

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2017

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.43225 of 2016

The Management,
Sri Akilaa Spinning Mills Private Limited,
Unit No.2, Kaparathanpatti,
Jalagandapuram,
Mettur Taluk, Salem District.

.. Petitioner

Vs

1. The Appellate Authority under
Payment of Subsistence Allowance Act, 1981
(Deputy Commissioner of Labour),
Salem.

2. The Authority under Payment of
Subsistence Allowance Act, 1981.
(Assistant Commissioner of Labour),
Salem.

3.Thiru.M.Arthanarisamy ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records in A.P.S.A.No.8 of 2014 on the file of the Appellate Authority under the Payment of Subsistence Allowance Act, 1981, (Deputy Commissioner of Labour), Salem, the first respondent herein to quash the order dated 28.10.2015, through which the order dated 28.11.2013 passed by the Authority under the Payment of Subsistence Allowance Act, 1981 (Assistant Commissioner of Labour), Salem, the second respondent in P.S.A.No.5 of 2012 was confirmed.

For petitioner : Mr.M.R.Raghavan

For R1 & R2 : Mr.M.Elumalai, GA

O R D E R

By way of filing this writ petition, the petitioner seeks to quash the order dated 28.10.2015 passed by the first respondent / Deputy Commissioner of Labour, Salem, confirming the order dated 28.11.2013 of the second respondent / Assistant Commissioner of Labour, Salem, directing the petitioner Mill to

pay the subsistence allowance to the third respondent / Mr.M.Arthanarisamy.

2. Learned counsel for the petitioner Mill submitted that while the third respondent was working as Electrician in the petitioner Mill, he was placed under suspension with effect from 09.09.2010. Thereafter, one Mr.N.V.Anandan was appointed as the Enquiry Officer and thereby though enquiries were fixed on 11.11.2010, 30.11.2010, 19.03.2011 and 27.05.2011, he had failed to appear before the Enquiry Officer. However, he had sent his reply dated 06.11.2010 stating that he had not committed any misconduct and that the Enquiry Officer appointed by them is a biased person. Subsequently, when he has made a claim for subsistence allowance, he was informed that the same would be paid only on the date of attending the enquiry. However, in spite of several reminders, he did not appear before the Enquiry Officer. Thus, it is submitted that the impugned orders passed by the respondents 1 and 2 directing the petitioner Mill to pay subsistence allowance to the third respondent without taking note of the fact that the third respondent had failed to appear before the enquiry officer are per-se illegal and the same are liable to be set aside.

3. This Court hardly finds any merit on the above said submissions, in view of Section 3(1) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981. For better appreciation, the same is extracted below:

"3. Payment of subsistence allowance --- (1) An employee who is placed under suspension shall, during the period of such suspension, be entitled to receive payment from the employer as subsistence allowance, an amount equal to fifty percentum of the wages which the employee was drawing immediately before suspension for the first ninety days reckoned from the date of such suspension;

Provided that where the period of suspension exceeds ninety days, but does not exceed one hundred and eighty days, the employee shall be entitled to receive, after the said period of ninety days, a subsistence allowance equal to seventy-five percentum of the wages, which the employee was drawing immediately before his suspension:

Provided further that where the period of suspension exceeds one hundred and eighty days, the employee shall be entitled to receive wages in full which the employee was drawing immediately before his

suspension:

Provided also that where the enquiry or criminal proceeding is prolonged beyond the period of ninety days for reasons directly attributable to the employee, the subsistence shall, for the period exceeding ninety days, be reduced to fifty percentum of the wages, which the employee was drawing immediately before his suspension."

From the above said provision, it is clear that during the suspension period, an employee is entitled to receive the subsistence allowance equivalent to 50% of the wages which the employee was drawing immediately before his suspension for the first ninety days from date of his suspension. Thus, in the case on hand, the third respondent/employee was suspended with effect from 09.09.2010. Thereafter, though he had sent an application requesting the petitioner Mill to pay the subsistence allowance, the said request was rejected directing the third respondent to appear before the Enquiry Officer. Therefore, he made an application before the second respondent on 12.12.2012 seeking payment of subsistence allowance, however, ever after this application, he was not granted subsistence allowance, hence, in my view, insisting the third respondent to attend the enquiry for receipt of the subsistence allowance is not in consonance with the object of the above said provision, for, on account of his penury occasioned by non payment of subsistence allowance during the suspension period, he could not undertake journey to attend the proceedings from his home town. Therefore, in my view, nonpayment of subsistence allowance is inhuman act, which has unpropitious effect on the life of an employee. The very object of paying reduced salary to the employee during the period of suspension would be frustrated if the subsistence allowance is not paid, because, the subsistence allowance would mean supporting life especially minimum livelihood.

4. Thus, for the reasons stated above, the writ petition filed by the petitioner Mill challenging the orders passed by the respondents 1 and 2 directing the petitioner Mill to pay the subsistence allowance to the third respondent/employee cannot be entertained by this Court and accordingly, it is dismissed as devoid of any merit. No Costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

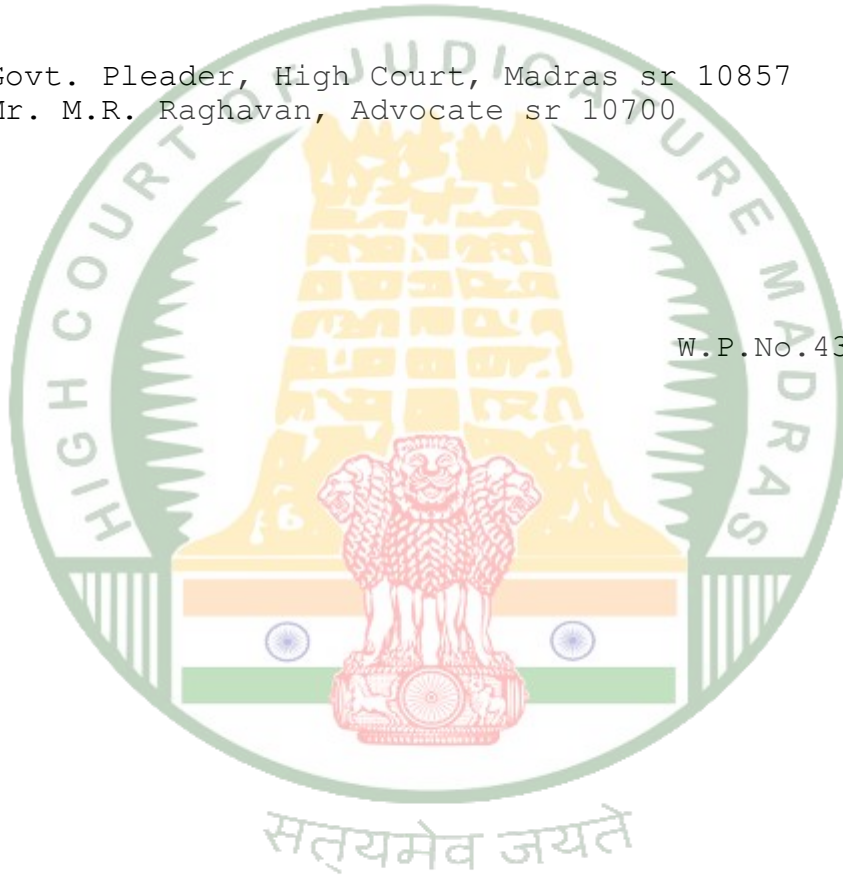
To

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Salem.

+1 CC to Govt. Pleader, High Court, Madras sr 10857
+1 CC to Mr. M.R. Raghavan, Advocate sr 10700

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CA (CO)
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