

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2017

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.2548 of 2006

And

W.P.M.P.No.2687 of 2006

The Management,
Elavadi Primary Agricultural Co-operative Bank,
Rep. by its Special Officer,
Elavadi Village, Chinnasalem (via)
Kallakurichi (T.K.), Villupuram (D.T). Petitioner

Vs.

1.The Assistant Commissioner of Labour,
(Authority under payment of subsistence Allowance Act)
II Assistant Labour Court, Chennai.

2.M.Periya samy Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the first respondent in PSA.Nos.3/99 and 37/99 dated 2.1.2001 and quash the same.

For Petitioner : Mr.M.S.Palani Swamy
For Respondents : Mr.M.Dig Vijaya Pandian for R1
Additional Government Pleader
Mr.Gubendra Gunabalan for R2

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The prayer in the writ petition is for a writ of certiorari calling for the records of the first respondent in PSA.Nos.3/99 and 37/99 dated 2.1.2001 and quash the same.

2.The case of the petitioner is that it is a Primary Agricultural Co-operative Bank. This writ petition is filed, challenging the order passed by the first respondent under the Payment of Subsistence Allowance Act directing to pay subsistence allowance to the second respondent.

3. According to the petitioner, the second respondent was working as Secretary of the petitioner Bank. When he was working as such, due to some charges framed against him, the second respondent was placed under suspension between 06.03.1998 and 30.06.1999. For the said period, the second respondent had approached the first respondent for getting subsistence allowance and an award to that effect, was passed by the first respondent to pay subsistence allowance to the second respondent. The said order was passed by the first respondent on 02.01.2001. In view of the said award having been passed by the first respondent, the concerned Tahsildhar had already written to the petitioner Bank that action would be initiated against the petitioner for recovery of the amount as directed by the first respondent. Only thereafter, this matter was taken up for consideration at the petitioner's Bank as the erstwhile Board was dissolved immediately within a period of six months from the date of passing of the said order by the first respondent, i.e., 02.01.2001.

4. The challenge now made against the said order passed by the first respondent is mainly on the ground that the second respondent being the Secretary of the petitioner Bank has no right to approach the first respondent under the Payment of Subsistence Allowance Act, 1981 (hereinafter referred to as 'Act'), for seeking the benefit of payment of subsistence allowance.

5. Heard the learned counsel appearing for both sides.

6. Mr. M. S. Palani Swamy, learned counsel appearing for the petitioner by relying upon the judgment of this Court reported in 2006(1) CTC 784 (The Management of Thekkalur Primary Co-operative Bank (K.2019)), represented by President, Mr. P. Senthilvel Vs. The Assistant Commissioner of Labour, Coimbatore and others), has contended that the ground on which, the present impugned order is assailed by the petitioner is supported by the said decision of this Court, whereby, this Court has already held that a Secretary of the Primary Co-operative Bank is in the cadre of Officer, therefore, for him or his benefits, the provisions of the Act cannot be invoked.

7. In this regard, the learned counsel appearing for the petitioner would rely upon the following paragraphs of the said judgment:

"11. From the above Statement of Objects and Reasons, it is evident that the Government has enacted the above said Act when the industrial establishments have failed to amend their Standing Orders providing for payment of subsistence allowance and that a number

of industrial establishments have not amended their Standing Orders and that representations were received by the Government that incorporation of the provisions relating to subsistence allowance in the Model Standing Orders in every industrial establishment is a cumbersome process. Therefore, to have a uniform law with regard to the payment of subsistence allowance to the employees in the industrial establishments during the period of their suspension pending enquiry, the Government passed the Tamil Nadu Payment of Subsistence Allowance Act, which came into effect from 1.1.1982. Therefore, the said Act was enacted with a view to pay uniform subsistence allowance only to the employees who are working in the industrial establishments and not to others who are working in other establishments which as the primary agricultural co-operative societies and banks.

12. Payment of subsistence allowance to an employee working in an industrial establishment who was placed under suspension by his employer is governed by the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981, which came into force with effect from 1.1.1982. An employee, within the meaning of Section 2(a) of the said Act, suspended from work pending enquiry, is entitled to claim subsistence allowance from his employer to an amount equal to 50% of the wages which he was drawing immediately before suspension for the first ninety days from the date of his suspension and if the period of suspension exceeds ninety days but does not exceed 180 days, he is entitled to claim subsistence allowance equal to 75% of his wages drawn by him immediately before suspension and if the period of suspension exceeds 180 days, the employee will be entitled to receive his wages in full which he was drawing immediately before his suspension. Therefore, for claiming subsistence allowance under the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 the claimant must first satisfy that he is an "employee" within the meaning of Section 2(a) of the said Act.

16. Section 2(19) of the Tamil Nadu Co-operative Societies Act, 1983 reads as under:

"Officer" includes a President, Vice President, Managing Director, Secretary, Assistant Secretary, Member of Board and any other person empowered under the rules or the by-laws to give directions in regard to the business of the registered society.

The post of "Secretary" in a Co-operative Society is classified as an "officer". By-law 12(c) of the petitioner bank provides for payment of subsistence allowance at the rate of 25% of the basic wages.

19. The judgment of this Court in Goundanpalayam Primary Agricultural Cooperative Bank case, cited supra, relied upon by the learned counsel for the petitioner applies on all fours to the facts and circumstances of the present case. That was also a case where the petitioner bank resisted the claim of the respondent, who was employed as "secretary" and was suspended and terminated from service after enquiry, for payment of subsistence allowance during the period of his suspension as per the provisions of the Tamil Nadu Payment of Subsistence Allowance Act. This Court dismissed the claim of the respondent holding that since the respondent was classified as an "officer" under the Tamil Nadu Co-operative Societies Act, 1983, there was no question of second thought whether he could be again reclassified as an "employee" within the purview of the definition of Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981.

23. For the reasons stated above, I am of the considered view that the third respondent is not an "employee" within the purview of Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 to claim subsistence allowance under Section 3 of the said Act. Therefore, the impugned order dated 27.11.2000 passed by the second respondent is set aside and the writ petition is allowed. No costs."

8. By relying upon the said judgment, the learned counsel appearing for the petitioner would also submit that since the second respondent, admittedly, was the Secretary of the petitioner Bank and when he was working as such, at the petitioner Bank only, he was placed under suspension and therefore, if at all, for the said suspension period, he had any grievance with regard to payment of subsistence allowance, he can approach the Authorities concerned under the by-laws and also can approach the Registrar of Co-operative Societies by way of Revision under Section 153 of the Tamil Nadu Co-operative Societies Act. Without having approached the said Authorities, the second respondent had approached the first respondent who is the Authority under the Subsistence Allowance Act and the said Authority namely, the first respondent, since does not have the jurisdiction to decide the issue with regard to the payment of subsistence allowance to the second respondent, the impugned

order passed by the first respondent dated 02.01.2001 is liable to be quashed.

9.Per contra, Mr.Gubendra Gunabalan, learned counsel appearing for the second respondent would contend that though the second respondent was working as the Secretary of the petitioner Bank he could only be considered as an employee of the society. Whoever be the employee of the society, either can approach the Authorities under the Co-operative Societies Act for getting subsistence allowance or even to approach the concerned Authority under the Subsistence Allowance Act. Since the said Act was a special legislation only to meet out the situation like this, where the second respondent had been situated, for whom no subsistence allowance was paid by the petitioner in respect of his suspension for a long period, he had rightly approached the first respondent Authority, who also, in turn having considered the merits of the issue raised by the second respondent has passed an order/ award directing the petitioner to pay subsistence allowance to the second respondent. Therefore, the learned counsel for the second respondent would submit that there is no infirmity in the order impugned herein. Hence, the same can be confirmed and the writ petition may be dismissed.

10.This Court has considered the rival submissions made by both sides.

11.The order impugned has been assailed, as set out above, on the main ground that the first respondent since is acting under the provisions of the Act does not have the jurisdiction to give an award or direction to the petitioner to pay subsistence allowance to the second respondent. The reason being that the second respondent was working only as a Secretary of the petitioner Bank and therefore, he was working in the Managerial/ Official capacity or Officer in rank and therefore, the beneficial legislation namely, Subsistence Allowance Act is only meant for employees and labour segment and therefore, the same cannot be invoked for Officials like the second respondent.

12.In support of the said contention put forth on behalf of the petitioner, the learned counsel has relied upon the said judgment of this Court reported in 2006(1) CTC 784 (The Management of Thekkalur Primary Co-operative Bank (K.2019), represented by President, Mr.P.Senthilvel Vs. The Assistant Commissioner of Labour, Coimbatore and others), cited supra.

13.On a perusal of the same, this Court finds that the learned Judge has held in the said judgment that person employed as Secretary in the Co-operative Bank claiming Subsistence Allowance

under the Payment of Subsistence Allowance Act, 1981, could not be construed as an employee within the meaning of Section 2 (a) of the said Act since he being an Officer within the meaning of Section 2(19) of the Tamil Nadu Co-operative Societies Act, 1983. Therefore, the claim made by the said Officer/ Secretary of the Primary Co-operative Bank registered under the Co-operative Societies Act was negatived and the law has been held in this regard, as cited supra.

14.The learned counsel appearing for the second respondent has not cited any contra decision to the said decision cited by the learned counsel appearing for the petitioner and in view of the same, applying the said ratio, as has been applied in the said judgment cited supra, this Court is of the considered view, that the first respondent does not have the jurisdiction to pass the present impugned order and in view of the same, the same is liable to be interfered with. Accordingly, it is quashed.

15.However, it is open to the second respondent to approach the appropriate Authorities in the manner known to law to get the subsistence allowance to the second respondent for the period when he was placed under suspension by the petitioner Bank, if he is advised to do so.

16.With these observations, the writ petition is allowed to the term extended above. No costs. Consequently, the connected miscellaneous petition, is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Assistant Commissioner of Labour,
(Authority under payment of subsistence Allowance Act)
II Assistant Labour Court, Chennai.

+1cc to Mr.M.S. Palaniswamy, Advocate, S.R.No.16944
+1cc to Mr.D. Gubendragunabalan, Advocate, S.R.No.16737
+1cc to the Government Pleader, S.R.No.17026

Vgi (CO)
md(07/04/2017)

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