

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 15-12-2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION No.36983 OF 2015

V.Rajiv Gandhi

...

Petitioner

-vs-

1. Deputy Labour Commissioner,  
Government of Puducherry,  
Labour Department,  
Labour Complex 2nd Floor,  
Vazhudhavur Road,  
Gandhi Nagar,  
Puducherry.

2. The Management,  
Texbond Nonwovens,  
A 27-30, Pipdic Electronic Park,  
Thirubuvanai,  
Puducherry -605 107.

...

Respondents

Writ Petition under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus, directing the second respondent to implement the order of the first respondent, dated 20.05.2015, bearing No.821/AIL/Lab/G/2015, by paying the subsistence allowance to the petitioner for the period from December 2014 onwards till the completion of the Disciplinary Proceedings initiated in respect of Charge Memo, dated 14.10.2014, in terms of Section 10-A of the Industrial Employment (Standing Orders) Act, 1947.

For petitioner : Mr.Balan Haridas

For respondent 1 : Mr.M.Govindaraj,

Government Pleader (Pondicherry).

For respondent 2 : Mr.D.Senthil Kumar

O R D E R

Heard Mr.Balan Haridas, learned counsel for the petitioner; Mr.M.Govindaraj, learned Government Pleader, who accepts notice for the first respondent, Mr.D.Senthilkumar learned counsel for the second respondent.

2. Petitioner seeks for issuance of a writ of mandamus, to direct the second respondent to implement the order passed by the first respondent, dated 20.05.2015, and pay subsistence allowance to the petitioner from the month of December, 2014, at 75% of the last drawn wages, since the period of suspension extends beyond 90 days. The second respondent sent a reply to the first respondent stating that the subsistence allowance payable to the petitioner has been paid and so far as the amount demanded by the petitioner, they are not bound to pay the same as the charges against the petitioner are proved.

3. Learned counsel for the petitioner submits, that till-date, the disciplinary proceedings have not attained finality, and the matter is still pending, and that the petitioner is continued to be retained under suspension.

4. It is a settled legal position, that when an employee is suspended from service, he is entitled to subsistence allowance in accordance with law, and, non-payment of the same would not only vitiate the conduct of disciplinary proceedings, but also affect the right to life of the workman. It is seen that the communication sent by the first respondent to the second respondent dated 20.05.2015, refers to Section 10A of the Industrial Employment (Standing Orders) Act, 1946, which states that if any workman is suspended by the employer pending investigation or inquiry into complaints or charge of misconduct against him, the employer shall pay to such workman subsistence allowance at the rate of 75% of such wages for the remaining period of suspension, if the delay in completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

5. Therefore, the second respondent was directed to pay subsistence allowance at the rate of 75% for the months December 2014 and January & February 2015, since the period extends beyond 90 days and the second respondent was directed to comply with the same within 7 days. In the reply given by the second respondent dated 02.06.2015, the respondent has not stated as to why subsistence allowance should not be paid to the petitioner in accordance with Section 10A of the Standing Orders Act, 1946, but has taken a stand that they are not bound to pay the subsistence allowance to the petitioner as charges have been proved as per law. In the light of the above, the first respondent has to proceed further in accordance with law, pursuant to its communication dated 20.05.2015, and accordingly, there will be a direction to the first respondent to take further action pursuant to the proceedings dated 20.05.2015, after putting the petitioner and the second respondent on notice.

6. Writ Petition is disposed of accordingly. No costs.  
Consequently, the connected M.P.No.1 of 2015 is closed.

dixit/pbn

s/d-  
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

The Deputy Labour Commissioner,  
Government of Puducherry,  
Labour Department,  
Labour Complex 2nd Floor,  
Vazhudhavur Road,  
Gandhi Nagar,  
Puducherry.

+ 1 cc to Govt.Pleader cum Public Prosecutor, Pondicherry, High  
Court, Madras SR 67486

+ 1 cc to Mr.Balan Haridas, Advocate SR 63648

+ 1 cc to Mr.Balan Haridas, Advocate SR 67786[13/7/16]

ppa(co)  
prk19/1

W.P.No.36983 OF 2015

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