

**(2011) 02 MAD CK 0030**

**In the Madras High Court**

**Case No :** Writ Petition (MD) . No. 14346 of 2010 and M.P. (MD) No. 1 of 2010

Maruthaiah

APPELLANT

Vs

The Special Officer/Co-Op Sub Registrar, Sri  
Ranganathaswamy etc., Devasthanam Employees Co-  
operative Stores Ltd.

RESPONDENT

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**Date of Decision :** 17-02-2011

**Acts Referred:**

Constitution of India, 1950 — Article 21

**Citation :** (2011) 02 MAD CK 0030

**Hon'ble Judges :** V. Dhanapalan, J

**Bench :** Single Bench

**Advocate :** A. Chandrasekaran, for V. Illanchezian, for the Appellant; M.  
Sridharan, Adv, for K.M. Vijayakumar, Special Government Pleader, for the  
Respondent

**Final Decision :** Allowed

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**Judgement**

V. Dhanapalan, J.—Heard Mr. A. Chandrasekaran for Mr. V. Illanchezian, learned Counsel for the Petitioner and Mr. M. Sridharan for

Mr. K.M. Vijayakumar, learned Special Government Pleader for the Respondent.

2. An order of the Respondent, dated 02.08.2010, whereby and where under the claim of the Petitioner for subsistence allowance was rejected,

has been challenged in this writ petition and the Petitioner also prays for a consequential direction for the Respondent to pay subsistence allowance.

3. It is the case of the Petitioner that he was working as a Secretary in Sri Ranganathaswamy Devasthanam Employees Co-operative Stores

Limited, R.1564, Srirangam. While so, he was placed under suspension for the charges of misconduct on 12.11.2009 and thereafter, an enquiry

was conducted by the Respondent u/s 81 of the Tamil Nadu Co-operative Societies Act, 1983. However, the Respondent has not given any subsistence allowance to the Petitioner from 12.11.2009 i.e. from the date of the order of suspension. The Petitioner claims that he is entitled for subsistence allowance under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 (hereinafter referred as the Act) and he made a request to the Respondent in person for payment of subsistence allowance on several occasions, but the Respondent did not pay the subsistence allowance. Therefore, he made a representation on 17.07.2010 claiming for payment of subsistence allowance, which has been rejected by the Respondent in the impugned order, dated 02.08.2010 stating that no decision will be taken at present for payment of subsistence allowance to the Petitioner. Therefore, the Petitioner challenged the impugned order on the ground that the decision of the Respondent in not paying the subsistence allowance is against law and the provisions of the Act and it is in violation of principles of natural justice.

4. The Respondent has filed a counter affidavit and it is stated inter alia that the Respondent society is a Society registered under the Tamil Nadu Co-operative Societies Act and the Petitioner was the Secretary of the Society working in a managerial capacity and he was placed under suspension on 12.11.2009. Thereafter, a charge memo was issued on 01.03.2010 framing charges for misappropriation to the Respondent society to the tune of Rs. 11,04,180/-and after the receipt of the charge memo, the Petitioner remitted a sum of Rs. 6,43,000/-. Because of the fraudulent act of the Petitioner, the Respondent society has incurred a loss of Rs. 4,61,180/-. It is their further case that as per Section 2(a)(i) of the Act, the claim of the Petitioner under the Act is not applicable to him since the Petitioner was in the managerial capacity as defined u/s 2(a)(i) of the Act, which reads thus;

(a) employee"" means any person employed in, or in connection with the work of 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.

Therefore, the claim of the Petitioner for payment of subsistence allowance was rejected by the Respondent in its impugned order, dated

02.08.2010 and they prayed for dismissal of the writ petition.

5. The foremost contention of the learned Counsel for the Petitioner is that non payment of subsistence allowance will deprive a person's

fundamental right and therefore, the impugned order is in violation of the Article 21 of the Constitution of India. He would further contend that in

view of the decision reported in I.I.558 Kuthiraichandal Primary Co-operative Bank Limited Vs. A. Asokan and Villupuram District Committee of

Common Cadre Services for Secretaries of Primary Agricultural Co-Operative Bank, , the question of applicability of the Act to the post of

Secretary to the Primary Agricultural Co-operative Bank is no longer a issue as the decision is directly on the point and therefore, the impugned

order cannot be sustained.

6. Per contra, the learned Counsel for the Respondent would contend that in view of the specific provisions of the Act under definition 2(a)(i),

employer means any person employed in, or in connection with the work of 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 and who is employed mainly in a managerial or administrative capacity, the decision of

the Respondent in rejecting the claim is perfectly valid.

7. I have heard the learned Counsel on either side and perused the material documents annexed in the typed set of papers and analysed the

relevant provisions of law and the decision relied on by the counsel.

8. It is not in dispute that the Petitioner was the Secretary of the Respondent society working in a managerial capacity and he was placed under

suspension on 12.11.2009 and thereafter, a charge memo was issued to him on 01.03.2010 for charges of misappropriation to the Respondent

society to the tune of Rs. 11,04,180/-and he was continued to be in suspension as on date. The Petitioner claimed payment of subsistence

allowance to him and he made a representation to the Respondent on 14.07.2010. However, the Respondent has passed the impugned order on

02.08.2010 rejecting the claim by stating that no decision has been taken for

issuance of payment of subsistence allowance as the Petitioner was placed under suspension and his request is rejected. Though the Respondent has raised one line of objection about the maintainability of the writ petition either in law or on facts, the payment of subsistence allowance is to be considered as a fundamental right guaranteed by Article 21 of the Constitution of India as it encompasses that the employee suspended pending enquiry should survive to maintain his family and to effectively participate in the disciplinary proceedings. Unless subsistence allowance is paid, the employee would be deprived of his valuable right to effectively defend the disciplinary inquiry. Therefore, it is the cardinal Principle that deprivation of payment of subsistence allowance is considered by this Court, time and again, and held that the payment of subsistence allowance is a fundamental right guaranteed under Article 21 of the Constitution of India. The question of payment of subsistence allowance to the employee, who engaged in a managerial or administrative capacity is no longer res integra in view of the decision of the Division Bench of this Court reported in I.I.558 Kuthiraichandal Primary Co-operative Bank Limited Vs. A. Asokan and Villupuram District Committee of Common Cadre Services for Secretaries of Primary Agricultural Co-Operative Bank, and the ruling of this Court in paragraphs 23 and 24 are read thus;

23. In the case on hand the Petitioner seeks to enforce his right in terms of the Government Order in G.O. Ms. No. 55 Co-operation, Food and Consumer Protection Department, dated 12.03.2000, which are statutory in character, as the said order was issued in exercise of the power u/s 75 of the Tamil Nadu Co-operative Societies Act, 1983. Therefore, the argument that the writ Petitioner is not maintainable to enforce the bye-laws of the Co-operative Society is untenable. The issue of writ being discretionary and when the employee of the Bank approaches the Court for direction to implement the Regulation on the ground of non compliance of statutory provisions, the power of judicial review is not excluded and consequently Writ Petition is maintainable. This view is supported by the Larger Bench in Sub Clause (iv) of 21 of the judgment in K. Marappan v. Deputy Registrar of Co-operative Societies, Namakkal Circle, Namakkal 636 001 and Anr. (supra).

24. For all the above reasons, we hold that the Secretary of Primary Agricultural

Co-operative Bank belonging to Common Cadre Service is

entitled to payment of subsistence allowance in terms of G.O. Ms. No. 55 Co-operation, Food and Consumer Protection Department, dated

12.03.2000, during the period of his suspension and consequently, we find no infirmity in the order dated 23.03.2007 made in W.P. No. 40249 of

2006. Accordingly, the writ appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed. Time for

payment of subsistence allowance is three months from to-day.

9. For the foregoing discussions and analysing the relevant provisions and materials, I am of the considered view that the decision of the

Respondent cannot be sustained for the reasons that the payment of subsistence allowance is also to be considered as a fundamental right

guaranteed by Article 21 of the Constitution as it encompasses that the employee suspended pending enquiry should survive to maintain his family

and to effectively participate in the disciplinary proceedings. Therefore, the impugned order is set aside and the writ petition is allowed with a

direction to the Respondent herein to pay the subsistence allowance from the date of suspension and also calculate the arrears and pay the same to

the Petitioner, within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is

closed. No costs.