

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.03.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO. 30440 OF 2018

D.Manivasagam

.. Petitioner

- Vs -

1. The Registrar of Co-operative Societies
Kilpauk, Chennai 600 007.
 2. The Assistant Commissioner of Labour
O/o The Deputy Commissioner of Labour-I
Teynampet, Chennai 600 006.
 3. The Managing Director
Triplicane Urban Co-op. Stores Ltd.
No.156, Big Street
Triplicane, Chennai 600 005.
- .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the 1st respondent to give suitable instructions to the 3rd respondent to disburse the subsistence allowance due to the petitioner from 13.01.2011 to 29.02.2012 as per the direction of the 2nd respondent in P.S.A. No.13/2015 dated 5.7.2017.

For Petitioner : Mr. J.Muthukumaran

For Respondents: Mr. J.Ramesh, AGP for R-2
Mr. L.P.Shanmugasundaram,
Spl. GP for RR-1 & 3

ORDER

This writ petition has been filed for a direction to the 1st respondent to issue necessary directions to the 3rd respondent to disburse the subsistence allowance due to the petitioner from 13.1.2011 to 29.2.2012 in compliance with the orders passed by the 2nd respondent.

2. The petitioner herein was placed under suspension for a particular period pending disciplinary action initiated against him by the 3rd respondent. However, the petitioner was not paid

subsistence allowance during the period of suspension and, therefore, he was constrained to approach the 2nd respondent for payment of subsistence allowance. After hearing the parties, the 2nd respondent passed order holding that the petitioner was entitled to subsistence allowance for the period from 13.1.2011 to 29.2.2012 for a sum of Rs.1,24,507/=. The order was passed by the 2nd respondent as early as on 5.7.2017. However, according to the learned counsel for the petitioner, the amount has not been paid despite the direction of the 2nd respondent and, hence, the present petition has been filed.

3. In response to the above, a counter has been filed on behalf of respondents 1 and 3 stating that the 3rd respondent deducted the stock deficit amount of Rs. 73,377.15 and has sent a cheque for a sum of Rs.51,129.85 to the petitioner and, therefore, the order passed by the 2nd respondent had been complied with.

4. To the above submission, learned counsel for the petitioner submits that the stock deficit amount cannot be adjusted from the amount payable to the petitioner towards subsistence allowance and it is always open to the respondents to initiate disciplinary action, if there was any shortage or act of misconduct on the part of the petitioner. In any event, according to the learned counsel for the petitioner, the petitioner's service came to be terminated on the basis of some acts of alleged misconduct for which the petitioner has raised an industrial dispute and the same is pending before the Labour Court in I.D. No.212/2012.

5. This Court considered the submissions advanced by the learned counsel appearing for the petitioner and the learned counsel appearing for the 3rd respondent. On a careful consideration of the rival submissions, this Court is of the view that once the 2nd respondent has adjudicated the dispute and directed the 3rd respondent to pay the subsistence allowance of Rs.1,24,507/- to the petitioner, it is not open to the 3rd respondent to deduct any amount under the pretext of stock deficit from the amount payable to the petitioner towards subsistence allowance. The 2nd respondent has clearly held in its order that the petitioner was entitled to subsistence allowance for the period from 13.1.2011 to 29.2.2012 and when such an order has been passed by the 2nd respondent, the benefit of the order cannot be denied to the petitioner on the grounds raised by the 2nd respondent.

6. Even otherwise, this Court is of the view that the payment of subsistence allowance cannot be denied to the petitioner on any ground, since subsistence allowance is paid for basic sustenance of the employee concerned and, therefore,

such allowance cannot be subjected to any recovery. In view of the above, this Court has no hesitation to allow the writ petition.

7. Accordingly, this writ petition is allowed with a direction to the 3rd respondent to disburse the balance subsistence allowance payable to the petitioner as per the direction passed by the 2nd respondent in P.S.A. No.13/2015 dated 5.7.17, within a period of three weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

GLN

To

1. The Registrar of Co-operative Societies
Kilpauk, Chennai 600 007.
2. The Assistant Commissioner of Labour
O/o The Deputy Commissioner of Labour-I
Teynampet, Chennai 600 006.
3. The Managing Director
Triplicane Urban Co-op. Stores Ltd.
No.156, Big Street
Triplicane, Chennai 600 005.

+1cc to Mr.J.Muthukumaran, Advocate SR.No.25816

+1cc to Mr.L.P.Shanmugasundaram, Advocate SR.No.26165

+1cc to Government Pleader, High Court, Madras SR.No.26323

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CA(CO)
GMY(02/05/2019)