



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.01.2017

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.5989 of 2016

A.Murugarajan

... Petitioner

-vs-

1. The Senior Regional Manager,
Office of the Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC),
Collectorate Buildings,
1st Floor (Old Building),
Thiruchirappalli.

2. The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC),
Thanjavur, Thanjavur District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to grant subsistence allowance to the petitioner from the date of suspension.

For Petitioner : Mr.V.Perumal
For Respondents : Mr.M.Muniyasamy

O R D E R

This petition has been filed, seeking to direct the respondents to grant subsistence allowance to the petitioner from the date of suspension.

2. The petitioner has submitted that he has been placed under suspension on 16.02.2016 for shortage of account during audit inspection; that he has given a representation stating that he was not involved in any misconduct and also requested for revocation of his suspension; that the respondents neither revoked his suspension nor paid subsistence allowance .

3. The respondents would submit that the petitioner is only a contract employee. When this Court posed a question whether he was employed under any Contractor, the respondents submitted that his



employment as on date is on part time on a temporary basis.

4. It is seen that the payment order has been issued by the TASMAC directly and there is no intermediary to employ this petitioner. The contention that the petitioner, being a Contract Employee will not be entitled to subsistence allowance, cannot be acceded to. The Payment of Subsistence Allowance Act defines "employee" as under:

"2(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 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 in him, functions mainly of a managerial nature;"

5. From the above, it is clear that an petitioner is governed by the said Act and that TASMAC, which is a wing of the Government, cannot deprive subsistence allowance to the petitioner, who is under suspension. The Payment of Subsistence Allowance Act does not preclude the respondents from initiating any disciplinary proceedings, if so advised or to revoke the suspension or proceed with the departmental action. Non payment of subsistence allowance is hit by Article 21 of the Constitution of India.

6. Under such circumstances, this Writ Petition is disposed of, directing the respondents to grant subsistence allowance to the petitioner from the date of suspension and the arrears shall be paid within a period of two months from the date on which a copy of this order is made ready and the subsequent monthly allowance be paid on or before 10th of every succeeding month without fail. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar



To:

1. The Senior Regional Manager,
Office of the Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC),
Collectorate Buildings,
1st Floor (Old Building),
Thiruchirappalli.
2. The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC),
Thanjavur, Thanjavur District.

+1 cc to MR.V.PERUMAL, advocate SR.No.3972

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SMA/JM/24.02.2017:3P/4C