

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 19.03.2018
Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.198 of 2013
and M.P.No.1 of 2013

Special Officer
TUCS Ltd.

156, Big Street, Triplicane
Chennai 600 005.

... Appellant/Writ Petitioner

Vs.

1.The Assistant Commissioner of Labour-I
Controlling Authority

Office of the Deputy Commissioner of Labour-I
Chennai 600 006.

...Ist Respondent/Ist Respondent

2.P.S.Elangovan

...2nd Respondent/2nd Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order dated 05.11.2012 made in W.P.No.29575 of 2012 on the file of this Court.

WP.No.29575 of 2012:filed under Article 226 of Constitution of India to issue of a Writ of Certiorari or any other appropriate writ, order or direction in the nature of writ calling for the records of the first respondent, relating to his order in PSA.IA.No.2/2011 dated 06/08/2012 and quash the same.

For Appellant : Mrs M.Meenakshi

For R1 : Mrs.A.Sree Jayanthi

Special Government Pleader

For R2 : No appearance

J U D G M E N T

[Judgment of the Court was delivered by K.K.SASIDHARAN,
J.]

The appellant initiated disciplinary proceedings against the second respondent. He was suspended from service. However, he was not given subsistence allowance. The second respondent, therefore, filed a petition before the Assistant Commissioner of

Labour-cum-Controlling Authority, Chennai, claiming subsistence allowance. Since the claim was not made within the stipulated period, application was submitted to condone the delay of 778 days. The authority was pleased to condone the delay. The order was put in issue by the appellant before the writ court. The learned single Judge having found that the Assistant Commissioner exercised his discretion and condoned the delay, dismissed the writ petition. Feeling aggrieved, the employer has come up with this appeal.

2. The learned counsel for the appellant submitted that there was no valid reason given by the second respondent for filing the claim petition after such delay. According to the learned counsel, the first respondent, without considering the bona fides of the reasons given by the second respondent, allowed the application.

3. Since the appellant has taken up a contention with regard to payment of subsistence allowance, we directed the learned Special Government Pleader to

produce the entire file relating to the disciplinary proceedings initiated against the second respondent. The learned Special Government Pleader, on a perusal of the entire file, submitted that the second respondent was not given subsistence allowance at any point of time.

4. The payment of subsistence allowance is a statutory requirement on the part of the appellant. The appellant initiated disciplinary proceedings against the second respondent. The appellant has not taken any action to pay him subsistence allowance during the currency of the period of suspension. The second respondent waited for a considerable period and thereafter, approached the competent authority, the first respondent herein, for payment of subsistence allowance.

5. It is true that there was a delay of 778 days in filing the application. The delay was properly accounted for. Even otherwise, if there is a statutory default on the part of the appellant for payment of subsistence allowance, the competent authority was expected to consider the matter leniently. The first respondent exercised the discretion in accordance with the settled legal principles. The issue was once again considered by the writ court. This is not a fit case to exercise the discretion by setting aside the order passed by the authority under the Act. We therefore, do not find any merit in the contention taken by the appellant.

In the upshot, we dismiss the intra court appeal. No costs.
Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gms

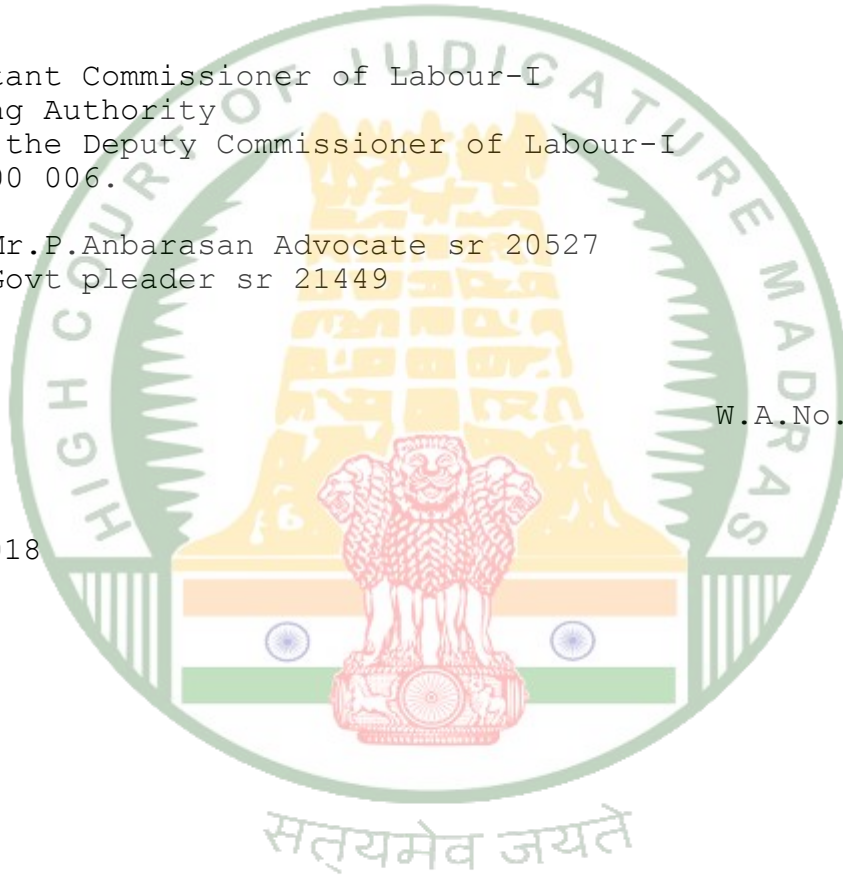
To

The Assistant Commissioner of Labour-I
Controlling Authority
Office of the Deputy Commissioner of Labour-I
Chennai 600 006.

+1 cc to Mr.P.Anbarasan Advocate sr 20527
+1 cc to Govt pleader sr 21449

W.A.No.198 of 2013

pvs (co)
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