

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2018

CORAM:

THE HON'BLE DR.JUSTICE S.VIMALA

Writ Petition No.12752 of 2013

Chinna Salem Co-operative Agricultural Bank,
Chinna Salem & Post,
Villupuram District.

... Petitioner

Vs.

1. The Assistant Commissioner of Labour,
Office of Labour Commission,
Madras.

2. P.Natarajan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari, to call for the records of the first respondent in P.S.A.No.36 of 2009 dated 03.12.2012 and to quash the same.

For Petitioner : Mr.P.S.Sivashanmugasundaram

For Respondents : Mr.N.Srinivasan
Additional Govt. Pleader for R1
Mr.M.Ramadoss for R2

O R D E R

The first respondent, by the order, dated 03.12.2012, ordered that out of the total amount of subsistence allowance of Rs.1,33,731/- payable to the second respondent, the petitioner is liable to pay the balance of Rs.58,948/-, apart from what is already paid, i.e., Rs.74,783/-. This order is under challenge by the petitioner-Management.

2. It is claimed by the petitioner that the petitioner has already paid a sum of Rs.74,783/- in accordance with the bye-law of the Cooperative Society from the date of suspension, i.e., 19.03.2008 till the date of dismissal, i.e., 20.08.2009 and there is no balance payable.

3. The contention of the second respondent / employee is that the second respondent is entitled to subsistence allowance, in terms of the provisions of Payment of Subsistence Allowance Act and therefore the order passed by the first respondent directing payment under the said Act is justified.

4. Therefore, the main issue to be decided is, which is the enactment under which the subsistence allowance is payable to the second respondent.

5. The learned counsel appearing for the second respondent / workman relied upon the decision of a Division Bench of this Court, reported in 2008 (1) MLJ 270 (M.Kanagasabapathy vs. Special Officer, Namakkal District and others), where under, it has been specifically held that the Co-operative Societies Act was passed only for the purpose of development of the Co-operative Movement in accordance with the Co-operative principles and that piece of legislation cannot be used for the purpose of curbing the welfare or working condition of the paid officers of the Society. The Tamil Nadu Subsistence Allowance Act 1981, being a special legislation, would alone govern and in that respect, the Tamil Nadu Co-operative Societies Act, 1983 would become a general enactment, having regard to the applicability of maxim "Generalia Specialibus Non Derogant". The Division Bench has made it clear that the said Act alone is applicable for calculating payment of subsistence allowance.

6. In the light of the ratio laid down above, it is clear that the impugned order passed by the first respondent has to be sustained and the writ petition is liable to be dismissed.

7. For the reasons aforesaid, the writ petition is dismissed, confirming the order passed by the first respondent in P.S.A.No.36 of 2009, dated 03.12.2012. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ogy / srk

To

1. The Assistant Commissioner of Labour,
Office of Labour Commission, Chennai.

+1 CC to Mr.P.S.Sivashanmugasundaram, Advocate sr 61971.

+1 CC to Mr.M.Ramadoss, Advocate sr 61519

W.P.No.12752 of 2013

SJ(CO)
SP(28/01/2019)