



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:08.02.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) Nos. 6303 and 6304 of 2016
and
W.M.P. (MD). Nos. 5533 to 5536 of 2017

M/s.Damodar Home Industries,
12/15, Jothi Nagar,
Alangulam, 627 851,
Tirunelveli District,
Rep by its Partner,
H.Ramesh Shenoy

.. Petitioner in
both Writ Petitions

Vs.

1. The Appellant 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.
3. Vasantha
4. Vigneshwari
5. Sundari

.. Respondents
both Writ Petitions

COMMON PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call 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.07 of 2012 & 08 of 2013 confirming the order dated 08.11.2011 and 23.07.2012 respectively passed by the second respondent in P.S.A.No.24 of 2009 and 05 of 2011 and quash the same.

For petitioner	: Mr.M.E.Ilango
For R-1 & R-2	: Mr. J.Gunaseelan Muthiah
	Additional Government Pleader
	(in Both Writ Petitions)



COMMON ORDER

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

2. In both the writ petitions the Management is the writ petitioner. The third respondents in both 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 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 Payment of Subsistence Allowance Act, 1981 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 Payment of Subsistence Allowance Act, 1981 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 Payment of Subsistence Allowance Act, 1981 are justified. There is no merit in both the writ petitions.

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

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To:

1. The Deputy Commissioner of Labour,
(Appellate Authority under the Payment of
Subsistence Allowance Act, 1981),
Palayamkottai, Tirunelveli.
2. The Assistant Commissioner of Labour
Authority under the Payment of Subsistence
Allowance Act, 1981,
Palayamkottai, Tirunelveli.

+ 1 CC TO Mr.M.E.ILANGO, ADVOCATE IN SR No. 47598

KMI

TE/SV-MMS/SAR-2 : 21/06/2018 : 3P/4C

ORDER MADE IN
W.P. (MD) Nos. 6303 and 6304 of 2016
08.02.2018