

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.12.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Writ Petition No.4205 of 2003

and

WPMP.No.5291 of 2003

The Management of Sangurichi Primary
Agricultural Co-operative Bank Ltd.,
Rep. by its Special Officer
Sengurichi Post,
Ulundurpet Taluk,
Villupuram District.Petitioner

-Versus-

1. The Assistant Commissioner of Labour
Office of Deputy Commissioner-2
Teynampet, Chennai-6.
2. V.Balakrishnan Respondents

Petition filed under Section 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for the records of the 1st respondent in his S.A.Case No.14/2000 (Res) dated 15.10.2001 and subsequent corrected order dated 08.07.2002 and quash the same.

For Petitioner : Mr.P.P.Shanmugasundaram
For R1 : Mr.S.Gunasekaran, AGP
For R2 : Mr.P.K.Shivakumar

ORDER

This writ petition has been filed to call for the records of the 1st respondent in S.A.No.14/2000 (Res) dated 15.10.2001 and subsequent corrected order dated 08.07.2002 and quash the same.

2. For the sake of convenience, the parties will be referred to by their name.

3. Heard the learned counsel appearing for the Management of Sangurichi Primary Agricultural Co-operative Bank Ltd., (for brevity 'the Management'), the Additional Government Pleader for the Assistant Commissioner of Labour,

and the learned counsel appearing for V.Balakrishnan.

4. V.Balakrishnan (R2) was working as Salesman in Vanampattu Fair Price Shop, that was run by Sangurichi Primary Agricultural Co-operative Bank Ltd. V.Balakrishnan (R2) was not able to give satisfactory account for the loss of empty gunny bags and therefore, he was placed under suspension on 29.11.1996 on the ground that the Management is going to take disciplinary action against him.

5. V.Balakrishnan was not paid any Subsistence Allowance during the period of suspension, nor did the Management initiate any departmental action against him. Therefore he filed an application dated 29.11.1999 before the Assistant Commissioner of Labour, Chennai under Section 4 of the Tamil Nadu Payment of Subsistence Allowance Rules, 1981, claiming Subsistence Allowance from 29.11.1996 to 28.11.1999 at the rate of Rs.1,350/- p.m. totally amounting to Rs.45,562.50p.

6. It is contended by the Management that thereafter, he had given representation dated 31.12.1999 stating that the suspension order may be revoked and the period of suspension to be treated as punishment inflicted on him and that he would not claim any Subsistence Allowance for the period. Based on the said representation, the Management, by order dated 11.01.2000, treated the suspension period as punishment and reinstated him into service with effect from the said date.

7. V.Balakrishnan did not withdraw the proceedings that were initiated before the Assistant Commissioner of Labour nor did he challenge the order dated 11.01.2000.

8. The Management participated in the proceedings before the Assistant Commissioner of Labour and contended that V.Balakrishnan had voluntarily given a letter dated 31.12.1999 and therefore, the Management was gracious enough to accept his offer and treated the suspension as punishment and reinstated him into service. Therefore, it was contended by the Management that they are not liable to pay any Subsistence Allowance.

9. The Assistant Commissioner of Labour completed the enquiry and by the impugned order dated 15.10.2001, negatived the contention of the Management and awarded the claim of Subsistence Allowance in favour of V.Balakrishnan, challenging which, the Management is before this Court.

10. It appears, that at the time of admission, this Court, by order dated 04.08.2003, had granted interim stay on

condition that the Management should deposit 50% of the amount demanded in the impugned proceedings within a period of eight weeks. It is not known, whether the Management has complied with the interim order.

11. The learned counsel appearing for the Management submitted that the impugned order deserves to be set aside, because the suspension order was revoked only on the request of V.Balakrishnan vide his letter dated 31.12.1999.

12. Per contra, the learned counsel appearing for V.Balakrishnan refuted the submissions of the learned counsel for the Management.

13. This Court gave its anxious consideration to the rival submissions.

14. The fact remains that V.Balakrishnan was placed under suspension on 29.11.1996 on the ground that the Management is going to take departmental action against him Under the Tamil Nadu Payment of Subsistence Allowance Rules, 1981, subsistence allowance is a statutory right for a suspended employee. It is not the Management's charity. The Management had not paid him Subsistence Allowance from 1996 to 1999 and had also not completed the disciplinary proceedings against him. It is not the case of the Management, that they had initiated the disciplinary proceedings against V.Balakrishnan and that he had protracted the disciplinary proceedings by adopting dilatory tactics. For three years, V.Balakrishnan remained without work and Subsistence Allowance. One can imagine the financial plight of V.Balakrishnan and his family members, that they would have suffered through the period. That apart, a statutory right cannot be contracted out by a private treaty between the Management and the suspended employee. The Assistant Commissioner of Labour has gone into all these aspects and had negatived the plea of the Management.

15. Therefore, this Court does not find any serious infirmity in the order passed by the Assistant Commissioner of Labour. It is also represented, that the Management has subsequently suspended V.Balakrishnan.

In view of the foregoing discussion, the writ petition is dismissed as being devoid of merits. Consequently, connected miscellaneous petition is closed. Costs made easy.

Sd/-

Assistant Registrar

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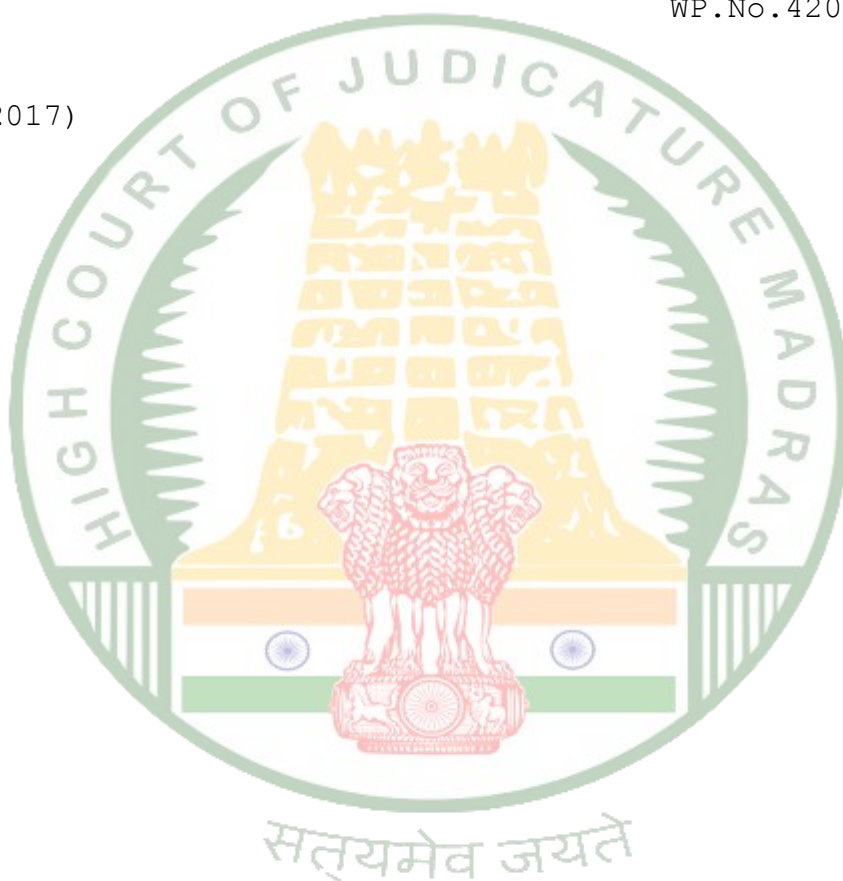
To

The Assistant Commissioner of Labour
Office of Deputy Commissioner-2
Teynampet, Chennai-6.

+ 1CC to Mr.P.P.Shanmugasundaram, Advocate (SR.No.73460)

WP.No.4205 of 2003

KJI (CO)
CB(20-01-2017)



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