



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :15.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE **R.MAHADEVAN**

WP(MD)No.17430 of 2017

WEB COPY

Sivakumar

... Petitioner

Vs.

1. The Managing Director,
Office of the Managing Director,
Tamil Nadu State Marketing Corporation (TASMAC),
Egmore, Chennai - 600 008.

2.The Senior Regional Manager,
Office of the Senior Regional Manager,
Tamil Nadu State Marketing Corporation (TASMAC),
Madurai District.

3.The District Manager,
Office of the District Manger,
Tamil Nadu State Marketing Corporation (TASMAC),
Sivagangai District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus directing the respondents to pay the subsistence allowance for the period of suspension from 27.05.2013 along with arrears of salary which is due and payable to the petitioner with interest for such delayed payment and consequently issue a direction to the 2nd respondent to dispose the petitioner's appeal dated 28.09.2016 within a time frame that may be stipulated by this Court.

For Petitioner : Mr.R.Udhayakumar
For Respondents : Mr.H.Arumugam

ORDER

Heard both sides.

2.This writ petition has been filed with two different prayers. One is for payment of subsistence allowance by the 3rd respondent and another is for disposal of the appeal by the 2nd respondent. Both the claims of the petitioner have not been considered so far. Hence, the petitioner is before this Court.

3.Upon instructions, the third respondent has filed a counter affidavit in respect of the claim for payment of subsistence allowance and the relevant portion of the same reads as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

"4.I submit that the petitioner was appointed only on contract basis and he was paid with consolidated pay and



therefore he is not entitled to get subsistence allowance. In view of termination of service of temporary employee, the principle that no work no pay would be applicable and as such the petitioner is not entitled to subsistence allowance it cannot be paid automatically but on the other hand the petitioner must file an undertaking that he is not in employment anywhere during the period of suspension.

4. Such submission is not seriously objected to by the learned Counsel for the petitioner.

5. Under such circumstances, the petitioner is directed to produce a certificate / undertaking to the 3rd respondent, to the effect that he is not in gainful employment during the suspension period, within a period of two weeks from the date of receipt of a copy of this order and on such production, the claim of the petitioner in regard to subsistence allowance be considered and necessary orders be passed by the 3rd respondent within a period of two weeks therefrom.

6. Insofar as the 2nd prayer for disposal of appeal is concerned, the 2nd respondent is directed to consider the appeal filed by the petitioner on 28.09.2016 and pass final orders on merits and in accordance with law, after affording due opportunity of hearing to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

7. The writ petition is disposed of, on the above terms. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

+1 CC to Mr.R.UDHAYA KUMAR, Advocate (SR-54338[F] dated 15/03/2019)

+1 CC to Mr.H.ARUMUGAM, Advocate (SR-54589[F] dated 18/03/2019)

ORDER MADE IN
WP (MD) No.17430 of 2017
15.03.2019

dsk