

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2016

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.19168 of 2015
and
M.P.No.2 of 2015

Management

rep. by Managing Director,
Park Town Cooperative Wholesale Stores Ltd.,
G- 133, First Main Road,
Anna Nagar East, Chennai - 600 102. ... Petitioner

Vs.

1. S.Joseph
2. The Assistant Commissioner of Labour,
Office of the Deputy Commissioner of Labour I,
Chennai - 600 006.
3. The Deputy Commissioner of Labour I,
Chennai - 600 006. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the third respondent, relating to his order in PSA (A) 1 A 1/2014, dated 02.03.2015, and of the second respondent's order in PSA No.46/2012, dated 19.08.2013, and to quash both the orders, and consequently, to direct the second respondent to return the deposit of Rs.1,21,060/- made by the petitioner, with accrued interest.

For Petitioner : Mr.P.Anbarasan

For Respondent-1 : Mr.Balan Haridass

For Respondents 2 & 3 : Mr.R.Rajeswaran
Special Government Pleader

O R D E R

The petitioner is the Managing Director of the Park Town Cooperative Wholesale Stores Limited, at Anna Nagar East, Chennai, and the challenge in this Writ Petition to the order passed by the second respondent, relating to the payment of subsistence allowance to the first respondent, as well as the order passed by the third respondent in rejecting the condone delay application.

2. The first respondent was working as a Packer in the Ration Shop, run by the petitioner-Society. On an allegation that the first respondent misappropriated essential commodities meant for public distribution, disciplinary action was initiated against him, and he was placed under suspension. Thereafter, domestic enquiry was conducted, in which, charges levelled against him were held to be proved. Ultimately, he was dismissed from service on 31.10.2012. It appears that the first respondent has not challenged the order of dismissal, however, he went before the second respondent/Assistant Commissioner of Labour, who is the competent authority under the provisions of Tamil Nadu Payment of Subsistence Allowance Act, 1981, by filing PSA No.46/2012, and requested for computing the benefits and consequential direction to pay the amount of Rs.1,21,060/- The second respondent adjudicated the matter, and passed an order, by which, the first respondent was entitled to the payment of aforesaid amount towards subsistence allowance. This order came to be passed on 19.08.2013. As against the said order, the petitioner/Management filed an Appeal, viz. PSA (A) 1 A 1/2014, along with an application to condone the delay before the third respondent/Deputy Commissioner of Labour. The amount, which was directed to be paid to the first respondent towards the subsistence allowance was deposited to the credit of PSA No.46/2012, as mandatory under the Act for filing the Appeal. The application to condone the delay in filing the Appeal was rejected by the third respondent/Deputy Commissioner of Labour, by order, dated 02.03.2015. Thus, challenging the order passed by the third respondent/Appellate Authority in rejecting the condone delay application and the order passed by the second respondent/Assistant Commissioner, directing payment of subsistence allowance, the present Writ Petition is filed, as stated in preamble portion of this order.

3. Heard the learned counsel appearing for the parties. The only ground on which, these impugned orders have been put to challenge is by contending that the first respondent is an employee of the petitioner- Cooperative Society, covered by the provisions of Tamil Nadu Cooperative Societies Act, 1983, and

the by-laws of the petitioner-Society. Therefore, the provisions of Tamil Nadu Payment of Subsistence Allowance Act, 1981, would not apply.

4. The contention putforth by the learned counsel for the petitioner is not sustainable. In fact, the very same issue was considered by the Hon'ble Division Bench of this Court in the case of (M.Kanagasabapathy Vs. The Special Officer and others) reported in (2007) 5 C.T.C. 392 wherein, the Hon'ble Division Bench held that Tamil Nadu Payment of Subsistence Allowance Act is a special enactment, which came into effect from 1981, much earlier to Tamil Nadu Cooperative Societies Act, which came into force from 1983, and therefore, it was held that the provisions of Tamil Nadu Payment of Subsistence Allowance Act, 1981 alone will prevail. The said decision holds the field, and the present Writ Petition is squarely covered by the said decision. It is not in dispute that the first respondent was a workman, and the only in cases, where, there is dispute whether the employee is a workman or not, then, the parties could seek to contest the said aspect before the authority. However, in the instant case, no such occasion has arisen, since the petitioner did not dispute the fact that the first respondent was a workman. The decision of the Hon'ble Division Bench relied on by the learned counsel for the petitioner in the case of (I.I.558 Kuthiraichandal Primary Cooperative Bank Ltd. Vs. A.Asokan and another) reported in (2009) Writ Law Reporter 397, arises out of a case, where, the Secretary of the Cooperative Bank belonging to the common cadre of service, claimed subsistence allowance and the said decision is clearly distinguishable on facts. Similarly, is the case relating to Dr.K.Ponsingh Vs. Central Registrar of Cooperative Societies, reported in (2010) 4 Madras Law Journal 921, and the said decision is also distinguishable on facts.

5. For all the above reasons, the Writ Petition fails, and it is dismissed. The first respondent is permitted to withdraw the entire amount, which has been lying to the credit of PSA No.46/2012, by making appropriate application before the third respondent. As and when, such an application is being moved by the first respondent, the third respondent shall release the amount within a period of two weeks. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

sd

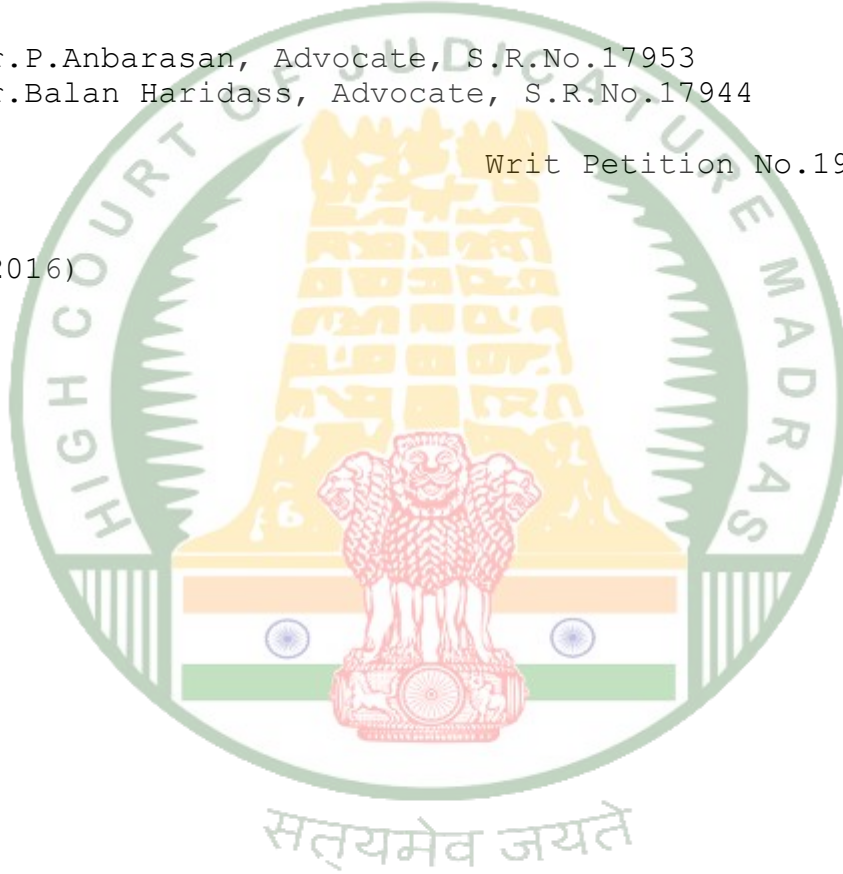
To

- 1.The Assistant Commissioner of Labour,
Office of the Deputy Commissioner of Labour I,
Chennai - 600 006.
- 2.The Deputy Commissioner of Labour I,
Chennai - 600 006.

+1cc to Mr.P.Anbarasan, Advocate, S.R.No.17953
+1cc to Mr.Balan Haridass, Advocate, S.R.No.17944

Writ Petition No.19168 of 2015

ALA (CO)
CA(04/04/2016)



WEB COPY