

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.04.2017
CORAM

THE HON'BLE Mr. JUSTICE S.M.Subramaniam

W.P.No.30092 of 2003

Y.P.611, Annavasal Panjayat
Union Employees and Teachers,
Co-operative Credit Society Ltd.,
Annavasal - 622 101,
Pudukottai District.

... Petitioner

Vs

1.The Assistant Commissioner,
of Labour,
Kajamalai Colony,
Mannarpuram,
Thiruchirapalli.

2.S.Ramalingam

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in his proceedings in P.S.A. (I.A.)No.2/2003 and to set aside the order, dated 17.09.2003 passed therein.

For Petitioners : Mr.R.Parthiban
For Respondent-1 : Mr.A.Zakkir Hussain
Government Advocate
For Respondent-2 : No appearance

O R D E R

The order passed by the first respondent/Assistant Commissioner of Labour, Tiruchirappalli, in P.S.A.(I.A)No.2 of 2003, dated 17.09.2003, is under challenge in this Writ Petition.

2. The petitioner is a Co-operative Society and the second respondent was working as Secretary in the petitioner/Society.

3. The facts, which led to the filing of this Writ

Petition are as follows:-

i) Owing to some misappropriation committed by the second respondent, he was placed under suspension by the petitioner-Society on 08.12.1997, and subsequently, he was dismissed from service, by order, dated 13.05.2002. Seeking payment of subsistence allowance, the second respondent filed an Application before the first respondent/Assistant Commissioner of Labour, and, since there was a delay of 1483 days, in filing such Application, he has taken out an Interlocutory Application, for condonation of delay.

ii) The first respondent, by the impugned order, dated 17.09.2003, condoned the delay, on the ground that, Tamil Nadu Payment of Subsistence Allowance Act, 1981 (hereinafter, referred to as the 'Act') is a Welfare Legislation Act, and therefore, the Courts have to be liberal in condoning the delay, and further observed that, since the petitioner-Society has failed to pay the subsistence allowance during the period of suspension, that necessitated the second respondent to file this Application, and also fixed the date for hearing the main Application. Aggrieved by the said order, dated 17.09.2003, the petitioner-Society is before this Court, with this Writ Petition, seeking to quash the same.

4. The learned counsel appearing for the petitioner-Society has submitted that, it is no doubt true that the Payment of Subsistence Allowance Act is a Welfare Legislation Act, enacted for the benefit of the employees, and further, to protect the livelihood of the employees, it has been time and again held by both the Hon'ble Supreme Court as well as this Court that subsistence allowance is a right accrued to the employees, and non-payment of the same will amount to violation of the spirit of under Article 21 of our Constitution. But, the learned counsel assailed the impugned order, mainly contending that, no reason, whatsoever, has been assigned by the first respondent for condoning such huge delay of 1483 days, (nearly 5 1/2) years, in filing the Application. As per Section 4 of the Act, application seeking subsistence allowance has to be filed within a period of one year, the period, on which, money became due to the second respondent from the employer. Though proviso to Section 4 of the Act grants liberty to the Courts for condoning the delay in filing such application even after the stipulated period of one year, it also makes it clear, there should be sufficient reason for condoning the delay. The learned counsel, contends that, in the case on hand, the first respondent, without assigning any reason, whatsoever, merely by observing that, the Act is a Welfare Legislation Act, and hence, the Courts have to be liberal in condoning the delay and by citing a decision of this Court, rendered in the case of (Tirichirapalli District Amaravathi Consumer Co-operative Society Whole Sale Stores Ltd., Vs. Deputy Commissioner of Labour

and others) in W.P.No.18403 of 1994, condoned the delay, which is unsustainable.

5. On the above submission, heard the learned Government Advocate for the first respondent and perused the materials on record.

6. As rightly pointed out by the learned counsel for the petitioner, the first respondent, apart from holding that the Act is a Welfare Legislation Act, and placing reliance upon the decision, referred to supra, has not rendered any findings as to the delay aspect, rather the first respondent has decided the entitlement of the second respondent, and stated that, due to the failure on that part of the petitioner-Society in paying the subsistence allowance to the second respondent during the period of his suspension, that has constrained the second respondent in filing the present application and also fixed the date for hearing the main Application, without granting any opportunity to the petitioner-Society. When the petitioner-Society has taken a stand in the main Application that the Application itself is not maintainable, as there existed no employer-employee relationship between the petitioner-Society and the second respondent, the first respondent ought not to have taken such a predetermined view. Hence, this Court is of the view that the impugned order is liable to be set aside and the matter has to be remanded to the first respondent for fresh consideration. Accordingly, the Writ Petition is allowed, and the impugned order, dated 17.09.2003 is set aside and the matter is remitted back to the first respondent for fresh consideration. It is made clear that the first respondent, while entertaining the matter afresh, viz., the Condone Delay Application, shall provide sufficient opportunity to the parties in the lis and dispose of the same by passing appropriate orders. No costs.

सत्यमेव जयते

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sd

To

The Assistant Commissioner,
of Labour,
Kajamalai Colony,
Mannarpuram,
Thiruchirapalli.

+1 cc to M/s.R.Parthiban Advocate sr 26052
+1 cc to Government Pleader sr 36544

W.P.No.30092 of 2003

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