

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.12.2017
CORAM
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
Writ Petition No.35336 of 2003

The Management of Coimbatore
District Central Co-operative Bank Ltd.,
State Bank of India Road,
Coimbatore - 641 018. Petitioner

versus

- 1.Mr.A.Annadurai (deceased)
 - 2.The Deputy Commissioner of Labour /
Appellate Authority under the
payment of Subsistence Allowance Act, 1981
O/o.Deputy Commissioner of Labour
Coimbatore - 641 018.
 - 3.The Assistant Commissioner of Labour
(Authority under the payment of
Subsistence Allowance Act, 1981)
O/o.Deputy Commissioner of Labour
Coimbatore - 641 018.
 - 4.A.Melkies
 - 5.A.Mighty Pricisilla (minor)
rep. By her guardian mother A.Melkies Respondents
- * R4 & R5 impleaded as per order of this Court dated 14.02.2014
in WPMP.No.1170 of 2008

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records pertaining to the order of the third respondent passed in P.S.A.No.4 of 2001 dated 26.04.2002 as confirmed by the order of the 2nd respondent in A.P.S.A.No.7 of 2002 dated 19.05.2003 and quash the same.

For Petitioner : Mr.R.Shanmugham

For Respondents: Mr.M.Elumalai

Government Advocate for R2 & R3

O R D E R

The prayer sought for in this writ petition is to call for the records pertaining to the order of the third respondent passed in P.S.A.No.4 of 2001 dated 26.04.2002, as confirmed by the order of the 2nd respondent in A.P.S.A.No.7 of 2002 dated 19.05.2003 and quash the same.

2. The necessary facts which are required to be noticed for the disposal of the case are as follows.

3. The first respondent was working as Assistant Manager in Annur Branch of the petitioner-Bank, while so, he was suspended on 14.09.1999 for misconduct. Thereafter, after suspension, the first respondent was dismissed from service on 19.06.2001. It is the claim of the petitioner-Bank that during suspension period, subsistence allowance was paid to the first respondent as per the Bye-laws of the petitioner-Bank.

4. However, the first respondent had approached the third respondent under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 in P.S.A.No.4 of 2001, where the first respondent claimed that he was suspended on 19.05.1999, before suspension, he was receiving a sum of Rs.14,610/- as salary and hence, he is entitled to get the said sum 100% as Subsistence Allowance. Though, the said petition was resisted by the petitioner-Bank on the ground that the said Act was not applicable to the first respondent, as the term employee mentioned in the said Act, would not cover the managerial staff, since the first respondent worked as Assistant Manager in the managerial capacity, he cannot be brought within the meaning of the term "employee" and therefore, the said petition should be dismissed.

5. However, the third respondent after having considered the rival claims made by the parties, allowed the said P.S.A. No.4 of 2001, by order dated 26.04.2002. Aggrieved over the said order of the third respondent, the petitioner-Bank filed an appeal in APSA.No.7 of 2002 before the second respondent, where also the said plea, as has been raised before the third respondent, was raised by the petitioner-Bank. However, the second respondent also, after having considered the said plea made by the petitioner-Bank, as to whether the first respondent was a person working in the managerial capacity, by thus, he was out of purview of the term employee as contemplated under Section 2(a) of the said Act, holding that the first respondent was working in a clerical cadre and therefore, he can be included within the meaning of the term employee and by thus, he was entitled to get the benefits of the Subsistence Allowance, under the TamilNadu Payment of Subsistence Allowance Act and therefore, the order passed by the third respondent in PSA.No.4

of 2001 dated 26.04.2002, has to be confirmed. Accordingly, the second respondent confirmed the said order, by an order dated 19.05.2003 in APSA.NO.7 of 2002, as against which the present writ petition has been filed.

6. During the pendency of the writ petition, the first respondent-employee died and therefore, a petition was filed by his wife and minor daughter in WP.MP.No1170 of 2008, seeking to implead themselves as the legal representatives of the deceased first respondent-employee. The said petition was allowed by this Court, by an order dated 14.02.2014, that is how the wife and daughter of the deceased first respondent became the respondents in this case on behalf of the first respondent.

7. I have heard Mr.R.Shanmugham, learned counsel appearing for the petitioner.

8. He would contend that there are special Bye-laws relating to the service conditions of the employees working in the petitioner-Bank and the Bank has given a list of the persons/employees working in the Bank, according to which, since the deceased first respondent had been working as Assistant Manager, he had been entrusted with certain managerial responsibilities, and therefore, he be treated as a managerial person and not merely as an employee of the Bank and therefore, the very provisions of the said Act cannot be invoked by the first respondent deceased against the petitioner-Bank.

9. In this regard, the learned counsel appearing for the petitioner would draw the attention of this Court to the relevant provisions of the special Bye-laws relating to the service conditions of the employees and the said portion is extracted hereunder for easy reference:

"SPECIAL BYE-LAWS RELATING TO SERVICE CONDITIONS OF
EMPLOYEES

1.(a) Subject to the budget allotment sanctioned by the General Body it shall be competent for the members of the Committee to prescribe from time to time, the strength of establishment of the Bank and the Scale of pay admissible thereof with the approval of the Registrar of Co-operative Societies. The cost of establishment and contingencies in any case shall not exceed 2% of the working capital and subject to the instructions that may be issued from time to time by the Registrar of Co-operative Societies. The establishment of the Central Co-operative Bank shall consist of the following categories of employees.

Category	Office Personnel	Field Personnel
I	Secretary	Executive Officer
II	Asst. Secretary	Asst. Executive Officer
III	Manager	Field Manager
IV	Asst. Manager	Senior Supervisor
V	Senior Assistant	Junior Supervisor
VI	Junior Assistant	
VII	Subordinate staff	Subordinate staff

Except the Secretary, who if a whole-time paid officer shall be appointed by the Board of Management, all the other members of the establishment shall be appointed by the Chairman, the Executive Committee or the Board of Management as the case may be, in accordance with the regulations framed for the purpose."

10. By quoting the said provisions of the said Bye-laws, the learned counsel appearing for the petitioner would submit that, all these persons such as Secretary, Assistant Secretary, Manager, Assistant Manager are working in the managerial capacity, therefore, they cannot be construed as employee of the Bank and therefore, the provisions of the said Subsistence Allowance Act cannot be invoked by them.

11. Therefore, the learned counsel appearing for the petitioner would submit that, though this plea was raised by the petitioner consistently, before the original authority under the Act as well as the appellate authority i.e. the second and third respondent respectively, they have erroneously rejected the said plea made by the petitioner bank. Therefore, the learned counsel for the petitioner would submit that interference by this Court is very much required in the impugned order passed by the second respondent.

12. Per contra, the learned Government Advocate appearing for the official respondents would submit that, it is not in dispute, that the deceased first respondent was placed under suspension for a particular period. For the said period, since the deceased first respondent is entitled to get the subsistence allowance as per the said Act and the said amount since was not paid to him by the petitioner-Bank, he had rightly approached the third respondent under the Act, who allowed the plea made by the first respondent, as against which, though appeal was filed

by the petitioner-Bank, before the second respondent, who also in turn dismissed the said appeal, by confirming the order of the third respondent and therefore, the issue raised by the petitioner-Bank has been rejected by both authorities.

13. The learned Government Advocate would also submit that, even under the Bye-laws produced by the petitioner, it does not disclose any thing to suggest that the Assistant Manager post, where the first respondent deceased was working, belongs to a managerial cadre and by thus, the post stand excluded from the purview of the term employee under Section 2A of the Act and therefore, the learned Government Advocate submits that, the order impugned is sustainable. Therefore, it requires no interference.

14. I have considered the said rival submissions made by both sides.

15. The controversy arises in this writ petition as raised by the petitioner is that, as to whether, the first respondent (deceased), erstwhile Assistant Manager of the petitioner-Bank was an employee in clerical cadre or was working in a managerial cadre to exclude himself from the purview of the provisions of the Tamil Nadu Payment of Subsistence Allowance Act.

16. In this regard, the relevant provisions of the Act i.e. Section 2(a) of the Tamilnadu Payment of Subsistence Allowance Act, 1981 can be usefully extracted hereunder:

"Section 2(a) of Tamilnadu Payment of Subsistence Allowance Act, 1981

In this Act, unless the context otherwise requires,-

a) "employee" means any person employed in, or in connection with the work or activities of, any establishment to do any skilled, semi-skilled, or unskilled, manual. Supervisory, technical, clerical or any other kind of work or activities for hire or reward, whether the terms of employment be expressed or implied, but does not include any such person-

(i) who is employed mainly in a managerial or administrative capacity; or

(ii) who, being employed in a supervisory capacity (draws wages exceeding three thousands and five hundred rupees per mensem) or exercises, either by the nature of the duties attached to the office or by reason of the powers vested to him, functions mainly of a managerial nature"

17. Under Clause (a) of the Section 2, it is specifically mentioned that a person working in establishment to do any skilled, semi skilled, unskilled, or manual work would be considered as an employee. Like that a person working in the

capacity as supervisory staff, technical staff, clerical staff or any other kind of work or activities or for hire or reward, whether the terms of employment be expressed or implied, they also be treated as employees.

18. What was excluded from the term employee is that, Clause (i) and Clause (ii) of Clause (a) which has already been extracted above. Under Clause (i) who ever, working in the managerial or administrative capacity and who ever, working in the supervisory capacity draws wages exceeding Rs.3,500/- per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested to him, functions mainly of a managerial nature.

19. Therefore, the ingredients which are required to construe a person as a managerial person, is that, straight away to be designated as in the managerial or administrative capacity or in the supervisory capacity exceeding the monthly salary of more than Rs.3,500/- and also functioning mainly as a managerial nature.

20. Here the case in hand, the first respondent was admittedly working as Assistant Manager at the petitioner-Bank. As per the special Bye-laws, which was extracted above, three such positions had been shown as managerial levels such as Secretary, Assistant Secretary and Manager. From the cadre of Assistant Manager like Senior Assistant, Junior Assistant and subordinate staff, those categories are not shown as managerial position, instead, the post Assistant Manager had been shown as Senior Supervisor. Though he is holding the post of Assistant Manager with that nomenclature, his nature of job is supervisory in nature. Once the job is supervisory in nature, certainly, the terms supervisory since has been included within the meaning of the term employee under Section 2(a) of the said Act, it can be safely construed, that those who are working under the supervisory cadre, cannot be termed as managerial persons and they can only be treated as employees. However, the second clause of Section 2(a) of the said Act, give some exception, where if a person is employed under the supervisory capacity draws wages exceeding Rs.3,500/- per mensem and exercises its duties attached to the office and powers vested in him and functioning mainly of a managerial nature, he cannot be treated as an employee, even though he is under supervisory cadre. Here the case in hand is that, though the first respondent was the Assistant Manager, he had been shown in the supervisory cadre and his salary was also definitely more than Rs.3,500/- where can he be treated as a managerial person, for the purpose of Section 2 (a) of the Act? Answering this question is very easy, because the second limb of Clause (ii) under Section 2(a) of the said Act itself, says that such supervisory cadre persons functioning mainly in a managerial nature, cannot be treated as managerial

cadre. Here the case on hand has been factually found by both the third respondent original authority as well as the second respondent appellate authority under the Act, that there was no evidence to show that the first respondent deceased Assistant Manager had been mainly functioning in the managerial nature. Since it was factual finding that its cadre was only clerical in nature, though it has been placed under the supervisory cadre, it can never be termed as managerial person or administrative person, in order to exclude him from the purview of the term employee within the meaning of Section 2(a) of the Act.

21. This position has been rightly considered in proper perspective, both by the third respondent as well as by the second respondent. Therefore, the order passed by the third respondent as confirmed by the second respondent, which is impugned herein, in the opinion of this Court, warrants no interference, as this Court finds nothing infirm or it runs contra to the provisions of Section 2(a) of the Act as well as the special Bye-laws made by the petitioner-Bank, which was in fact marked as Ex.P1, before the authorities.

22. For all these reasons stated above, this Court finds that there is no infirmity in the order, passed by the official respondents, impugned herein. Accordingly, this writ petition fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Labour /
Appellate Authority under the
payment of Subsistence Allowance Act, 1981
O/o.Deputy Commissioner of Labour
Coimbatore - 641 018.

2.The Assistant Commissioner of Labour
(Authority under the payment of
Subsistence Allowance Act, 1981)
O/o.Deputy Commissioner of Labour
Coimbatore - 641 018.

+1 cc to Mr.R.Shanmugam Advocate sr 87547

+1 cc to Govt Pleader sr 89506

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aa23/01/2018