



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4102 of 2016

V.Palanichamy

... Petitioner

Vs.

1.The Authority under the Tamil Nadu
Shops and Establishment act,
(Deputy Commissioner of Labour),
Dindigul.

2.The Management,
D.D.596, Palapatti Primary
Agricultural Co-operative Bank,
Vallipatti Post, Vedasanthoor Circle,
Dindigul District.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the impugned award passed by the first respondent dated 13.05.2013 in TNSEA.No.22 of 2009 and quash the same and direct the respondents to reinstate the petitioner with all attendant and monetary benefits.

For Petitioner : Mr.G.Murugan

For Respondents : No appearance

ORDER

The petitioner was employed in the second respondent society as Secretary. The petitioner allegedly committed certain acts of delinquency. He was suspended by order dated 19.08.2004. A charge memo was issued on 16.11.2004. On 07.02.2005, an additional charge memo was also issued. Domestic enquiry was conducted. An exparte report was submitted on 28.03.2005. Based on the same, the petitioner was dismissed from service. The petitioner filed an appeal before the first respondent. The Appellate Authority by order dated 13.05.2013 dismissed the appeal. The same is assailed in this writ petition.



2. Though the management was duly served and their names were printed in the cause list, no appearance has been entered on the side of the management. This Court went through the entire material on record. The learned counsel appearing for the petitioner raised two grounds primarily. The petitioner was entitled to be disbursed with subsistence allowance during the period of suspension. It is his specific contention that the second respondent was not paid any subsistence allowance during the period from 19.08.2004 till 14.05.2005.

3. Contending that he has been put to prejudice and that he is entitled to be paid with the said amount, he moved the authority under the Tamil Nadu Payment of Subsistence Allowance Act, 1981. The said authority had also passed an order in his favour. The same was marked as Ex.A6. Conducting the domestic enquiry without even paying the subsistence allowance to the suspended employee is clearly unfair.

4. This Court can assume that prejudice was caused to the employee as a result of the non payment of subsistence allowance. The entire proceedings are clearly vitiated on that sole ground. Secondly, it is seen from the evidence on record that the petitioner wanted deferment of enquiry. He made a request vide letters dated 04.12.2004, 12.01.2005 and 15.03.2005. The petitioner wanted copies of the relied upon documents. He also wanted permission to inspect certain documents. But, the authority denied the same and found the petitioner guilty of the charges framed against him.

5. Based on such an ex parte enquiry conducted in gross violations of the principles of natural justice, the authority/first respondent could not have passed the order of dismissal and without taking note of the contentions raised by the petitioner herein. Therefore, the order impugned in this writ petition is set aside. The petitioner has since attained the age of superannuation. The management will treat the petitioner as a retired employee and disburse the benefits payable to him accordingly within a period of eight weeks from the date of receipt of a copy of this order.

6. The writ petition is allowed. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar



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Dindigul District.

+1 CC TO Mr. R.Saravanan , Advocate, Sr.No. 51826

JAM/01/06/2018/ CM/ SAR 3/ 3p-4c

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