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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2019

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.30654 of 2014

The General Manager,
Tamilnadu State Transport Corporation Ltd.,
Salamedu, Vazhuthareddy, Villupuram,
Villupuram District.

.. Petitioner

-vs-

1.R.Chandrasekaran

2.The Presiding Officer,
Labour Court, Cuddalore.

.. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the 2nd respondent made in C.P.No.55/2012 dated 10.06.2014 and to quash the same as illegal.

For Petitioner : Ms.Rajeni Ramadoss,
Standing Counsel

For Respondents: R1 - Mr.R.Muralidharan

: R2 - Labour Court

ORDER

The order dated 10.06.2014, passed by the 2nd respondent, Labour Court, Cuddalore, in C.P.No.55 of 2012 is under challenge in the present writ petition.

2.The petitioner is Tamil Nadu State Transport Corporation Ltd., Villupuram.

3.The learned counsel appearing on behalf of the writ petitioner made a submission that the 1st respondent employee joined as a driver in the petitioner Management on 02.02.2009, temporarily on casual basis. The 1st respondent employee had involved in a road accident on 15.09.2010, for which he was disengaged from service and he was not granted any further employment. At a later point of time, on humanitarian, he was



granted re-employment. Taking advantage of the disengagement, the 1st respondent filed a claim petition in C.P.No.55 of 2012 before the 2nd respondent claiming for the payment of subsistence allowance starting for the period from 15.09.2010.

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4.The writ petitioner Management filed a counter by stating that the engagement of the 1st respondent employee was casual in nature and the disengagement cannot be treated as a suspension and it is disputed that the disengagement cannot be termed as a suspension. Therefore, the claim petition under Section 33C(2) of the Act cannot be maintained. It is contended that the claim petition is against the principles of Section 11A of the Act and is passed erroneously on appreciation that the petitioner is at the liability to pay subsistence allowance.

5.The learned counsel appearing on behalf of the writ petitioner Management made a submission that the claim regarding the subsistence allowance is to be made under the provisions of the Act before the competent authority and a claim petition under Section 33C(2) of the Act would not arise at all, as the 1st respondent employee had not established any pre-existing right or entitlement, which all are the pre-conditions for entertaining a claim petition under Section 33C(2) of the Act.

6.The learned counsel appearing on behalf of the 1st respondent employee opposed the contention by stating that subsistence allowance is a fundamental right of an employee. Thus, the benefit of subsistence allowance cannot be denied. The 1st respondent was disengaged from 15.09.2010 and after some time, he was provided with re-employment. Therefore, he was entitled for subsistence allowance during the interregnum period. In support of such contentions, the learned counsel for the 1st respondent cited a judgment of the Hon'ble Supreme Court of India in the case of A.Satyanarayana Reddy and Others vs. Presiding Officer, Labour Court and Others reported in AIR 2016 SC 4557 wherein, the legal principles are settled in paragraphs 16 and 17, which are as follows:-

"16. We need not refer to the other clauses as they do not really provide for any kind of benefit but stipulate the various aspects for implementation of the VRS and the procedure to be adopted. On a perusal of the VRS, it is clear as day that it did not deal with the lay-off compensation. As has been laid down in National Buildings Construction Corporation vs. Pritam Singh Gill (1972 2 SCC 1) (supra), a claim pertaining to non-payment of suspension allowance could be agitated under the said provision in spite of the employee being dismissed from service. In A.K.Bindal and Another vs. Union of



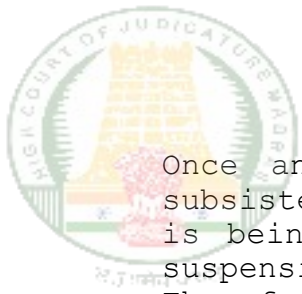
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India and Others (2003 5 SCC 163) (supra), the two-Judge Bench has held that after acceptance of the scheme and availing of benefits under VRS an employee could not claim higher wages. The controversy was different. If the VRS had mentioned about the lay-off compensation, needless to say, the claim would have been covered and the amount received by the workmen would have been deemed to have been covered the quantum of lay-off compensation. That is not the factual position. Therefore, the controversy that arose in Pritam Singh Gill (supra) and the dispute that emanated in A.K.Bindal (supra) are quite different. Hence, we are disposed to think that there exists no conflict between Pritam Singh Gill (supra) and A.K.Bindal (supra). We think it appropriate to say that though there is cessation of relationship between the employee and the employer in VRS but if it does not cover the past dues like lay-off compensation, subsistence allowance, etc., the workman would be entitled to approach the Labour Court under Section 33C(2) of the Act. If it is specifically covered, or the language of VRS would show that it covers the claim under the scheme, no forum will have any jurisdiction.

17. With the aforesaid clarification, we would have directed to list the matter before the two-Judge Bench. It is not so required. It is noticeable that the claim relating to lay-off compensation is not covered in the VRS. The Labour Court, learned Single Judge and the Division Bench have declined to entertain the claim on the ground that they had no jurisdiction to adjudicate the controversy. We have already held that claim pertaining to lay-off compensation having not been part of the VRS, the Labour Court has jurisdiction to adjudicate under Section 33C(2) of the Act. Therefore, we set aside the judgment and order of the High Court and that of the Labour Court."

7. Relying on the said judgment, the learned counsel for the 1st respondent emphasised that the payment of subsistence allowance cannot be denied and the subsistence allowance being a basic right, the claim petition would be entertained. Under these circumstances, he made a request to reject the writ petition.

8. This Court is of a considered opinion that undoubtedly, subsistence allowance is a fundamental right of an employee.



Once an employee is placed under suspension, the benefit of subsistence allowance cannot be denied. Subsistence allowance is being paid, considering the fact that during the period of suspension, the livelihood of an employee is to be protected. Therefore, subsistence allowance is considered as an integral part of Article 21 of the Constitution of India. Thus, the non-payment of subsistence allowance also would vitiate the entire proceedings. Thus, there is no quarrel in respect of the proposition that the payment of subsistence allowance is a basic right of an employee, who is placed under suspension by an employer. However, the facts with reference to the case must be considered by the Courts while considering the grounds whether, the petition is maintainable under Section 33C(2) of the Act or not.

9. This Court is of an opinion that in the event of any factual dispute, then the parties must approach the competent authority for adjudication of the disputed issues in order to crystallise the right. Once the rights are crystallised, then alone the petition under Section 33C(2) of the Act can be entertained. When the very entitlement of the employee for subsistence allowance is questioned by the Management based on the fact that he was not at all placed under suspension and he was a reserved employee and disengaged, then the facts regarding the suspension or order passed regarding the suspension are to be adjudicated with reference to the documents and evidences. In the absence of any such adjudication, the rights cannot be crystallised and in the event of non crystallising the rights, then the claim petition under Section 33C(2) of the Act would not be maintainable. This apart, the Tamil Nadu Payment of Subsistence Allowance Act, 1981 (hereinafter referred to as "the Subsistence Allowance Act") is a Special Act with reference to the Industrial Disputes Act. When the issue raised is in connection with the payment of subsistence allowance, then the aggrieved person must approach the competent authority under the provisions of the Subsistence Allowance Act. Thus, as far as the Industrial Disputes Act is concerned, regarding the payment of subsistence allowance, the Subsistence Act shall be considered as a Special Act and the same will prevail over the Industrial Disputes Act. Thus, the employee aggrieved must approach the competent authority under the Subsistence Allowance Act for the purpose of adjudicating the issues and to redress the grievances. Contrarily, a claim petition under Section 33C(2) of the Act cannot be entertained, in the absence of any pre-existing right or entitlement, which is mandatory for entertaining a claim petition.

10. In the present case, the fact regarding the suspension itself is disputed by the Management. The order of suspension is not produced by the 1st respondent employee. In the absence



of any order of suspension or document to establish that he was placed under suspension, the issues are to be construed as disputed and therefore, the 1st respondent has to approach the competent authority under the provisions of the Subsistence Allowance Act for adjudication of disputed facts. The judgment referred in the case of A.Satyanarayana Reddy (supra) would not be applicable with reference to the facts and circumstances of the lis on hand. Therefore, the 1st respondent has to redress his grievances in the manner known to law and more specifically, under the provisions of the Subsistence Allowance Act in respect of his claim for subsistence allowance.

11.The above being the legal principles to be followed, the writ petitioner Management has made out a case for interference and consequently, the order passed by the 2nd respondent dated 10.06.2014, in C.P.No.55 of 2012 is quashed and the writ petition stands allowed. However, there shall be no order as to costs.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

abr
To

The Presiding Officer,
Labour Court, Cuddalore.

+1 CC to M/s.S. Rajeni Ramadoss, Advocate sr 985191.

W.P.No.30654 of 2014

RR(CO)
SP(09/01/2020)