BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2025

CORAM:
THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.15332 of 2021 and
WMP(MD)No.12247 of 2021

The Management,
The Arumanai Co-Operative Stores Ltd - No.Y 286,
Arumanai – 629 151,
Kanyakumari District,
Rep by its President. ...Petitioner

Vs

1.The Appellate Authority
under the Payment of Subsistence Allowance Act, 1981,
(Joint Commissioner of Labour),
Tirunelveli.

2.The Authority under the
Payment of Subsistence Allowance Act, 1981,
(Assistant Commissioner of Labour),
Tirunelveli.

3.N.Sivakumar (Deceased)

4.S.Mallika

5.Aarthi Priya Dharshini. S.M.

6.Athira Priya Dharshini.S.M ...Respondents
[R4 to R6 are substituted vide order dated 22.09.2025 in WMP(MD)No. 14447 of 2022]

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India to issue a writ of certiorari to call for the records relating to the impugned order dated 11.06.2021 passed by the 1st respondent in PSA (Appeal)No.1 of 2020 confirming the impugned order dated 10.02.2020 passed by the 2nd respondent in PSA.No.10 of 2018 and quash the same as illegal.

For Petitioner	: Mr.M.E.Ilango,
For Respondent Nos.1 and 2	: Mr.C.Venkateshkumar, Special Government Pleader
For Respondent Nos.3 to 6	: Mr.P.Willson Associates

ORDER

The management / Arumanai Co-operative Stores Limited has preferred this writ petition as against the order passed by the 1st respondent the appellate authority under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 (in short 'the Act'), confirming the order of the 2nd respondent directing the petitioner management to pay the subsistence allowance to the 3rd respondent, the erstwhile Secretary of the petitioner co-operative stores.

2.The 3rd respondent was suspended from service on 22.12.2017 contemplating disciplinary proceedings. He was issued with a charge memo and was dismissed from service on 02.02.2019 after a full-fledged enquiry and also by following due process. The 3rd respondent filed an application before the 2nd respondent claiming subsistence allowance for the period between 22.12.2017 and 16.07.2018. The 2nd respondent / the authority under the Act has allowed the application filed by the 3rd respondent in PSA.No.10 of 2018 directing the petitioner management to pay a sum of Rs.1,14,870/-within a stipulated time. Aggrieved by this order, the petitioner management has preferred an appeal before the 1st respondent, who by his impugned order dated 11.06.2021 has dismissed the appeal by confirming the order of the 2nd respondent. Therefore, this writ petition has been filed as against the order of the 1st respondent dated 11.06.2021.

3.The learned counsel for the petitioner management submits that the 3rd respondent was employed as a Secretary and he was discharging his duty in the managerial cadre and therefore, he is not entitled for subsistence allowance as per the Act. The learned counsel for the petitioner has referred to the nature of work assigned to the 3rd respondent, the definition for an employee as provided under

Section 2(a) of the Act. He has also relied on the judgment of a Division Bench of this Court in the ***Management, Elavadi Primary Agricultural Co-operative Bank Vs Assistant Commissioner of Labour [2017 (2) LLN 256]*** in support of his contention that the 3rd respondent being a Secretary will not come under the Act.

4.The learned counsel further submits that the 3rd respondent as the Secretary has committed several irregularities in the stores and for the same, an enquiry was conducted and surcharge proceedings were initiated. Therefore, according to the learned counsel, the 3rd respondent is not entitled for any relief under the Act. However, the respondents 1 and 2 without considering the settled position, have erroneously passed the orders, which need to be interfered with.

5.On the other hand, the learned counsel for the 3rd respondent submits that though the 3rd respondent was employed as a Secretary, he had discharged the clerical duty only and therefore, he will fall within the definition of an employee under Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act. The learned counsel has also relied on the judgment of the Division Bench of this Court in ***The Registrar vs. M. Elango [2020 SCC OnLine Mad 384]*** and submits that even the Secretary or an employee in the managerial cadre has to maintain his family and therefore, he is entitled for subsistence allowance.

6.This Court has considered the rival submissions made and perused the materials placed on record.

7.The 3rd respondent Secretary of the petitioner stores, was suspended on 22.12.2017 contemplating disciplinary proceedings and was dismissed from service on 02.02.2019. He was not provided with any subsistence allowance during the suspension period. Therefore, the 3rd respondent has approached the 2nd respondent authority under the Act, which was allowed and the petitioner management was directed to pay the subsistence allowance and the same has also been confirmed by the 1st respondent appellate authority.

8.The issue to be decided in this case is whether the 3rd respondent Secretary of the Co-Operative Stores is entitled for subsistence allowance as per the Tamil Nadu Payment of Subsistence Allowance Act, 1981.

9.As per Section 3 of the Act, an employee who is placed under suspension is entitled for payment of subsistence allowance, the amount equivalent to 50% of his wages during the period of suspension. An employee is defined under Section 2(a) of the Payment of Subsistence Act as under:

> *"Section 2(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 draws wages exceeding fifteen thousand rupees per mensem or exercises (Rs. 300 per month before 2017 amendment), either by the nature of the duties attached to*

the office or by reason of the powers vested to him,functions mainly of a managerial nature;"

10.Sub Section 2 of Section 2(a) has been amended with effect from the year 2017 on the wages from Rs.3,500/- per mensem to Rs.15,000/- per mensem. The 3rd respondent had joined as Secretary of the petitioner co-operative stores in the year 1985 and he was assigned mainly with duties as under:

> *"(1) Power to collect the earnings from the various stores, compare the same with the bills and deposit the amount in the bank account of the Co-operative store (clause 2).*
>
> *(2) Comparing of Accounts Registers at the head office with the accounts register in each fair price shop every month and conducting inspections to ensure the availability of stock in fair price shops (clause 5).*
>
> *(3) Supervising the Attendance Registers and maintaining the leave registers (clause 13)*"

11.The bye-laws of the petitioner Co-operative store provides in the definition under clause 2 (c) that an officer includes a Secretary, which is different from employees of the petitioner co-operative store for which a separate definition is provided under clause 2 (d).

Clause 4 of the bye-law provides list of administrative posts which includes the Secretary. As per Ex.M2, the letter of the petitioner management, containing the duties and responsibilities of the 3rd respondent, he was indeed vested with supervisory works.

12.In ***K.Pazhani Vs. The Presiding Officer, Labour Court, Cuddalore and another [WP.No.21014 of 2007, dated 05.01.2012]***, this court has held that the Secretary of the co-operative society cannot be a workman within the meaning of Section 2(s) of the Industrial Disputes Act and also under Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act and the same is extracted as under:

> *"7.The question whether a secretary of a Cooperative Society is a workman within the meaning of Section 2(s) of the Industrial Disputes Act and also Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 came up for consideration in several judgments of this Court, where it was held that the definition of 'employee' is similar to that of a workman under Section 2(s) of the Industrial Disputes Act.*

8. In this context, it is necessary to refer to the judgment of this Court in the case of The Management, T.P.Spl.67 Goundanpalayam, Primary Agricultural Cooperative Society Limited V. The Assistant Commissioner of Labour and another reported in 2003 Writ Law Reporter 371, wherein a similar claim was negatived by this Court. Under the said circumstances, there is no infirmity in the award passed by the first respondent Labour Court."

13.A Division Bench of this Court in ***M.Kanagasabapathy v. The Special Officer and others, reported in (2008) 1 MLJ270*** has held that it is the Tamil Nadu Payment of Subsistence Allowance Act, which should be considered when deciding on whether a secretary is an employee, entitled to subsistence allowance and the relevant portion is extracted as under:

"59. Having regard to the main purport and intent of Tamil Nadu Act 43 of 1981 we can safely conclude that the said Act exclusively deals with the payment of subsistence allowance and none else. Though it can be stated that Act 30 of 1983 having regard to its purport and intent, namely, for the orderly development of the co-operative movement in different fields, it is a special

enactment in that respect, when it comes to the question of comparing the said Act with Act 43 of 1981 it will have to be held that the said Act, namely, Act 43 of 1981 being a special enactment dealing only with payment of subsistence allowance, and having regard to its origin being earlier in point of time and by virtue of the application of the maxim 'Generalia Specialibus Non Derogant', the special Act would by necessary implication will have over riding effect on the general Act, namely, Act 30 of 1983."

14.However, the subsequent Division Bench in ***The Registrar, Co-Operative Societies vs. M. Elango [2020 SCC OnLine Mad 384]*** considering the above judgment, has held as under:

"23. A perusal of the said provision, therefore, indicates that a person who is employed in a managerial or administrative capacity is not included within the definition of "employee" and hence, by necessary implication the applicability of the 1981 Act is denied in respect of such an employee. In our opinion, the Special Act, namely the 1981 Act, does prevail over the general provisions of the 1983 Act or the Bye-laws framed under the 1983 Act and the 1988 Rules framed thereunder. To

this extent, we agree with the ratio of the judgment in the case of M.Kanagasabapathy v. Special Officer, Namakkal District and others (supra)……..

25. Having come to the aforesaid conclusion, we have to accept this contention of the learned Additional Advocate General that the 1981 Act excludes the applicability of the same in the case of a Secretary of a Primary Agricultural Co-operative Society.

31. 'To subsist' means to manage to stay alive, especially with limited resources or money. The state of living as such is known as subsistence, which is indicative of the fact that one has enough resources to sustain life with basic minimum needs. This means of existence or continuance with meagre resources of livelihood for a salaried employee is known as a subsistence allowance, which is an advance payment to cover immediate living expenses while being kept away from service. It is, therefore, an income that is sufficient to provide bare necessities and is an adequacy of support that exists as a reality while undergoing a compulsory distress. The idea is to preserve sustenance at the minimum economic level to sustain a minimum standard of living. It is practically an allowance for maintenance granted under special *circumstances. An employee of whatever rank, if is surviving only on his salary, then whatever be the standard or status of employment, a minimum sustenance is required for all employees. A managerial or secretarial cadre employee also has to maintain himself and may be his family, if he has one. It is in reality a surviving need, when employment is put in suspended animation, that is necessary whether it be an ordinary employee or one who may be enjoying a managerial capacity. This also depends upon the emoluments that are received by an employee and, therefore, it is a matter of assessment, as in the present case, as to what salary was the Secretary being paid. Thus, an universal application of the rule of not paying any subsistence allowance to an employee of the secretarial or managerial cadre may not be a correct approach to the fundamental of the necessity of subsistence allowance. It cannot be accepted by applying a universal logic that a Secretary or a Manager ceases to have the need of basics to continue to live at the bare minimum on being suspended.*

32. The underlying principle for making payment of subsistence allowance is to allow an individual to sustain himself. In the present context of the suspension of an employee, one has to keep in mind that services of *an employee have not been snapped and the employer-employee relationship during suspension continues to subsist. There is a possibility of the employee being exonerated and he may in such circumstances be entitled to his entire emoluments of the said period. On the other hand, an employee can be found partially guilty and the employer may choose to deduct part of the emoluments by imposing a condition that the employee would not be entitled to any further emoluments, apart from what he has received during his period of suspension. It is, therefore, the discretion of the employer according to the Bye-Laws and Rules applicable, but, at the same time, it is the right of sustenance of an employee to receive subsistence allowance. As to what would be the ratio to which an employee may be entitled in the present context will have to be left to the discretion of the employer, as Bye-Law 31(2) indicates that the employer may pay subsistence allowance as he may deem fit. This discretion, however, should be exercised reasonably and may be subject to any such deductions in the event an employee is found to be ultimately guilty of heavy financial irregularities or misappropriations. On this ground, we therefore find favour with the respondent/writ petitioner that his representation for payment of subsistence allowance also deserves consideration in the* *background aforesaid. A total denial of subsistence allowance to a suspended employee, in our opinion, would be violative of Article 21 of the Constitution of India, unless it can be shown that payment of subsistence allowance is not warranted on the facts of a particular case, as illustrated above. We are conscious that a possible sense of injustice or inconvenience resulting in a temporary hardship by itself cannot be a ground to claim a right bereft of the statutory provisions, but where the very sustenance is a single salaried source, a total denial thereof may result in an abrupt punishment with hardly any justification thereby violating basic fundamental rights."*

15.The 3rd respondent in fact has relied upon the above judgment of the Division Bench in support of his claim that he is entitled for subsistence allowance. It is pertinent to that the Division Bench in the above said judgment has held that the Secretary of a Co-operative Society is in the cadre of manager, however the Division Bench has ordered for subsistence allowance, depending upon the facts of the case. The Court has specified that this discretion is left with the employer, as he may deem fit and has also cautioned that this discretion should be exercised reasonably and subject to any such deductions, if the employee is found to be guilty of heavy financial irregularities or misappropriation.

16.The 3rd respondent in this case was issued with a charge memo on 22.12.2017 on the allegation of misappropriation. According to the petitioner management the 3rd respondent had forged 13 bills of the petitioner society and misappropriated to the tune of Rs.8,58,293/-. The surcharge proceedings was also initiated as against the 3rd respondent and surcharge order has been passed directing the 3rd respondent to pay a sum of Rs.8,58,293/- along with 14% of the interest and the same has not been challenged by the 3rd respondent. The 3rd respondent was also dismissed on the charge of misappropriation. He has not challenged the dismissal order. While so the discretionary concession provided in the Registrar of Co-operative Societies' case cited supra, cannot be availed in all the cases. The 3rd respondent is not entitled for the relief, in view of the surcharge orders passed under Section 87 of the Co-Operative Societies Act.

17.In the result, the writ petition is allowed. Accordingly the impugned order is set aside. No costs. Consequently connected miscellaneous petition is closed.

24.11.2025

DSK

To

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under the Payment of Subsistence Allowance Act, 1981,
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B.PUGALENDHI.J.,

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