



C.R.P(MD)No.2264 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.08.2023**

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.2264 of 2019

and

C.M.P(MD)No.11712 of 2019

The Management,
D.D.568, V.Ammappatti Primary Agricultural
Co-operative Credit Society Limited,
Achanampatti Post,
Vedasandur Taluk,
Dindigul District.

... Petitioner/Respondent

Vs.

C.Rayappan

... Respondent/Petitioner

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order in I.D.No.6 of 2012, dated 31.10.2019 on the file of the Labour Court, Tiruchirappalli (Camp at Dindigul).

For Petitioner : Mr.M.Sundar

For Respondent : Mr.R.Saravanan

ORDER

This civil revision petition has been filed against the order passed by the Labour Court, Tiruchirappalli in I.D.No.6 of 2012, dated 31.10.2019.



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2. The petitioner herein is the respondent/Management and the respondent is the petitioner/Workman before the Court below.

3. For the sake of convenience, the parties will be referred as per the litigative status before the trial Court.

4. It appears that the petitioner/workmen has raised an industrial dispute under Section 2 A (2) of the Industrial Dispute Act challenging the termination order, dated 29.12.2009. In which, the Court below has conducted a preliminary enquiry in respect of the fairness of the domestic enquiry and has ultimately arrived at a conclusion that the domestic enquiry was not conducted in a fair and proper manner, vide order, dated 31.10.2019.

5. Aggrieved with the order of the Court below, the management/respondent has filed this civil revision petition.

6. The learned counsel for the petitioner herein would vehemently submits that the very finding of the trial Court that the domestic enquiry was not conducted in a fair and proper manner is without any basis. The learned counsel for the petitioner though admits that no subsistence



allowance was given during the domestic enquiry proceedings, however, justifies the same in view of the financial conditions of the management.

Hence, he prayed to allow the civil revision petition.

7. It is the submission of the learned counsel for the respondent herein that the finding of the trial Court that the domestic enquiry was not conducted in a fair and proper manner is based upon the materials available before the Court below. The very admissions made by the petitioner that they did not pay the subsistence allowance would suffice to hold that the domestic enquiry was not conducted in a fair and proper manner.

8. I have given my anxious consideration to either side submissions.

9. On perusal of the record, the Court below, in respect of the fairness of the enquiry has observed as follows:

10. The petitioner, in the petition filed under Section 2 A (2) of the Act, in Para 4, mentioned that:-

"மனுதாரருக்கு, எதிர்மனுதாரர் விசாரணை நடத்திய காலத்தில் தற்காலிகப் பணிநீக்கத்தில் பிழைப்பூதியம் வழங்கும்படி கோரியும், சட்டப்படியான பிழைப்பூதியம் வழங்காமல் நடத்தி உள்ளனர். எனவே, மனுதாரர் மீது நடத்தப்பட்ட ஒழுங்கு நடவடிக்கை விசாரணை பாரபட்சமான நடவடிக்கை..."



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According to the petitioner he was not given subsistence allowance during the period of suspension and domestic enquiry was conducted. This was not denied in the written statement, filed by the respondent. In the written statement, the respondent has not mentioned, that subsistence allowance was given to the petitioner during the period of suspension and domestic enquiry, petitioner was examined as WW1. In the proof affidavit he stated that:-

“எனக்கு எதிர்மனுதாரர் விசாரணை நடத்திய காலத்தில் தற்காலிகப் பணி நீக்கத்தில் பிழைப்பூதியம் வழங்கும்படி கோரியும், சட்டப்படியான பிழைப்பூதியம் வழங்காமல் விசாரணையை நடத்தி உள்ளனர்”

In his evidence also WW1 categorically stated that during the period of his suspension, domestic enquiry was conducted and during that period no subsistence allowance was given. Even this evidence of WW1 was not challenged or denied in the cross-examination. The petitioner faced the domestic enquiry, during the period of suspension without getting subsistence allowance.

11. On 18.05.2009 the petitioner gave a requisition to the Special Officer requesting him to give subsistence allowance. This letter of the petitioner was marked on the side of the management as Ex.M.6. In the last paragraph of this letter, the petitioner mentioned that:-

“மேலும் நான் தற்காலிக பணிநீக்கம் செய்யப்பட்ட காலத்திற்கு பிழைப்பு ஊதியம் ஒரு பகுதிதான் வழங்கப்பட்டுள்ளது. (மூன்று மாதத்திற்கு மட்டும்) மீதமுள்ள காலமான 01.06.2008 தேதியிலிருந்து இன்றுவரை எனக்கு பிழைப்பு ஊதியம், நான் பலமுறை கேட்டும் வழங்கப்படவில்லை. மேற்படி பிழைப்பு ஊதியம் வழங்கப்படாததால் நானும் எனது குடும்பத்தாரும் வறுமையில் வாடி வருகிறோம். தற்காலிக பணிநீக்க காலத்தில் நான் எங்கும் பணியாற்றவில்லை என்பதையும் சான்று செய்கிறேன். ஆகவே இக்கடிதம் கண்டவுடன் எனக்கு சேரவேண்டிய பிழைப்பு ஊதியத்தை உடன் எனக்கு தந்து உதவுமாறு மிகவும் பணிவுடன் கேட்டுக்கொள்கிறேன்.”



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The petitioner gave a requisition to the Special Officer of the respondent management to give him subsistence allowance, informing that, he and his family members were suffering under poverty. For this letter of the petitioner dated 18.05.2009, the Special Officer gave a memo to the petitioner on 27.05.2009. This memo was marked as Ex.M.7. The requisition given by the worker under Ex.M.6 was referred, as the second reference in the memo. However, nothing is mentioned in Ex.M.7 that whether subsistence allowance was given to the petitioner or steps were taken to give subsistence allowance to the petitioner. In spite of the request of the petitioner to give subsistence allowance, in Ex.M.7 memo the respondent management said nothing regarding payment of subsistence allowance to the petitioner. With all these it is very certain that during the period in which the domestic enquiry was conducted, the petitioner was under suspension and no subsistence allowance was given to the petitioner during the relevant time.

10. From the above findings, what would emerge is that, workmen challenged the fairness of the domestic enquiry, during the pendency of the domestic enquiry. But the petitioner herein did not pay subsistence allowance to the respondent/workmen. This sole reason would suffice to hold that the domestic enquiry was not conducted in a fair and proper manner. It is relevant to mention here that the very concept of subsistence allowance is to protect the employee's well being and his survival during the suspension period. If subsistence allowance is not paid, it would affect the employee's ability to counter the charges and would result in unequal contest.



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11. Therefore, this Court is of the view that the findings of the Trial Court that the domestic enquiry was not conducted in a fair and proper manner is based on valid materials. Further, the learned counsel for the petitioner has also not provided any material to interfere with the well considered order of the trial Court.

12. In the result, this Civil Revision Petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

08.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The Labour Court,
Tiruchirappalli (Camp at Dindigul).

2. The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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