

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.09.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.27498 of 2013

&

W.M.P.No.1 of 2013

The Joint Registrar/Administration
Dharmapuri District,
Central Co-operative Bank,
Dharmapuri.

...Petitioner

...Vs...

1.The Appellate Authority/
Deputy Commissioner of Labour,
(Payment of Subsistence Allowance Act),
Salem.

2.Assistant Commissioner of Labour,
Tamil Nadu Payment of Subsistence
Allowance Act, Salem - 7.

3.K.Dhandapani

...Respondents

Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the first respondent in APSA.No.2/12 dated 30.12.2012 and reversing the order of the second respondent in PSA.No.6/2010 dated 04.07.2011 quash the same.

For Petitioner : Mr.M.S.Palaniswamy

For Respondent : Mr.J.Ramesh, AGP (for R.1 & R.2)
Mr.R.M.D.Nasrullah (for R.3)

ORDER

The order passed by the first respondent in APSA.No.2/12 dated 30.12.2012 and reversing the order of the second respondent in PSA.No.6/2010 dated 04.07.2011 is sought to be quashed in the present writ petition.

2.The third respondent was working as Branch Manager of the petitioner bank. The learned counsel appearing on behalf of the petitioner states that the third respondent along with two other employees misappropriated the funds of the writ petitioner co-operative bank to a sum of Rs.17,04,225/-. The disciplinary proceedings were initiated against all the officials who are responsible for allegation of misappropriation and the third respondent was suspended from service on 02.03.2005. After conducting an enquiry, the third respondent was dismissed from service w.e.f., 29.12.2009. A criminal case was also registered in Cr.No.1/2005 on the file of the Judicial Magistrate, Uthangarai, which ended in conviction and an appeal was filed on the order of conviction, which is now pending.

3.During the pendency of the criminal appeal, as well as after the order of dismissal from service, the third respondent filed a petition before the second respondent in PSA No.6/2010, claiming subsistence allowance from the period from 02.03.2005 to 29.12.2009. The petitioner/bank contested the claim of the third respondent and has taken a stand that the third respondent is not entitled to for subsistence allowance under the Subsistence Allowance Act.

4.The learned counsel appearing on behalf of the petitioner states that the third respondent was employed as Branch Manager and therefore, he is not a workman and consequently, the Competent Authority has no jurisdiction to entertain an application under the provisions of the Subsistence Allowance Act. He further contended that the Co-operative Society is a registered society under the provisions of the Co-operative Societies Act and therefore, the Co-operative Societies Rules as well as the Special byelaws in this regard are to be followed and the same will prevail over the General Law. It is further stated that the second respondent allowed the claim of the third respondent against which an appeal was filed by the petitioner bank before the first respondent/Appellate Authority, who inturn, also rejected the same and therefore, the writ petitioner/bank is constrained to file the present writ petition.

5.The learned counsel appearing on behalf of the writ petitioner mainly contended that the petition under the provisions of the Subsistence Allowance Act is not applicable, in view of the fact that the byelaw itself provide for payment of subsistence allowance and the byelaw has already been approved by the Registrar of Co-operative Societies under the Act.

6.This Court is of an opinion that undoubtedly the special enactment will prevail over the general Law. The co-operative societies are registered under the Tamil Nadu Co-operative

Societies Act, 1983. Rule 149 of the Tamil Nadu Co-operative Societies Rules provides service conditions of the employees of the Co-operative Societies. Based on Rule 149, byelaws are approved by the Board of Directors or Manager of the concerned co-operative society and the said byelaws are approved by the Registrar of Co-operative Societies under the Act itself. Thus, the byelaws approved by the Registrar will prevail over in the matter of service conditions of the employees of the Co-operative Societies and whenever there is a provision for payment of subsistence allowance under the byelaws which was approved by the Competent Authority namely the Registrar, the General Law would have no application and therefore, an application entertained by the second respondent under the provisions of the Subsistence Allowance Act is without jurisdiction. It is not as if the employees are remedy less whenever the disciplinary proceedings are entertained and an employee is placed under suspension.

7. The byelaw 22 states that;

(1) An employee of the Bank may be placed under suspension from the service where;

(i) an inquiry into grave charges against him is contemplated or pending; or

(ii) a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest or in the interest of the bank

(2) The authority competent to suspend an employee shall grant to the employee suspended, subsistence allowance in accordance with the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981.

8. Thus, the byelaw stipulates that the subsistence allowance is to be paid with reference to the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981. Thus, the quantum of subsistence allowance and the provisions contemplated under the Tamil Nadu Payment of Subsistence Allowance Act, is to be followed for the purpose of payment of subsistence allowance. However, in respect of the dispute arising out of the payment of subsistence allowance, then the employees are bound to approach the competent authority under the provisions of the Tamil Nadu Co-operative Societies Act for the purpose of redressing their grievances.

9. Subsistence allowance is a Fundamental Right of an employee. It is an anomaly of an employee, who is under suspension and is not entitled to accept any other employment during the period of suspension. Thus, the payment of subsistence allowance is considered as a right to life enunciated under Article 21 of the Constitution of India. Such a

right cannot be denied to an employee, who is under suspension and pending enquiry. Thus, the right of subsistence allowance cannot be denied to an employee when the employer has taken a decision to place an employee under suspension on account of misconducts or pendency of criminal case.

10.This being the principles to be followed, this Court is of an opinion that the writ petition is bound to pay subsistence allowance to the third respondent at the rate prescribed under the provisions of the Tamil Nadu Payment of Subsistence Allowance Act. The learned counsel appearing on behalf of the petitioner states that some amount has already been deposited before the second respondent during the pendency of application. In this regard, the writ petitioner is entitled to withdraw the said amount. However, the subsistence allowance due to the third respondent is to be paid and the 50% of the salary is contemplated under the Subsistence Allowance Act, is directed to be paid.

11.Accordingly, the order passed by the first respondent in A.P.S.A.No.2/2012 dated 30.12.2012 reversing the order of the second respondent in P.S.A.No.6/2010 dated 04.07.2011 is quashed mainly on the ground that when the remedy is available to the suspended employee under the byelaws as well as under the provisions of the Tamil Nadu Co-operative Societies Act. The petition filed before the Competent Authority under the payment of Subsistence Allowance Act cannot be entertained.

12.However, this Court cannot deny the right of subsistence allowance to the employee, who was placed under suspension, though the petitioner failed before the Authority under the Subsistence Allowance Act, cannot be entertained in view of the special enactment namely Tamil Nadu Co-operative Societies Act. The employee is entitled to get the subsistence allowance under the provisions of the byelaw approved by the Registrar as well as under the Provisions of the Tamil Nadu Co-operative Societies Act and Rules.

13.In this regard, the writ petitioner is directed to pay the subsistence allowance of 50% of the salary, calculate the same and accordingly settle the subsistence allowance in favour of the third respondent within a period of eight weeks from the date of receipt of copy of this Order. The writ petitioner is permitted to withdraw the deposited amount from the respondents 1 & 2 by filing an appropriate application.

14.With the above directions, this writ petitions stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Appellate Authority/
Deputy Commissioner of Labour,
(Payment of Subsistence Allowance Act),
Salem.
- 2.Assistant Commissioner of Labour,
Tamil Nadu Payment of Subsistence
Allowance Act, Salem - 7.
- 3.The Joint Registrar/Administration
Dharmapuri District,
Central Co-operative Bank,
Dharmapuri.

+lcc to the Government Pleader Sr.81905
+lcc to Mr.M.S.Palaniswamy, Advocate Sr.81634

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