

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 26.04.2019**

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**W.P. (MD) .No.8082 of 2018****and****W.M.P. (MD) Nos.7662 & 11689 of 2018**

The Management,
Tirunelveli Special 83 Vellalankottai
Primary Agricultural Co-op Credit Society Ltd.,
Vellalankottai,
Tuticorin District. ... Petitioner

-vs-

1) The Appellate Authority under the
Payment of Subsistence Allowance Act, 1981
(Deputy Commissioner of Labour),
Madurai.

2) The Authority under the Payment of
Subsistence Allowance Act, 1981,
(Assistant Commissioner of Labour),
Palayamkottai, Tirunelveli.

3) S.Tamil Arasi

4) S.Murali

5) S.Ranjani ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records relating to impugned order dated 01.09.17 passed by the 1st respondent in P.S.A.(Appeal) No.01 of 2017 confirming the order dated 18.04.12 passed by the 2nd respondent in P.S.A.No.03 of 2010 & 12 of 2011 and quash the same as illegal.

For Petitioner : Mr.M.Jerin Mathew

For RR 1 & 2 : Mr.N.Shanmugaselvam,
Additional Government Pleader

For RR 3 to 5 : Mr.T.Ravichandran

**ORDER**

The instant writ petition has been filed challenging the order dated 01.09.2017 passed by the first respondent in P.S.A.(Appeal) No.01 of 2017 confirming the order dated 18.04.2012 passed by the second respondent in P.S.A.No.13 of 2010 & 12 of 2011.

2. The respondent Nos.3 to 5 are the legal representatives of the deceased Saktheeswaran, who was employed as a Secretary in the petitioner Society from the year 1979 till 16.03.2005. According to the learned counsel for the petitioner, the deceased worker left the service of the petitioner Society without submitting any leave application or without informing the petitioner Society or its officials. Therefore, according to the petitioner, Tuticorin Regional Common Cadre Service Authority by its proceedings in Na.Ka.No.683 of 2005 dated 29.07.2005 placed the deceased worker under suspension for a period six months and thereafter, the same was extended periodically by the orders of the said authority.

3. Since the Subsistence Allowance was not paid to the deceased worker Saktheeswaran, he approached the second respondent for payment of Subsistence Allowance by filing an application in P.S.A.No.13 of 2010 & 12 of 2011 under the Tamil Nadu Payment of Subsistence Allowance Act. A counter affidavit was also filed by the petitioner Society in P.S.A.No.13 of 2010 & 12 of 2011 stating that the deceased worker Saktheeswaran is not entitled for Subsistence Allowance since he was the Secretary of the petitioner Society and has been given managerial functions and therefore, Tamil Nadu Payment of Subsistence Allowance Act will not apply.

4. Before the second respondent, the petitioner Society filed five documents namely bye-laws, conviction orders against the worker and dismissal orders which are marked as exhibits. The second respondent allowed the application filed by the deceased worker in P.S.A.No.13 of 2010 & 12 of 2011 by a common order dated 18.04.2012 and rejected the contentions of the petitioner Society on the ground that they have not produced any evidence to deprive the deceased worker from getting the Subsistence Allowance.

5. Aggrieved by the common order dated 18.04.2012 passed by the second respondent in P.S.A.No.13 of 2010 & 12 of 2011, the petitioner Management preferred an Appeal under the Tamil Nadu Payment of Subsistence Allowance Act before the first respondent. The first respondent, by its order dated 01.09.2017 in P.S.A.No.01 of 2017 confirmed the common order dated 18.04.2012 passed by the second respondent in P.S.A.No.13 of 2010 and 12 of 2011. Aggrieved by the order dated 01.09.2017 passed by the first respondent in P.S.A.No.01 of 2017 confirming the order dated 18.04.2012 passed by the second respondent in P.S.A.No.13 of 2010 & 12 of 2011, the instant writ petition has been filed by the petitioner Management.



6. Heard Mr.M.Jerin Mathew, learned counsel appearing for the petitioner, Mr.N.Shanmugaselvam, learned Additional Government Pleader appearing for the respondents 1 and 2 and Mr.T.Ravichandran, learned counsel appearing for the respondents 3 to 5.

7. Learned counsel for the petitioner drew the attention of this Court to the following authorities:-

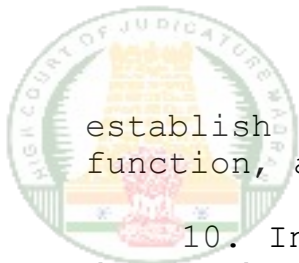
(a) In the matter of **Management, Elavadi Primary Agricultural Cooperative Bank** - Appellant vs., **Assistant Commissioner of Labour**- Respondent, a Single Bench judgment of this Court dated 17.03.2017 passed in W.P.(MD) No.2548 of 2006.

(b) In the matter of the **Management of Thekkalur Primary Cooperative Bank**- Appellant vs., **the Assistant Commissioner of Labour, the Deputy Commissioner of Labour and K.Avanasiappan**- Respondent, a Single Bench judgment of this Court reported in (2006) 1 CTC 784.

Referring to the aforesaid judgments, the learned counsel for the petitioner would submit that as a Secretary, the deceased worker is not entitled for Subsistence Allowance under the provisions of the Tamil Nadu Payment of Subsistence Allowance, as he is holding managerial functions. Further, he would contend that the Common Cadre Authority Service Act was abolished even before the dismissal of the worker and therefore, the said Act is also not applicable for him.

8. Per contra, the learned counsel appearing for respondents 3 to 5 would submit that before the authorities below, no evidence was let in by the petitioner Society to establish that the deceased worker was in fact performing managerial functions excepting for the nomenclature of the post was named as 'Secretary'. Learned counsel for the respondent drew the attention of this Court to the impugned orders passed by the Authorities below and submitted that except for filing of the bye-laws of the petitioner Society, no other document was filed by the petitioner Society to prove that the deceased worker was performing managerial functions as 'Secretary'. According to him, even for a convicted person, the petitioner Society is liable to pay the Subsistence Allowance and therefore, the conviction orders filed by the petitioner Society before the second respondent will not have any bearing to the instant case.

9. This Court has perused and examined the impugned order passed by the Authorities below. It has been the consistent stand of the respondents 3 to 5 as well as the deceased worker that even though he was appointed as a Secretary in the petitioner Society, he never performed any managerial functions in the petitioner Society. As rightly contended by the learned counsel for the respondents 3 to 5, no evidence has been placed by the petitioner Society to prove that the deceased worker was in fact empowered to perform managerial functions for the petitioner Society. The bye-laws of the Society which is marked as exhibit before the second respondent will not



establish that the deceased worker was performing managerial function, as his name is not mentioned in the bye laws.

10. In the instant case, no appointment order in favour of the deceased worker was filed as a document by the petitioner Society. The appointment order, in the instant case, will give the details of the powers given to the deceased worker. Since the appointment order or any other similar document to prove that the deceased worker was in fact performing the managerial functions in the petitioner Society was not filed by the petitioner Society before the second respondent Authority and the Authorities below have rightly concluded that the deceased worker Saktheeshwaran is entitled for Subsistence Allowance from the petitioner Society during the period of his suspension. Both the authorities below have considered all these aspects and only thereafter have passed the impugned order.

11. In so far as the judgments relied upon by the learned counsel for the petitioner are concerned, they are not applicable to the facts of the instant case. Since in those cases, it was not the stand of the worker that he was not performing any managerial function. But in the instant case, it is the consistent stand of the worker that he was only performing managerial function, even though he was appointed under the nomenclature 'Secretary' by the petitioner Society.

12. The learned counsel for the respondents 3 to 5 relied upon the Division Bench judgment of this Court dated 10.02.2015 passed in W.A.(MD) No.1569 of 2012 in the case of **Special Officer vs., P.Periyannan** and the Division Bench had held that even in the case of a Secretary of Primary Agriculture Corporation Society, which is a Common Cadre, he is entitled for Subsistence Allowance in terms of regulations 29(d)(i). Therefore, the Single Bench judgment reported in **2006 1 CTC 784** relied upon by the learned counsel for the petitioner does not support the case of the petitioner Society.

13. This Court under Article 226 of the Constitution of India is not a Court of Appeal and cannot re-appreciate the findings of the Authorities below, unless and until the findings given below are perverse. This Court does not find any perversity in the findings of the authorities below. Accordingly, there is no merit in the writ petition and hence, **the Writ Petition is dismissed**. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

Sub Assistant Registrar(CS)



To

1) The Appellate Authority under the
Payment of Subsistence Allowance Act, 1981
(Deputy Commissioner of Labour),
Madurai.

2) The Authority under the Payment of
Subsistence Allowance Act, 1981,
(Assistant Commissioner of Labour),
Palayamkottai, Tirunelveli.

+1cc to Mr.T.RAVICHANDRAN, Advocate, SR.No. 62965

+1cc to M/s.Special Government Pleader,SR.No.63339

Order made in
W.P. (MD) .No.8082 of 2018
26.04.2019

STS

KK/SAR/15.05.2019/ 5P- 5C