

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.NO.23691 of 2004

The Tamilnadu Industrial Cooperative Bank Ltd
rep.by its Special Officer Mr.S.Parameswaran
No.8, Gandhi Irwin Road, Egmore, Chennai-8.

...Petitioner

Vs

1.G.Kalyana Sundaram
2.The Assistant Commissioner of Labour-I
Chennai - 600 006.

...Respondent

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari
calling for the records of the 2nd respondent in its proceedings
in P.S.A.No.13 of 2003 dated 01.04.2004 and quash the same.

For Petitioner : Mr.K.Harishankar
For Respondents : Mr.S.Ravi - for R1

Mr.N.Srinivasan, Addl. Government Pleader
- for R2

O R D E R

This writ petition has been filed by the management,
challenging the order passed by the second respondent in the
proceedings dated 01.04.2004 passed in P.S.A.No.13 of 2003,
directing the management to pay a sum of Rs.1,33,112/- towards
payment of subsistence allowance.

- 2.The management challenges the order on question of law as
well as question of fact. The first contention raised by
the learned counsel for the management is that the first
respondent would not be covered as per the definition of
"employee" as contemplated under Section 2(a)(i) of the
Tamilnadu Payment of Subsistence Allowance Act.
- 3.

2.1. The second contention is that the claim of the first respondent would be covered under the provisions of Cooperative Societies Act and not under Payment of Subsistence Allowance Act. On this ground also, the order passed by the second respondent is claimed to be not sustainable.

3. Learned counsel for the petitioner relied upon two decisions of this Court, viz., 2003 (4) LLN 849 "Management T.P.Spl.67 Goundanpalayam Primary Agricultural Co-operative Bank Ltd, -vs- Assistant Commissioner of Labour" and 2006 (1) CTC 784 "The Management of Thekkalur Primary Cooperative Bank -Vs- The Assistant Commissioner of Labour, Coimbatore" , wherein it was held that the Tamil Nadu Cooperative Societies Act is a special law and it overrides Tamil Nadu Payment of Subsistence Allowance Act, 1981 which is a general law and person who is an "officer" under special law cannot invoke rights under general law.

4. Per contra, the learned counsel for the respondent relies on the later decision of this Court reported in 2007 (5) CTC 392 "M.Kanagasabapathy -Vs- Special Officer , S-390, Pothanoor Primary Agricultural Cooperative Bank Ltd and others", wherein it was held as to why the Tamil Nadu Payment of Subsistence Allowance Act, 1981 is a special enactment and how it prevails over the Tamil Nadu Cooperative Societies Act. The decision being later in time and also by the Division Bench of this honourable Court, the dictum laid down in this case must prevail over the decision reported in 2003 (4) LLN 849 "Management T.P.Spl.67 Goundanpalayam Primary Agricultural Co-operative Bank Ltd, -vs- Assistant Commissioner of Labour". Therefore, the Act applicable is only Payment of Subsistence Allowance and not the Cooperative Societies Act.

5. The second contention raised is that the first respondent cannot be construed as "employee" under the Payment of Subsistence Allowance Act. This issue has already been dealt with by the authority under the Payment of Subsistence Allowance Act and considering the definition of "employee" under Section 2A of the Payment of Subsistence Allowance Act, apart from the order of appointment, it has been held that the first respondent is an employee. The fact remains that the appointment itself has been made branding him as "Inspector" with a direction to discharge the duties of "Branch Manager", rendering a finding that there is no material to construe that the nature of job is supervisory, and that he is an employee.

6. Yet another contention is that the issue regarding the nature of job of the first respondent. The said issue can be agitated only in the appeal, which is provided under Rule 5A of the Payment of Subsistence allowance Act, and not by filing writ

petition. When an effective alternative remedy is available, the writ petition filed, is not maintainable.

7. Under the circumstances, the writ petition deserves to be dismissed and it is dismissed accordingly.

7.1. It is represented that out of the total amount payable, 50% of the amount alone has been deposited and hence, the first respondent may be permitted to withdraw the same along with accrued interest, if any. As the appeal is dismissed, the first respondent is permitted to withdraw 50% of the amount deposited along with accrued interest. The balance of 50% shall be paid directly to the first respondent by way of a demand draft, within a period of 15 days from the date of receipt of a copy of this order. As the writ petition is dismissed, connected W.M.P.is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner of Labour-I
Chennai - 600 006.

+1cc to Mr.K.Harishankar, Advocate, S.R.No.67264

+1cc to Mr.S.Ravi, Advocate, S.R.No.67487

+1cc to the Government Pleader, S.R.No.68178

W.P.No.23691 of 2004

GSP(13/11/2018)

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