



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.14522 of 2014

and

MP(MD)Nos.1 & 2 of 2014

S.Aruldoss

... Petitioner

Vs.

1. The Joint Registrar / Managing Director,
Pandian Consumer Co-operative Whole
Sale Stores Ltd.,162, East Veli Street,
Madurai, Madurai District.

2. The General Manager,
Pandian Consumer Co-operative Whole Sale
Stores Ltd.,162, East Veli Street,
Madurai, Madurai District.

3. The President,
Pandian Consumer Co-operative
Whole Sale Stores Ltd., 162, East Veli Street,
Madurai, Madurai District.

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents to reimburse the recovery made from the salary of the petitioner without any award passed by the competent authority and to pay the subsistence allowance payable to the petitioner as per the order made in Subsistence Allowance Petition No.14/2011 dated 26.06.2012 on the file of the Assistant Commissioner of Labour, Madurai as well as the back wages payable to the petitioner in accordance with law within the time stipulated by this Court.

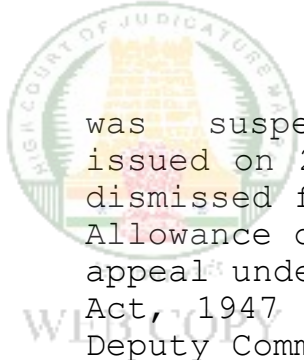
For Petitioner : Mr.Sadiq Raja

For Respondents : Mrs.S.Srimathy,
Special Government Pleader
for R1 & R3
Mr.S.Barathi for R2

ORDER

Heard the learned counsel on either side.

2.The petitioner was employed in the second respondent co-operative society. Following an inspection that was conducted on 19.12.2009 at Vilangudi No.2, Fair Price Shop in which the petitioner was working, an allegation was made that the writ petitioner caused loss to the store to the tune of Rs.46,111/-. He



was suspended from service on 22.12.2009 and charge memo was issued on 25.02.2010. After holding an enquiry, the petitioner was dismissed from service. The petitioner was not paid any Subsistence Allowance during the period of suspension. The petitioner filed an appeal under Section 41 (2) of the Tamil Nadu Shops and Establishment Act, 1947 and by order dated 26.03.2012 in T.N.S.E No.7/2011, The Deputy Commissioner of Labour/Appellate Authority, Madurai set aside the order of dismissal dated 28.02.2011 and directed the reinstatement of the petitioner.

3.Likewise, the authority constituted under the Payment of Subsistence Allowance Act also allowed the petition filed by the petitioner in S.A.No.14 of 2011 and the second respondent was directed to pay Subsistence Allowance for the period in question to the petitioner. Both these orders have attained finality. They were not challenged. The respondents 2 and 3 ought to have complied with the aforesaid orders. Instead of doing so, they appeared to have been obtained an undertaking from the petitioner on 24.10.2012. The writ petitioner has given an undertaking that the aforesaid sum of Rs.46,111/- would be recovered from his salary in monthly instalments at the rate of Rs.3,000/- per month. It is beyond dispute that no order directing recovery was passed against the petitioner.

4.This Court has no hesitation to come to the conclusion that the undertaking dated 24.10.2012 obtained from the petitioner is vitiated. It is obvious that the petitioner was left with no other option but to simply sign on the dotted lines. The authorities cannot take advantage of such undertaking that was secured under coercive circumstances. This Court has to necessarily express its displeasure over the conduct of the authorities in this case.

5.When the statutory authorities constituted under the Tamil Nadu Shops and Establishment Act and the Tamil Nadu Payment of Subsistence Allowance Act have allowed the petition and also the appeal filed by the petitioner, the same ought to have been complied with in letter and spirit. Not doing so cannot be said to be proper. In these circumstances, the petitioner is entitled to succeed. Therefore, the respondents are directed to reimburse the recovery made from the petitioner's salary forthwith. The petitioner shall also be paid the Subsistence Allowance as directed by the statutory authority.

6.The writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (Crl.Side)

/True Copy/



To

1. The Joint Registrar / Managing Director,
Pandian Consumer Co-operative Whole
Sale Stores Ltd.,
162, East Veli Street, Madurai,
Madurai District.
2. The General Manager,
Pandian Consumer Co-operative Whole Sale
Stores Ltd.,
162, East Veli Street, Madurai,
Madurai, Madurai District.
3. The President,
Pandian Consumer Co-operative
Whole Sale Stores Ltd.,
162, East Veli Street, Madurai,
Madurai District.

+1CC to Mr.D.Sadiq Raja, Advocate, SR.No.45020
+1CC to the Special Government Pleader SR.No. 45185

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