

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12-11-2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.1176 OF 2015

AND

M.P.NOS.1 AND 2 OF 2015

The Management,
Manali Petrochemicals Limited,
Ponneri High Road,
Manali, Chennai-600 068
Represented by its Company Secretary. .. Petitioner

-vs-

1. The Deputy Commissioner of Labour-I,
(Appellate Authority under the Payment of
Subsistence Allowance Act),
DMS Compound, Teynampet,
Chennai-600 006.
2. The Assistant Commissioner of Labour-II,
(Authority under the Payment of Subsistence
Allowance Act), DMS Compound, Teynampet,
Chennai-600 006.
3. Thiru S.Thomas .. Respondents

Petition under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorari, calling for the
records of the first respondent in PSA (A) No.36 of 2014, quash
the order dated 20.11.2014, confirming the order of the second
respondent in PSA No.10 of 2012 dated 06.08.2012.

For Petitioner : Mr.Anand Gopalan for
M/s.T.S.Gopalan and Co.

For Respondents-1&2 : Mr.J.Ramesh,
Additional Government Pleader.

For Respondent-3 : Mr.D.Bharathy

ORDER

The order passed by the first respondent in PSA (A) No.36 of 2014, dated 20.11.2014, confirming the order of the second respondent passed in PSA No.10 of 2012, dated 06.08.2012, are under challenge in the present writ petition.

2. The writ petitioner-Company has involved in manufacturing of petrochemical products. The writ petitioner-Company has two factories in Manali and they are named as 'Plant-I' and 'Plant-II'. The third respondent-employee was employed in 'Plant-II' of the writ petitioner-Company.

3. On 22.09.2003, the third respondent-employee was placed under suspension on account of pending enquiry. A charge sheet was issued to the third respondent-employee regarding certain misconducts.

4. The writ petitioner-Company states that the last draw salary of the third respondent-employee at the time of suspension was Rs.9,616/-. Accordingly, the writ petitioner-Company paid 50% of the salary as subsistence allowance, after making deductions towards monthly instalments of certain loans availed by him.

5. The third respondent-employee filed PSA No.2 of 2004, claiming that his last drawn wages was Rs.9,470/-. The third respondent-employee was entitled to the entire 50% of the last drawn wages as subsistence allowance and no deductions should have been made from the subsistence allowance paid by him during the period of his suspension from 22.09.2003 to 30.11.2003. An order was passed on 10.06.2004 in PSA No.2 of 2004, holding that no deductions should be made in payment of subsistence allowance and directed the writ petitioner-Company to pay a sum of Rs.7,948.33 for the period from 22.09.2003 to 30.11.2003. On 27.02.2007, the third respondent-employee filed an application, seeking subsistence allowance at the rate of Rs.11,960/-.

6. The learned counsel appearing on behalf of the writ petitioner-Company states that the wages of the third respondent-employee was determined as Rs.9,470/- and the writ petitioner-Management was directed to pay the subsistence allowance. An order passed in PSA No.2 of 2004 was accepted by both the parties and the payment was also made. Thus, the subsequent application filed on 27.02.2007, claiming the subsistence allowance at the rate of Rs.11,960/- itself is not maintainable.

7. The claim for a difference of Rs.2,945/- was made for the period from 22.09.2003. On 20.12.2007, an order was passed in

the above application stating that already the wages have been determined. Thus, the third respondent-employee preferred an appeal on 19.11.2008. In the appeal, an order was passed, holding that the wages of the third respondent-employee was Rs.13,505/-. Thus, the writ petitioner-Company is constrained to file WP No.1639 of 2009. The said WP No.1639 of 2009 was disposed of, with a direction to the original authority to reconsider the petition filed by the third respondent-employee on 27.02.2007.

8. Once again the original authority passed an order on 06.08.2012, holding that the wages to be paid to the third respondent-employee as Rs.11,960/-. The authority was of the view that the High Court had directed the authority to reckon the wages as Rs.11,960/-. In fact, the High Court remanded the matter for reconsideration, which was misconstrued by the competent authority. On 13.08.2012, an application was filed by the writ petitioner-Management to reopen the case as it was not given the opportunity. However, the Appellate Authority passed an order, rejecting the same on 20.11.2014, against which the present writ petition has been filed.

9. The contention of the learned counsel appearing on behalf of the writ petitioner-Company is that once the wages of the third respondent-employee was admitted as Rs.9,470/-, both by the Management as well as the employee concerned and the subsistence allowance was already paid in this regard, there is no reason whatsoever to entertain the further application to pay the difference. This apart, the High Court remanded the matter only for reconsideration of the issues. The said remanded order was misconstrued as if the High Court has fixed the wages of the third respondent-employee as Rs.11,960/-. Thus, the respondents 1 and 2 have committed grave error in arriving a conclusion that the wages of the third respondent-employee was fixed at Rs.11,960/-.

10. The learned counsel for the writ petitioner-Company further contended that as regards normal medical reimbursement of Rs.558/- and as regards special medical reimbursement of Rs.417/-, both these components are the reimbursements to be made in terms of the Settlement. Thus, these components are reimbursed towards the bills and not as a matter of right. Further, these reimbursements, which are annual components, would not come within the definition of wages and as far as canteen allowance of Rs.1,540/- and transport allowance of Rs.1,520/- are concerned, they are not paid to any employees of the writ petitioner-Company. In wage dispute before the Tribunal, the writ petitioner-Management filed an exhibit showing the cost incurred by the Management per employee towards Canteen cost as Rs.1,540/- and towards transport cost as

Rs.1,520/- and the said claim has been made based on the document filed by the writ petitioner-Company before the Tribunal. Both Canteen and Transport components were not paid by the writ petitioner-Company to any of the employees at any point of time.

11. The learned counsel appearing on behalf of the third respondent-employee opposed the contentions of the learned counsel for the writ petitioner-Company, by stating that the competent authority has rightly fixed the wages of the third respondent-employee as Rs.11,960/-. The High Court remanded the matter and accordingly, the issues were reconsidered by the authority concerned and the last drawn wages was fixed as Rs.11,960/- and therefore, there is no error in the order passed.

12. Let us now look into the original application filed by the third respondent-employee for payment of subsistence allowance before the authority concerned. As per the application, an amount of wages drawn by the third respondent-employee immediately before the suspension was Rs.11,960/-. In column No.11, it is stated that the amount of subsistence allowance of Rs.9,470/- was paid. However, it is made clear by the writ petitioner-Company that certain deductions are to be made and those deductions were not taken into consideration. Certain deductions and other calculations to be made were not considered by the authorities concerned. Contrarily, respondents 1 and 2 had misconstrued the order of the High Court and fixed the wages of the third respondent-employee to be paid as Rs.11,960/-.

13. In fact, the subsistence allowance of Rs.9,470/- was paid and the same was accepted by the third respondent-employee during the relevant point of time. When the parties also agreed and when there was no mistake in the calculations and the subsistence allowance was made after deducting the loan amounts and other recoveries, then there is no other reason whatsoever to issue direction to the writ petitioner-Company to pay the enhanced subsistence allowance to the third respondent-employee. The third respondent-employee was subsequently reinstated by the writ petitioner-Company and is now working.

14. Under these circumstances, this Court is of an opinion that the subsistence allowance, admitted by the third respondent-employee, was paid all along during the period of suspension and the subsequent application entertained by the respondents 1 and 2 are perverse and not in consonance with the provisions of the Payment of Subsistence Allowance Act. The third respondent-employee cannot set out a new claim after settlement of the subsistence allowance and this apart, the writ petitioner-Management is able to establish that the subsistence

allowance was calculated as per the Regulations and paid after deducting certain amounts towards loans and other recoveries.

15. Therefore, there is no error or perversity in payment of subsistence allowance by the writ petitioner-Company and the respondents 1 and 2 have misconstrued the orders of the High Court, which is an order of remand for re-adjudication. Such a direction issued for reconsideration of the issues was wrongly interpreted and a direction was issued for payment of higher subsistence allowance. Under these circumstances, the order passed by the first respondent in PSA (A) No.36 of 2014, dated 20.11.2014, confirming the order of the second respondent passed in PSA No.10 of 2012, dated 06.08.2012, are quashed.

16. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Deputy Commissioner of Labour-I,
(Appellate Authority under the Payment of
Subsistence Allowance Act),
DMS Compound, Teynampet,
Chennai-600 006.
2. The Assistant Commissioner of Labour-II,
(Authority under the Payment of Subsistence
Allowance Act), DMS Compound,
Teynampet, Chennai-600 006.

+1cc to M/s.T.S.Gopalan and Co., Advocate, S.R.No.93637

W.P.No.1176 of 2015

VGI (CO)
CS/12/12/2019