

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.12.2017

Coram

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.35290 of 2003

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

...Petitioner

Vs.

1. B.Sekar

2. The Assistant Commissioner of Labour,
Office of 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

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of writ of certiorari, calling for the records in P.S.A.No.9 of 2001 of the 2nd respondent dated 03.12.2001, confirmed by the third respondent in P.S.A.Appeal No.8 of 2002 dated 07.07.2003 and quash the same.

For Petitioner : Mr.C.Munusamy

For Respondents : Mr.K.Rangesh

for M/s.Jayaraman and Associates
For R1

Mr.M.Elumalai,
Government Advocate
For R2 and R3

O R D E R

The prayer sought for in this Writ Petition is to call for the records in P.S.A.No.9 of 2001 of the 2nd respondent dated 03.12.2001, confirmed by the third respondent in P.S.A.Appeal No.8 of 2002 dated 07.07.2003 and quash the same.

2. It is the claim of the petitioner that the first respondent is not permanently appointed as a workmen in the petitioner - Corporation. Therefore, if at all, the first respondent had been suspended for a period, on the charge of misappropriation of the Corporation funds, the first respondent cannot claim any subsistence allowance for the said period of suspension, that too, belatedly, after several years, in respect of the said period.

3. It is the case of the petitioner-Corporation that, the second respondent, who is the authority under the Tamil Nadu Payment of Subsistence Allowance Act, had allowed the claim made by the first respondent, as against which, the appeal was filed before the third respondent - the Appellate Authority, who also confirmed the same, through the impugned order dated 07.07.2003. Challenging the said order, this writ petition has been filed.

4. Heard, Mr.C.Munusamy, learned counsel appearing for the petitioner and Mr.K.Rangesh, for M/s.Jayaraman and Associates, learned counsel appearing for the first respondent and Mr.M.Elumalai, learned Government Advocate appearing for the second & third respondents.

5. The learned counsel appearing for the first respondent would submit that, exactly with similar facts, when the very same petitioner-Corporation filed a writ petition in W.P.No.35162 of 2003, where also a similar grounds to that of the present one was also raised, this Court, by an order dated 21.08.2017, in W.P.No.35162 of 2003, in the matter of Regional Manager, Tamil Nadu Civil Supplies Corporation, Villupuram, Villupuram District. Vs. P.Kalidasan and two others, has considered the said grounds raised by the petitioner-Corporation and ultimately dismissed the writ petition. The said fact is not disputed by the learned counsel appearing for the petitioner.

6. I have perused the materials placed before this Court and considered the submissions made by the learned counsels appearing for both sides.

7. It is the claim of the first respondent that he was an employee of the petitioner-Corporation and he had been placed under suspension for a period from 29.09.82 to 30.11.2000. The salary, which was paid at that time to the first respondent was Rs.150 per month. Therefore, based on the said salary, the subsistence allowance was sought for with the following calculation.

"மனுதாரர் பெற்ற ஊதியம்

.....

ரூ.150./

மனுதாரர் பிழைப்பூதியம் பெற வேண்டிய
காலம் 29.09.1982 முதல் 30.11.2000 வரை

ரூ. பை.

29.09.1982 முதல் 27.12.1982 வரை (50=)	225.00
28.12.1982 முதல் 27.03.1983 வரை (75=)	337.50
28.03.1983 முதல் 30.11.2000 வரை (100=)	32820.00

மனுதாரர் பெற வேண்டிய பிழைப்பூதியத்தொகை ரூ. 32382.50

"(ரூபாய் முப்பத்திரெண்டாயிரத்து முன்னூற்று எண்பத்தி இரண்டு
மற்றும் ஐம்பது காசுகள் மட்டும்) "

8. The second respondent authority has passed an order directing the petitioner to pay the said subsistence allowance to the first respondent. As against which, the petitioner-Corporation preferred an appeal before the third respondent in P.S.A.No.8 of 2002, which was also dismissed, by confirming the order of the second respondent, by the order impugned herein dated 07.07.2003.

9. When a similar case was considered by this Court, by an order dated 21.08.2017 in W.P.No.35162 of 2003, the learned Judge has passed the following order:

" 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 re-appreciate 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."

10. Since the facts of the present case as well as the said case referred to above, where the order was passed on 21.08.2017, are exactly similar, where also the writ petitioner was the very same Tamil Nadu Civil Supplies Corporation and admittedly, there was no intracourt appeal against the said order dated 21.08.2017, passed by this Court, I am of the view that the said order would be binding on the petitioner, who was the party in the writ petition also in the similar circumstances. In view of the same, the present Writ petition also deserves to be dismissed, following the said judgment of the learned Judge referred to above. Accordingly, the Writ Petition is dismissed. No Costs.

Sd/-

Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

raja

To

1. The Assistant Commissioner of Labour,
Office of 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.

+1cc to Mr.C.Munusamy, Advocate SR.No.87548

+1cc to Mr.Jayaraman & Associates, Advocate SR.No.87893

+1cc to Government Pleader SR.No.89058

W.P.No.35290 of 2003

KK(CO)
GN(09/01/2018)



WEB COPY