

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.10.2019

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.17288 & 17289 of 2005
&
W.M.P.Nos.18783 & 18784 of 2005

The Regional Manager,
The Tamil Nadu Civil Supplies Corporation Ltd.,
Villupuram, Villupuram District.

...Petitioner in both WPs

..Vs..

1.P.Kalidasan ...Respondent No.1 in W.P.No.17288/05

2.G.Selvaraj ...Respondent No.1 in W.P.No.17289/05

3.The Assistant Commissioner of Labour,
Office of the Dy.Commissioner of Labour - 2,
Under the payment of Subsistence Allowance Act,
Teynampet, Chennai - 600 006.

4.The Deputy Commissioner of Labour,
Under the payment of Subsistence Allowance Act,
Teynampet, Chennai - 600 006.

...Respondent Nos.2 & 3 in both WPs

Common Prayer: Petitions filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records in PSA No.10/2003, dated 18.09.2003 & PSA No.146/2000, dated 23.12.2002 of the second respondent and confirmed by the third respondent in APSA No.4/2004 dated 25.01.2005 & APSA No.2/2003 both dated 25.01.2005 respectively and quash the order dated 25.01.2005.

For Petitioners : Mr.Arun Datta
for Mr.C.Munusamy
(in both the WPs)

For Respondents : No appearance for R.1 in W.P.No.
17288 of 2005
N.Kamaraj for R.1 in W.P.No. 17289 of
2005
Mr.J.Ramesh, AGP (for R.2 & R.3) in
both WPs

COMMON ORDER

The Order dated 18.09.2003 passed in PSA No.10/2003 and the order dated 23.12.2002 passed in PSA No.146/2000 passed by the second respondent and as confirmed by the third respondent in APSA No.4/2004 dated 25.01.2005 & APSA No.2/2003 dated 25.01.2005 respectively are under challenge in the present writ petitions.

2.The writ petitioner is the Tamil Nadu Civil Supplies Corporation Ltd. The petitioner states that the first respondent/workmen in both the WPs were appointed as an apprenticeship trainee salesman through Employment Exchange on part-time basis in a Fair Price Shop. On account of allegation of misappropriation of funds of the Corporation, they were placed under suspension and discharged from service, as they were appointed as apprenticeship trainee and their services were not confirmed nor regularized.

3.The first respondent in both the WPs were paid with stipend of Rs.150/- per month during the apprenticeship training. No other payment or benefit or whatsoever were paid for the apprentice of the Corporation. They were discharged from the training by orders dated 20.02.1982 & 06.05.1985 for the allegation of misappropriation of funds, committed by them. The Orders of discharge were issued based on the terms and conditions of the order of appointment and the same became final.

4.After a lapse of about 19 years from the date of discharge, the first respondent in both the WPs filed applications before the Authority under the payment of Subsistence Allowance Act claiming subsistence allowance. The said applications were allowed and the appeals filed by the writ petitioner were rejected. Thus, the orders passed by the third respondent were under challenge in the present writ petitions.

5.Considering the facts and circumstances, this Court is of the opinion that the first respondent in both the WPs were appointed as Apprentice Trainee and on account of allegation of misappropriation of funds, they were discharged from service in the year 1982 & 1985 respectively. The orders of discharge were not challenged for many years and the same became final. The applications under the Subsistence Allowance Act were filed after a lapse of 19 years from the date of discharge i.e., 20.02.1982 & 06.05.1985.

6.Thus, the Authority competent ought not to have entertained such applications as the same were not maintainable. Further the first respondent in both the WPs were appointed as

Trainee and they were paid stipend and they were not regular employees of the writ petitioner/Corporation. Therefore, the applications filed by the first respondent in both WPs for payment of subsistence allowance cannot be entertained at all. The Authorities competent had erroneously entertained and passed an order in favour of the first respondent in both the WPs, granting subsistence allowance. The entire exercise done by the respondent Nos.2 & 3 is perverse and in violation of the provisions of the Subsistence Allowance Act itself. This apart, the applications were filed after a lapse of 19 years.

7.This being the factum of the case, this Court is of an opinion that the orders passed by the second respondent, which were confirmed by the third respondent are perverse and untenable. Consequently, the Order dated 18.09.2003 passed in PSA No.10/2003 and the order dated 23.12.2002 passed in PSA No.146/2000, of the second respondent and as confirmed by the third respondent in APSA No.4/2004 dated 25.01.2005 and in APSA No.2/2003 dated 25.01.2005 respectively were quashed and the writ petitions stand allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mrn

To

1.The Assistant Commissioner of Labour,
Office of the Dy.Commissioner of Labour - 2,
Under the payment of Subsistence Allowance Act,
Teynampet, Chennai - 600 006.

2.The Deputy Commissioner of Labour,
Under the payment of Subsistence Allowance Act,
Teynampet, Chennai - 600 006.

+1 CC to Govt. Pleader sr 85521.

+2 CC to Mr.C.Munusamy, Advocate sr 84613 & 84614.

W.P.No.17288 & 17289 of 2005

RSI (CO)
SP(08/11/2019)