

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED : 21.08.2017  
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.35162 of 2003

The Regional Manager,  
Tamilnadu Civil Supplies Corporation,  
Villupuram, Villupuram District.

... Petitioner

Vs.

1.P.Kalidasan

2.The Assistant Commissioner of Labour,  
O/o.The Deputy Commissioner of Labour II,  
Under the Payment of Subsistence Allowance  
Act, Chennai - 6.

3.The Deputy Commissioner of Labour II,  
Under the Payment of Subsistence Allowance  
Act, Chennai - 6.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the record in P.S.A.No.137 of 2000, dated 3.9.2001, on the file of the 2<sup>nd</sup> respondent and confirmed by the third respondent in P.S.A. Appeal No.7/2002, dated 7.7.2003, and quash the same.

For Petitioner : Mr.C.Munusamy

For Respondents : Mr.K.Rangesh for R1

for Mr.Jayaraman Associates

Mrs.K.Bhuvaneswari for R2 and R3

Government Advocate

O R D E R

This writ petition has been filed seeking issuance of Writ of Certiorari calling for the records in P.S.A.No.137 of 2000, dated 03.09.2001, on the file of the second respondent and confirmed by the third respondent in P.S.A. Appeal No.7/2002, dated 07.07.2003 and to quash the same.

2.Heard the learned counsel appearing for the petitioner, learned counsel appearing for the first respondent and the learned Government Advocate appearing for the respondents 1 and 2.

3.According to the petitioner, the first respondent was appointed as Apprentice Trainee Salesman for the purpose of giving training to the educated unemployed youth in retail trade. The trainee was paid a stipend of Rs.150/- per month. As per the appointment order issued by the petitioner, the first respondent is not entitled to the benefits allowed for the employees of the petitioner corporation. Since the first respondent while working as Trainee committed misappropriation of funds and immediately by order dated 20.02.1982, he was discharged from service and against the said, no dispute was raised by the first respondent and that order became final.

4.Thereafter, after a long period, the first respondent filed a petition in P.S.A.No.137 of 2000 before the second respondent claiming allowance for the period from 20.02.1982 to 31.08.2000. The second respondent vide order dated 03.09.2001, directed the petitioner to pay a sum of Rs.33,027.50 to the first respondent, as against which, the petitioner filed appeal before the third respondent and the third respondent vide order dated 07.07.2003 dismissed the appeal. Hence, challenging the order of the second respondent dated 03.09.2001 and the consequential order of the third respondent dated 07.07.2003, the petitioner has filed this petition.

5.The learned counsel appearing for the petitioner would submit that since the first respondent was not appointed in the regular appointment and was only a temporary apprentice and hence, the order of the second respondent dated 03.09.2001 and the consequential order of the third respondent dated 07.07.2003 are liable to be interfered with and prayed for allowing the writ petition.

6.Per contra, the learned counsel appearing for the first respondent would submit that the petitioner was appointed as Apprentice Trainee Salesman for a monthly stipend of Rs.150/- in the year 1979 and finding certain irregularities against the first respondent, he was placed under suspension. The allegations found in the suspension order was that he has misappropriated some amount. Thereafter, he filed P.S.A.No.137 of 2000 under Section 4 of the Tamil Nadu Payment of Subsistence Allowance Act, before the second respondent, claiming allowance for the period from 20.02.1982 to 31.08.2000.

7.The learned counsel would further submit that after contest and on perusing the suspension order, the second respondent granted subsistence allowance in favour of the first respondent, against which, the petitioner preferred appeal under Section 5 A(1) of the Tamil Nadu Payment of Subsistence Allowance Act before the third respondent and the third respondent also confirmed the payment of subsistence allowance in favour of the first respondent. He would further submit that both the original authority as well as the appellate authority arrived at the conclusion based on the document produced by the first respondent and no document was produced in support of the termination of the first respondent. Hence, he prayed for the dismissal of the writ petition.

8.It is useful to extract hereunder the relevant portion of the decision of the Hon'ble Supreme Court reported in (1999) 1 SCC 759 (Apparel Export Promotion Council Vs. A.K.Chopra):

"16.The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/ and jurisdiction to reappraise the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/ or legally untenable."

9.Law is well settled that the High Court while exercising the power under Article 226 of the Constitution of India is not an appellate authority to sit over the fact finding authority. Unless the order of the fact finding authority is perverse or arbitrary, interference under Article 226 of the Constitution of India is not permissible.

10. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner of Labour,  
O/o. The Deputy Commissioner of Labour II,  
Under the Payment of Subsistence Allowance  
Act, Chennai - 6.

2. The Deputy Commissioner of Labour II,  
Under the Payment of Subsistence Allowance  
Act, Chennai - 6.

+1 cc to Mr.C.Munusamy Advocate sr 59897  
+1 cc to M/s.Jayaraman and Associates sr 60596  
+1 cc to the Government Pleader sr 60539

W.P.No.35162 of 2003

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