



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:08.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) Nos. 5289 to 5300 of 2016
and
W.M.P. (MD). Nos. 4734 to 4756 of 2016

M/S.DAMODAR HOME INDUSTRIES,
12/15, JOTHI NAGAR,
ALANGULAM, 627 851,
TIRUNELVELI DISTRICT,
REP BY ITS PARTNER.

.. PETITIONER IN ALL
WP(MD)NOS.5289 TO 5300 OF 2016

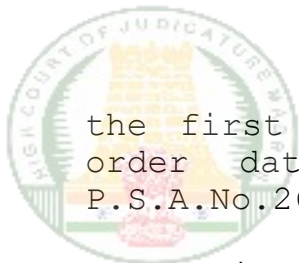
VS.

1.THE APPELLATE AUTHORITY UNDER
THE PAYMENT OF SUBSISTENCE ALLOWANCE ACT, 1981
(DEPUTY COMMISSIONER OF LABOUR)
PALAYAMKOTTAI, TIRUNELVELI.

2.THE AUTHORITY UNDER
THE PAYMENT OF SUBSISTENCE ALLOWANCE ACT, 1981
(ASSISTANT COMMISSIONER OF LABOUR)
PALAYAMKOTTAI, TIRUNELVELI. ... RESPONDENTS 1 & 2 IN ALL
WP(MD)NOS.5289 TO 5300 OF 2016

S.MURUGAN	..3 RD	RESPONDENT IN WP(MD)No.5289/2016
S.PARAMASIVAN	..3 RD	RESPONDENT IN WP(MD)No.5290/2016
K.GANESAN	..3 RD	RESPONDENT IN WP(MD)No.5291/2016
G.SUBRMANIAN	..3 RD	RESPONDENT IN WP(MD)No.5292/2016
A.ARUNACHALAM	..3 RD	RESPONDENT IN WP(MD)No.5293/2016
G.SUBRAMANIAN	..3 RD	RESPONDENT IN WP(MD)No.5294/2016
K.BALASUBRAMANIAN	..3 RD	RESPONDENT IN WP(MD)No.5295/2016
S.PARAMASIVAN	..3 RD	RESPONDENT IN WP(MD)No.5296/2016
A.ARUNACHALAM	..3 RD	RESPONDENT IN WP(MD)No.5297/2016
K.BALASUBRAMANIAN	..3 RD	RESPONDENT IN WP(MD)No.5298/2016
K.GANESAN	..3 RD	RESPONDENT IN WP(MD)No.5299/2016
S.MURUGAN	..3 RD	RESPONDENT IN WP(MD)No.5300/2016

Prayer in WP(MD)No.5289 of 2016: Writ Petition is filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order dated 03.07.2015 (received on 29.12.15) passed by



the first respondent in P.S.A(Appeal)No.3 of 2012 confirming the order dated 08.11.2011 passed by the second respondent in P.S.A.No.26 of 2009 and quash the same.

Prayer in WP(MD)No. 5290/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to the impugned order dated 03.07.15 (received on 29.12.15) passed by the 1st respondent in P.S.A (Appeal) No. 4 of 2012 confirming the order dated 08.11.11 passed by the 2nd respondent in P.S.A. No.23 of 2009 and quash the same as illegal.

Prayer in WP(MD)No. 5291/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to the impugned order dated 03.07.15 (received on 29.12.2015) passed by the 1st respondent in P.S.A.(Appeal) No.10 of 2013 confirming the order dated 23.07.12 passed by the 2nd respondent in P.S.A No.03 of 2011 and quash the same as illegal.

Prayer in WP(MD)No. 5292/ 2016 :

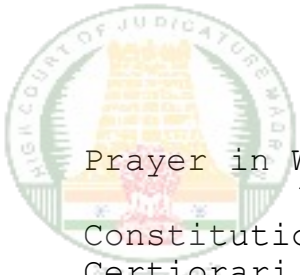
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to the impugned order dated 03.07.15 (received on 29.12.15) passed by the 1st respondent in P.S.A (Appeal) No.07 of 2013 confirming the order dated 23.07.12 passed by the 2nd respondent in P.S.A. No.07 of 2011 and quash the same as illegal.

Prayer in WP(MD)No. 5293/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to the impugned order dated 03.07.15 (received on 29.12.15) passed by the 1st respondent in P.S.A (Appeal) No. 5 of 2013 confirming the order dated 23.07.2012 passed by the 2nd respondent in P.S.A. No. 10 of 2011 and quash the same as illegal.

Prayer in WP(MD)No. 5294/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to the impugned order dated 03.07.15 (received on 29.12.2015) passed by the 1st respondent in P.S.A.(Appeal) No.08 of 2012 confirming the order dated 08.11.11 passed by the 2nd respondent in P.S.A No.27 of 2009 and quash the same as illegal.



Prayer in WP(MD)No. 5295/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to the impugned order dated 03.07.15 (received on 29.12.15) passed by the 1st respondent in P.S.A (Appeal) No.11 of 2013 confirming the order dated 23.07.12 passed by the 2nd respondent in P.S.A. No.02 of 2011 and quash the same as illegal.

Prayer in WP(MD)No. 5296/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to the impugned order dated 03.07.15 (received on 29.12.15) passed by the 1st respondent in P.S.A (Appeal) No. 09 of 2013 confirming the order dated 23.07.2012 passed by the 2nd respondent in P.S.A. No.04 of 2011 and quash the same as illegal.

Prayer in WP(MD)No. 5297/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to the impugned order dated 03.07.15 (received on 29.12.2015) passed by the 1st respondent in P.S.A.(Appeal) No.05 of 2013 confirming the order dated 08.11.11 passed by the 2nd respondent in P.S.A No.28 of 2009 and quash the same as illegal.

Prayer in WP(MD)No. 5298/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to the impugned order dated 03.07.15 (received on 29.12.15) passed by the 1st respondent in P.S.A (Appeal) No.09 of 2012 confirming the order dated 08.11.11 passed by the 2nd respondent in P.S.A. No.25 of 2009 and quash the same as illegal.

Prayer in WP(MD)No. 5299/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to the impugned order dated 03.07.15 (received on 29.12.15) passed by the 1st respondent in P.S.A (Appeal) No. 06 of 2012 confirming the order dated 08.11.11 passed by the 2nd respondent in P.S.A. No.21 & 29 of 2009 and quash the same as illegal.

Prayer in WP(MD)No. 5300/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to the impugned order dated 03.07.15 (received on 29.12.2015) passed by the 1st respondent in P.S.A.(Appeal) No.06 of 2013 confirming the order dated 23.07.12



passed by the 2nd respondent in P.S.A No.06 of 2011 and quash the same as illegal.

For petitioner

: Mr.M.E.Ilango

For R-1 & R-2

: Mr. J.Gunaseelan Muthiah

Additional Government Pleader

(In all the Writ Petitions)

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COMMON ORDER

Heard Mr.M.E.Ilango, learned Counsel appearing for the petitioner in all the writ petitions and Mr. J.Gunaseelan Muthiah, learned Additional Government Pleader appearing for the Respondents 1 and 2 in all the writ petitions.

2. In all these writ petitions the Management is the writ petitioner. The third respondents in all writ petitions were employed as a workmen in the writ petitioner's firm. On account of the disorderly conduct of the workmen, the management took recourse to lockout and other measures. The Management also suspended the workmen and initiated disciplinary action against them. The trade union, representing the workers, raised Industrial Dispute and the matter was referred for Conciliation under Section 2 (K) of the Industrial Disputes Act, 1947, before the Conciliation officer. Suspension orders were issued in the month of March 2008. In July 2008, the conciliation proceedings commenced. The conciliation proceedings went on for almost two years. During the pendency of the said conciliation proceedings the Management conducted domestic enquiry. But final orders could not be passed on account of the pendency of the conciliation proceedings. Once the conciliation proceedings concluded, the workmen were removed from service.

3. The issue is regarding the quantum of Subsistence Allowance payable to the workmen during the period of suspension. Section 3(1) of Tamil Nadu Payment of Subsistence Allowance Act, 1981 reads that for the first ninety days, the Subsistence Allowances will have to be paid at the rate of 50% of the wages. If the period of suspension exceeds 90 days and not exceeding 180 days, the workmen will be entitled to receive 75% of the wages. Beyond 180 days the workman will be entitled to receive the wages in full which he was drawing immediately before his suspension. But the 3rd proviso of the Section 3(1) of Tamil Nadu Payment of Subsistence Allowance Act reads that if the enquiry or criminal proceeding is prolonged beyond the period of ninety days for reasons directly attributable to the employee, the subsistence allowance shall be reduced to 50% of the wages.



4. In this case there is nothing on record to show that the delay was directly attributable to the workmen. It is true that the conciliation proceedings were pending for more than two years. But then, delay in conclusion of the conciliation proceedings cannot be a ground for reducing the quantum of Subsistence Allowance to 50% of the wages. The 3rd proviso of Section 3(1) of the said Act may require a strict construction. The expression used is, "if the enquiry or the criminal proceedings prolonged beyond the period of 90 days ...".

5. In this case, even if the enquiry got concluded the Management could not have passed any order on account of the pendency of the conciliation proceedings. This will not fall within the scope of the aforesaid proviso. Therefore, this Court comes to a conclusion that the orders passed by the authorities under the Act are justified. There is no merit in these writ petitions.

6. These Writ Petitions stand dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To:

1. Deputy Commissioner of Labour,
The Appellate Authority under
The Payment of Subsistence Allowance Act, 1981
Palayamkottai, Tirunelveli.

2. Assistant Commissioner of Labour
The Authority under
The Payment of Subsistence Allowance Act, 1981
Palayamkottai, Tirunelveli.

+One cc to M/s.M.E.Ilango, Advocate, SR.No.47596
+One cc to The Special Government Pleader, SR.No.47901

kmi
RL/5C/5P/KK/SAR4/8/3/2018

COMMON ORDER MADE IN

W.P. (MD) Nos. 5289 to 5300 of 2016