannot foreclose the authority of the Court to exercise its jurisdiction under Article 226 of the Constitution of India in appropriate cases. The appellant apparently has approached the authorities about a decade back, sometime in 2014, and his claim was rejected vide the impugned order, dated 18.06.2015. If the appellant was informed right at the time when he approached the Court about the availability of alternate relief, it would have enabled the appellant to save time. Now, having chosen to entertain the writ petition, this Court considers that it will be inappropriate for the Court to tell the appellant some ten years after arising of the cause of action that he should opted for statutory remedies.

7. Section 3 of the Tamil Nadu Payment of Subsistence Allowance Act, mandates that an employee when he was placed under suspension should be



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paid the subsistence allowance.

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8. Turning to the larger issue as to whether the appellant would be entitled to subsistence allowance, it goes by the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981. Who constitutes an employee is defined in Section 2(a). Section 2(a) reads as below:

2. *Definitions:- In this Act, unless the context otherwise requires,- (a) “employee” means any person employed in, or in connection with the work or activities of, any establishment to do any skilled, semi-skilled or unskilled, manual, supervisory, technical, clerical or any other kind of work or activities for hire or reward, whether the terms of employment be expressed or implied, but does not include any such person-*

(i) who is employed mainly in a managerial or administrative capacity; or

(ii) who, being employed in a supervisory capacity 1 [draws wages exceeding fifteen thousand rupees per mensem] or exercises, either by the nature of the duties attached to the office or by reason of the



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powers vested to him, functions mainly of a managerial nature;

9. Replying the same, the learned counsel for the appellant would submit that the appellant belongs to a common cadre of Secretaries in terms of Section 75 of the Tamil Nadu Co-operative Societies Act and is governed by G.O.Ms.No.55 Co-operation, Food and Consumer Protection Department, dated 12.03.2000 and the regulation framed pursuant to the same. Regulation 29(d) specifically provides for payment of subsistence allowance to a common cadre employee under suspension as per the Tamil Nadu Payment of Subsistence Allowance Act, 1981 and he also added this has been recognized in a catena of authorities in ***Kuthiraichandal Primary Cooperative Bank Limited Vs A.Asokan and another*** [2009(1) MLJ 18]; ***Special Officer, D.K.81, Chennasandiram Primary Agricultural Cooperative Credit Society Limited Vs P.Periyannan and another*** [W.A.No. 1569 of 2012 dated 10.02.2015]; ***Special Officer, T.28, Vandaiyar Eruppu Primary Agricultural Cooperative Credit Society Limited Vs P.Ravichandran*** [W.A(MD)No.460 of 2015, dated 17.06.2015];



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P.Marichamy Vs The Joint Registrar of Cooperative Societies and another
[W.A(MD).No.537 of 2011, dated 01.09.2017]; and ***C.Jeyaraman Vs The***
Special Officer, Vellore District Central Cooperative Bank Limited
[W.A.No.116 of 2015, dated 18.06.2018]

10. After evaluating rival contentions, this Court has little hesitation to hold that the appellant would be entitled to subsistence allowance in terms of Regulation 29(d) in terms of G.O.No.55, dated 12.03.2000 that he might fall within the managerial cadre in terms of definition 2(a) (i) of the Tamil Nadu Payment of Subsistence Allowance Act might be true but inasmuch as common cadre employee of Co-operative Societies is governed by a set of special regulation, the same will prevail over the general provisions of the statute.

11. In view of the same, this Court holds that the appellant is entitled to subsistence allowance for the period from 29.10.2005 to 20.11.2009. The learned counsel for the appellant circulated before this Court a memo of calculation, but this Court requires the appellant to make the said statement of



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calculation available to the third respondent who on receipt of the same is directed to ascertain the correctness of the same and may pay the appellant such subsistence allowance as he is entitled to in law. The entire exercise shall be concluded within eight weeks from the date on which the appellant makes available his statement of calculation to the third respondent.

12. This writ appeal is disposed of. No Costs. Consequently, connected Miscellaneous Petition is closed.

(N.S.S., J.) (P.V.M., J.)
23.07.2024

NCC : Yes/No
Index : Yes/No

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