

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.No.36706 of 2016
and W.M.P.No.31546 of 2016

The Management
The General Manager, Tamilnadu
State Transport Corporation (Villupuram) Ltd
Vellore. ... Petitioner

Vs

1.S.Vivekanandan
2.The Deputy Commissioner of Labour /
Appellate Authority under the provisions of
Tamil Nadu Subsistence Allowance Act, 1981
Vellore. ... Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari to
call for the records of the second respondent made in P.S.A.No.2
of 2015 vide its order dated 11.01.2016 and to quash the same.

For Petitioner : Mr.A.Antony Arockiaraj

For Respondents : Mr.S.T.Varadharajulu - for R1
R2 - Court

O R D E R

The order passed in P.S.A (A) No.2 of 2015, sanctioning
subsistence allowance to the workman / first respondent herein
for the period from 14.09.2007 to 23.02.2009, is under challenge
by the management in this writ petition. It is claimed by the
management that the first respondent was under suspension only
from 14.09.2007 to 22.10.2007 and the management is liable to
pay subsistence allowance only for that period and not beyond
that period. But, the case of the workman is that the order of
revocation of suspension was not served upon him on 22.10.2007
or any time prior to that, and therefore the contention of the
management that the order of revocation was made on 22.10.2007
and therefore they are not liable to pay subsistence allowance
thereafter, cannot be sustained.

2. It is relevant to discuss the facts of the case in order to analyze the submissions made by both the parties. The first respondent joined the services of the petitioner corporation on 08.08.1986. In view of certain misconduct and dereliction of duty, the first respondent workman was suspended from service with effect from 14.09.2007.

2.1.A charge memo dated 14.09.2007 was also issued along with the suspension order. It is the claim of the management that the order of suspension was revoked on 22.10.2007. According to the management, the order of revocation was affixed in the notice board of the Konavattam Depot (II) Vellore and the affixure was also testified in the presence of two independent witnesses viz., the employees of the said depot. Whether it is a valid mode of communication of the revocation, is the issue that has to be considered.

3. In the meantime, the first respondent gave an explanation to the charges on 18.12.2007. An enquiry was ordered by the management by appointing one Mr.B.Shanmugam as the Enquiry Officer and during the enquiry, it is claimed that the order of revocation of suspension was intimated to the employee concerned.

4. The workman filed P.S.A.No.1 of 2009, claiming subsistence allowance for the period 14.09.2007 to 23.02.2009. The authority dismissed the application on the ground that the claim is maintainable only for the suspension period from 14.09.2007 to 22.10.2007. Thereafter, appeal has been preferred in P.S.A (A) No.1 of 2009 and the appellate authority has allowed the claim of the petitioner / first respondent herein. The said order of the appellate authority is now challenged by the management.

5. Learned counsel for the first respondent / workman would submit that the enquiry was conducted with respect to absence from duty and some other allegations and that therefore the defence taken by the management that the order of revocation was intimated to the workman during the enquiry, would not hold good.

6. A perusal of the order passed by the appellate authority would go to show that a finding was given by the appellate authority that the revocation of suspension has not been proved to be sent either to the residence of the workman or personally to him. In other words, the finding is that there is no proof to show that the order of revocation of suspension was intimated to the workman. In the absence of proof to show that the revocation order was intimated, the order of revocation is not

binding upon the workman and he is entitled to file a claim petition.

7. This court is of the view that the order passed by the appellate authority is perfectly justified and there is no ground to interfere with the same. The writ petition is liable to be dismissed and it is dismissed accordingly. No costs. Consequently, connected miscellaneous petition is closed. The subsistence allowance payable to the first respondent / workman, shall be quantified and paid to him within a period of one month from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

The Deputy Commissioner of Labour /
Appellate Authority under the provisions of
Tamil Nadu Subsistence Allowance Act, 1981
Vellore.

+1 cc to Mr.K.Kulandai Velu, Advocate Sr.No.74800
+1 cc to Mr.S.T.Varadarajulu, Advocate Sr.No.75059

W.P.No.36706 of 2016
and
W.M.P.No.31546 of 2016

VG-II(CO)
CSL/29.11.2018

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