



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.11.2018

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No. 6288 of 2015 and

M.P. (MD) Nos. 1 & 2 of 2015 and

W.M.P. (MD) Nos. 9588 & 16722 of 2016 & 11776 of 2017

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The Commissioner,
Tuticorin Corporation,
Tuticorin.

... Petitioner

Vs.

1. The Deputy Commissioner of Labour,
Appellate Authority,
Subsistence Allowance Disbursement,
Tirunelveli.

2. C. Rajamani

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the impugned records on the file of the first respondent in P.S.A. (Appeal) No. 2 of 2014 dated 22.12.2014 communicated to the office on 19.02.2015 and to quash the same.

For Petitioner : Mr. S. Saji Bino

For R-1 : Mr. Aayiram K. Selvakumar,
Additional Government Pleader.

For R-2 : Mr. R. Murugappan

O R D E R

The second respondent herein was employed as a Revenue Assistant in Tuticorin Municipality. The Tuticorin Municipality has become Tuticorin Corporation in the year 2008. The second respondent was placed under suspension on 07.02.2002. The second respondent reached the age of superannuation on 31.03.2006. But he was kept under suspension from 07.02.2002 to 31.03.2006. He was also allowed to retire without prejudice to the right of the authority to continue the disciplinary proceedings. The disciplinary proceedings have since ended in the year 2013 itself. The only question that arose for determination was the quantum of subsistence allowance payable to the second respondent herein. In this regard, the second respondent herein filed W.P. (MD) No. 963 of 2006. The said Writ petition was dismissed on 25.09.2007 in the following terms:-



"4. Under these circumstances, there is no necessity to interfere with the order at this stage and decide the matter one way or the other. Hence, the Writ petition is dismissed. No costs.

5. Even otherwise in a matter whether the subsistence allowance was to be increased or decreased can be gone into by having recourse to a proceeding under the Tamil Nadu Payment of Subsistence Allowance Act 1981. The petitioner could have moved the appropriate authority and the authority was empowered to decide what should be the quantum of the subsistence allowance during the period of suspension. In any event, it is for the petitioner to decide his forum, if he wants any relief."

2. Availing the liberty given by this Court, the Writ petitioner filed a petition before the Assistant Commissioner of Labour, Tirunelveli, seeking enhancement of the subsistence allowance that was paid to him. The authority under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 allowed the petition filed by the second respondent herein on 01.11.2012. The same was questioned by the Writ petitioner herein by filing W.P. (MD) No. 124 of 2013. The said Writ petition was dismissed giving liberty to the Writ petitioner herein to file an appeal before the appellate authority/Deputy Commissioner of Labour, Tirunelveli. The appeal filed by the Writ petitioner was dismissed on 22.12.2014. The same is challenged in this Writ petition.

3. Heard the learned counsel on either side.

4. The learned counsel appearing for the second respondent strongly contended that when he moved this Court on the earlier occasion, it was this Court which relegated him to invoke the provisions of the Tamil Nadu Payment of Subsistence Allowance Act. Therefore, he cannot be faulted.

5. The contention of the learned counsel appearing for the second respondent is no doubt formidable. However, I am of the view that the authority which otherwise does not have the jurisdiction cannot be conferred with jurisdiction even by an order of this Court. It is true that the Writ petitioner failed to question the order made in W.P. (MD) No. 963 of 2006 dated 25.09.2007. But even such failure cannot cure the jurisdictional defect which characterises the order impugned in this Writ petition.

6. The second respondent herein was an employee of the Tuticorin Municipality. He was governed by the Tamil Nadu Municipal Service Rules, 1970. Rule 53 of the Tamil Nadu Government Fundamental Rules deals with the payment of subsistence allowance. Therefore, the case of the second respondent herein stood governed by the aforesaid Rule 53 of the Tamil Nadu Government Fundamental

Rules and not by the provisions of Tamil Nadu Payment of Subsistence Allowance Act.

7. In this view of the matter, the orders impugned in this Writ petition stand set aside and the Writ petition stands allowed.

8. The second respondent herein cannot be left remediless. He rightly moved this Court on the earlier occasion. It was this Court which relegated him to go before the authority under the provisions of the Tamil Nadu Payment of Subsistence Allowance Act. Therefore, I am of the view that the interest of justice will be served by directing the petitioner herein to pass orders with regard to entitlement of the second respondent for enhancement of the subsistence allowance within a period of six weeks from the date of receipt of a copy of this order.

9. The Writ petitioner has to bear in mind that the second respondent was suspended on 07.02.2002 and kept under suspension till 31.03.2006. When an employee is kept under suspension beyond six months, the allowance payable to him will have to be varied, if the delay is not attributable to the second respondent. Therefore, the Writ petitioner will have to pass appropriate orders on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order in this regard. The second respondent is permitted to file a fresh representation narrating the entire sequence of event within a period of two weeks from the date of receipt of a copy of this order. The second respondent is said to be aged 68 years.

10. Pursuant to the condition imposed by this Court, the Writ petitioner deposited the award amount. The second respondent was permitted to withdraw 50% thereof. Since the present condition of the second respondent is attributable to the orders passed by this Court, the said amount shall not be recovered from the second respondent.

No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

The Deputy Commissioner of Labour,
Appellate Authority,
Subsistence Allowance Disbursement,



+1cc to Mr.R.Murugappan,Advocate Sr.No.95068
+1cc to Mr.S.Saji Bino,Advocate Sr.No.95044
+1cc to SPL.Govt.Pleader, Sr.No.95210

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KM/BK/SAR4/10.12.2018/4P/5C

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