



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2016

C O R A M

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No.15940 of 2016
and
W.M.P(MD)No.11676 of 2016

The Management,
Thirubhuvanam Silk Handlooms Weavers
Co-operative Production and Sales Society Limited,
Rep. By the Managing Director/Joint Director,
Thirubhuvanam,
Thanjavur District.

.. Petitioner

Vs.

1.The Appellate Authority under Tamil Nadu Payment
of Subsistence Allowance Act, 1981,
The Deputy Commissioner of Labour,
Tiruchirappalli - 20.

2.The Authority under Tamil Nadu Payment
of Subsistence Allowance Act, 1981,
The Assistant Commissioner of Labour,
Office of the Deputy Commissioner of Labour,
Tiruchirappalli - 20.

3.K.Varadharajan

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for records of the first respondent herein in his order dated 08.03.2016 made in P.S.A.Appeal No.1 of 2014, by confirming the order passed by the second respondent herein dated 17.04.2013 made in P.S.A.No.5 of 2012 and quash the same.

For Petitioner : Mr.M.Elanchezhian
For RR 1 & 2 : Mr.M.Rajarajan
Government Advocate

**ORDER**

The petitioner seeks for the issuance of a Writ of Certiorari, calling for records of the first respondent herein, dated 08.03.2016 made in P.S.A.Appeal No.1 of 2014, by confirming the order passed by the second respondent herein, dated 17.04.2013 made in P.S.A.No.5 of 2012 and to quash the same.

2.Heard the learned counsel appearing for the petitioner and Mr.M.Rajarajan, learned Government Advocate, who has notice for respondents-1 and 2.

3.The Management, Thirubhuvanam Silk Hand-looms Weavers Co-operative Production and Sales Society Limited, Represented by the Managing Director/Joint Director, Thirubhuvanam, has come up with the present Writ Petition, challenging the correctness of the impugned order, dated 08.03.2016 passed by the Appellate Authority under the Tamil Nadu Payment of Subsistence Allowance Act, 1981/the Deputy Commissioner of Labour, Tiruchirappalli, made in P.S.A.No.1 of 2014, dated 08.03.2016, by confirming the order passed by the second respondent herein made in P.S.A.No.5 of 2012, dated 17.04.2013, on the ground that the respondents 1 and 2 have failed to see that the third respondent was working as in-charge of the show-room of the petitioner's Society at Chennai and therefore, he was not a workman as per the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981. Subsequently, when the third respondent was placed under suspension on 18.11.1998 levelling allegation that he has mis-appropriated a sum of Rs.9,54,419.70/- as well as absented himself from duty without applying for leave or obtaining prior permission from 04.11.1998. Keeping quiet for almost 11 years, the third respondent ought not to have made out an application with a huge and unexplained delay for the payment of the Subsistence Allowance from the date of his suspension, namely 18.11.1998, even though there was a huge delay of 11 years, he was overlooked wrongly by the respondents 1 and 2. When there was a strange claim made by the third respondent for payment of Subsistence Allowance, the respondents 1 and 2 ought not to have entertained the same.

4.This Court is not able to find any merit on the submissions made by the learned counsel for the petitioner. The contention made by the learned counsel for the petitioner that there was a huge delay of 11 years on the part of the third respondent in making a claim for paying Subsistence Allowance itself shows that the petitioner/Management has unreasonably placed the third respondent under suspension with effect from 18.11.1998 had remained not only unreasonable but adamant in not paying the mere Subsistence Allowance which, the third respondent would make out his bread and butter to his family members. This aspect has been rightly considered by the respondents 1 and 2 and has given a direction to



the petitioner/Management to pay Subsistence Allowance. Aggrieved by the same, it is not permissible on the part of the petitioner/Management to waive the Society's Fund for unwanted litigation. Therefore, the Writ Petition is liable to be dismissed.

5. Accordingly, the Writ Petition is dismissed and the third respondent is legally entitled to get the Subsistence Allowance.

6. It is brought to the notice of this Court by both the learned counsel for the petitioner and the respondents 1 and 2 that the amount has already been deposited. In view of the same, it is open to the third respondent to move an application before the appropriate forum for withdrawal of the same. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (w)

/True Copy/

Sub Assistant Registrar

To

1. The Appellate Authority under Tamil Nadu Payment of Subsistence Allowance Act, 1981,
The Deputy Commissioner of Labour,
Tiruchirappalli - 20.
2. The Authority under Tamil Nadu Payment of Subsistence Allowance Act, 1981,
The Assistant Commissioner of Labour,
Office of the Deputy Commissioner of Labour,
Tiruchirappalli - 20.

Copy To:-

K.Varadharajan,
S/o.Kumarasamy Saluvar,
North West Street,
Edamalaiyur,
Mannarkudi Taluk,
Thiruvarur District.

- + 1 CC TO MR.K.HEMAKARTHIKEYAN, ADVOCATE IN SR No. 47607
- + 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 47725

PS

TE/SS-2 : 19/09/2016 : 3P/6C

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