

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM

THE HON'BLE MR. JUSTICE M.S. RAMESH

W.P.Nos.24746 & 24747 of 2004
& W.P.M.P.Nos.30100 to 30104 of 2004

The Management of Kovaipudur
Consumers Co-operative Stores,
No.10/5-A, A.S.P.Complex,
Saravana Nagar,
Perur Main Road,
Kovaipudur,
Coimbatore - 641 042
rep. by its Special Officer ...Petitioner in both W.Ps.

Vs.

- 1.The Deputy Commissioner of Labour,
The Appellate Authority under the
payment of Subsistance Allowance Act,
Near R.T.O. Office,
Dr.Balasundaram Road,
Coimbatore - 641 018.
- 2.The Assistance Commissioner of Labour/
Authority under the Payment of Subsistance
Allowance Act,
Near R.T.O. Office,
Dr.Balasundaram Road,
Coimbatore - 641 018.

3.G.Venkatesh ...Respondents in both W.Ps.

COMMON PRAYER: This Petition filed under Article 226 of Constitution of India to issue a writ of Certiorari after calling for the records of the second respondent pertaining to his proceedings in P.S.A.Nos.8 & 77/2000 and quash the orders dated 18.07.2001 and 13.02.2002 respectively, which was further confirmed by the first respondent by his order dated 28.10.2003 made in A.P.S.A.No.10/2001 and A.P.S.A.No.6/2002.

For petitioner
in both W.Ps. : Mr.R.Sivakumar

For Respondents 1 & 2
in both W.Ps. : Mr.S.Suresh Kumar
Government Advocate

For Respondent 3
in both W.Ps. : Mr.V.Govardhanan
for M/s. Row & Reddy

COMMON ORDER

The awards under challenge in both the writ petitions pertain to two periods wherein, the petitioner had denied subsistence allowance to the third respondent herein. Since the issue involved in both the writ petitions are one and the same, a common order is passed.

2. On certain set of charges of misappropriation, the third respondent herein was placed under suspension on 15.09.1997. Since the petitioner had not paid the subsistence allowance, the third respondent herein filed an application under Section 4 of the Tamil Nadu Payment of Subsistence Allowance Act for recovery of the money due to him for two periods, wherein the proceedings in P.S.A.No.8 of 2000 pertain to the period 01.07.1997 to 30.01.2000 and P.S.A.No.77 of 2001 pertain to the period 01.02.2000 to 30.06.2001.

3. The defence taken by the third respondent herein before the authorities was that the petitioner had misappropriated certain amounts and therefore, the subsistence allowance was sought to be adjusted from the subsistence allowance to be paid to the third respondent. The appellate authority had rejected such a defence and had passed the award, directing the petitioner to pay the subsistence allowance for the relevant periods.

4. It is settled proposition that the outstanding amount which is alleged to have been misappropriated cannot be adjusted from and out of the subsistence allowance and as such, the authorities have rightly held that the third respondent is entitled for the subsistence allowance.

5. The grounds raised before the authorities are the same grounds which have been raised before this Court. Under Section 3 of the Tamil Nadu Payment of Subsistence

Allowance Act, an employer is bound to pay subsistence allowance, except in cases, where the suspended employee accepts an employment in any other establishment, during the period of suspension. It is not the case of the petitioner that the employee was gainfully employed during the suspension period. Under these circumstances, there is a duty cast on the employer to pay subsistence allowance to the third respondent under Section 3 of the Tamil Nadu Payment of Subsistence Allowance Act, in the manner provided therein. As such, the objection taken by the petitioner for denial of subsistence allowance cannot be sustained and I do not find any infirmity in the award passed by the second respondent as confirmed by the appellate authority/first respondent.

6. In the result, there is no merit in these writ petitions and the same stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

7. At this juncture, the learned counsel for the petitioner submits that the entire outstanding amount of the subsistence allowance has been deposited before the first respondent herein.

8. The petitioner is at liberty to make appropriate application before the first respondent seeking for withdrawal. On receipt of such application, the first respondent shall permit the petitioner to withdraw the amount by passing appropriate orders, preferably within a period of two weeks from the date of receipt of such an application.

Sd/-

Assistant Registrar (CS VIII)

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Sub Assistant Registrar

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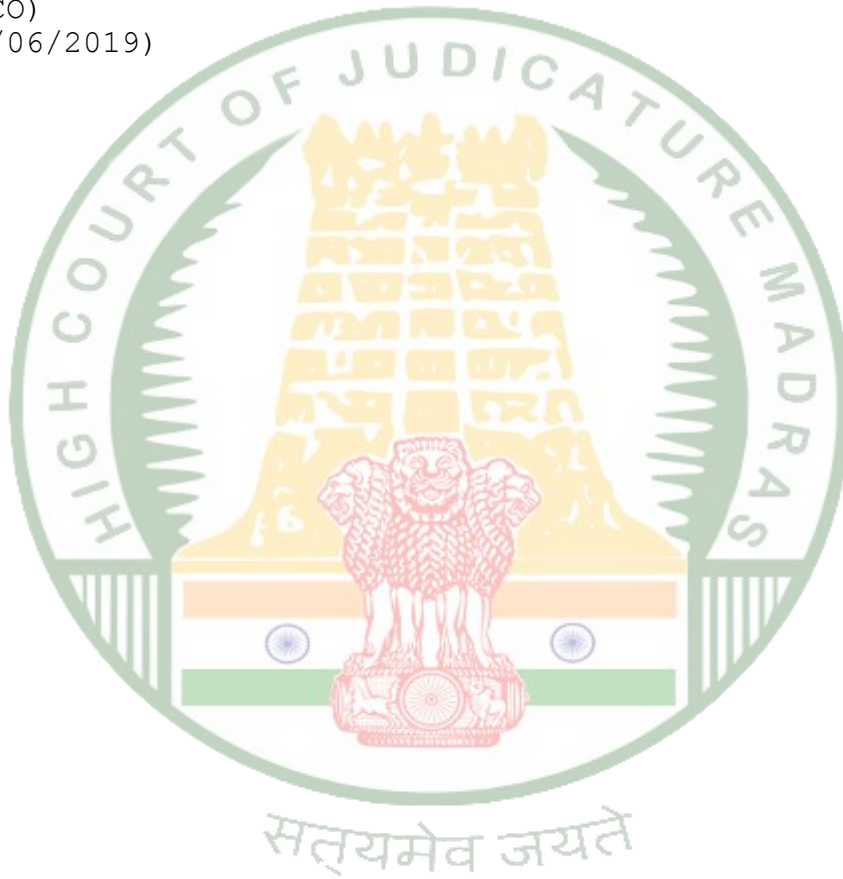
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+1cc to M/s. Row & Reddy , Advocate SR.No. 40535
+1cc to Mr.R.Sivakumar , Advocate SR.No. 40737

W.P.Nos.24746 & 24747 of 2004
& W.P.M.P.Nos.30100 to 30104 of 2004

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A.SK(26/06/2019)



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