



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

C.R.P. (PD) (MD)No.8 of 2014

and

M.P.(MD)No.1 of 2014

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The President,
D.D.592, V.Kurumbapatti Primary
Agricultural Co-Operative Society Ltd.,
V.Kurumbapatti.
Vembarpatti (PO),
Dindigul District.

... Petitioner/Respondent

vs.

K.Jeyechandran

... Respondent/Petitioner

PRAYER: Petition filed under Article 227 of the Constitution of India, against the order passed in the preliminary issue in P.S.A.I.A.No.3 of 2011 and P.S.A.No.5 of 2012, dated 28.03.2013, on the file of the Assistant Commissioner of Labour, Dindigul.

For Petitioner : Mr.V.O.S.Kalaiselvam

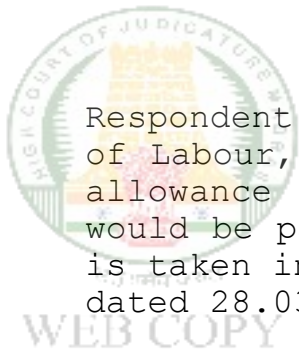
For Respondent : Mr.R.Saravanan
for Mr.S.Vijayakumar

ORDER

This Civil Revision Petition is filed to set aside the order in P.S.A. I.A.No.3 of 2011 and P.S.A. No.5 of 2012, dated 28.03.2013, on the file of the Assistant Commissioner of Labour, Dindigul.

2. I heard the learned counsel for the Petitioner and the learned counsel for the Respondent.

3.The learned counsel for the Petitioner submitted that the Respondent was suspended on 10.04.2004 and that he was subsequently relieved from employment but not permitted to retire by order dated 30.09.2005. During the period of suspension, namely, between 10.04.2004 and 30.09.2005, he was paid subsistence allowance pursuant to the order dated 08.02.2006 in W.P.(MD)No.9922 of 2006. The said order was confirmed by order dated 13.06.2006 in W.A.(MD) No.163 of 2006. After receiving subsistence allowance, the



Respondent herein filed a petition before the Assistant Commissioner of Labour, Madurai, claiming the difference between the subsistence allowance that was paid to him and the subsistence allowance that would be payable if the revision in pay with effect from 07.03.2010 is taken into consideration. The said petition was allowed by order dated 28.03.2013 and the said order is impugned herein.

4.The learned counsel for the Revision Petitioner submitted that the Petitioner was relieved from service with effect from 30.09.2005, whereas the revision in wages became effective much later. Accordingly, he submitted that the Respondent is not entitled to differential subsistence allowance based on the revision in wages. In this connection, he relied upon the judgment of the Hon'ble Supreme Court in **Union of India vs. R.K. Chopra 2010-I-LLJ-862 (SC)**, wherein, at paragraph 26, the Hon'ble Supreme Court held that a person who was dismissed from service before the pay revision is not entitled to the benefit of revision of subsistence allowance and that the same did not accrue to him. He further submitted that the Respondent is also not entitled to claim differential subsistence allowance because he first approached this Court by filing a Writ Petition and obtained an order for payment of subsistence allowance. According to the Revision Petitioner, the Respondent should not have, thereafter, approached the authority under the Payment of Subsistence Allowance Act for payment of the differential amount. In other words, the Petitioner should have made such claim before this Court and not before the Assistant Commissioner of Labour, Madurai.

5.In response, the learned counsel for the Respondent submitted that the present Civil Revision Petition is not maintainable because the Petitioner has an alternative remedy under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 and, particularly, the rules framed thereunder. In this regard, he referred to Rule 5A of the Tamil Nadu Payment of Subsistence Allowance Rules, 1981, which, inter alia, reads as under:

"5A. Appeal- (1) Any person aggrieved by the orders passed by an authority authorised under sub-section (1) of section 7 of the said Act may, within 60 days of receipt of such orders, appeal to the Deputy Commissioner of Labour within the local limits assigned to him under sub-section (1) of section 15 of the Payment of Wages Act, 1936 (Central Act IV of 1936) in the form of memorandum of appeal.

Provided that no appeal shall be admitted unless at the time of preferring the appeal, the appellant produced a certificate from the authority against whose orders the appeal has been made to the effect that the appellant had deposited with him the amount determined by him as payable to the employee under rule 5:



Provided further that where an employer makes an appeal under rule 5-A, the authority may and if so directed by the Deputy Commissioner of Labour, pending decision of the appeal, withhold payment of any sum in deposit with him."

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6. By referring to the said provision, he contended that the Civil Revision Petition is liable to be rejected and the Petitioner should be directed to file an appeal as provided by the statute, instead of approaching this Court.

7. Although the learned counsel for the Revision Petitioner raised several contentions with regard to the ineligibility of the Respondent herein for differential subsistence allowance, I am not inclined to exercise discretion under Article 227 and examine the merits of the case in view of the existence of an alternative statutory remedy. Rule 5(A) specifies a limitation period of 60 days for filing an appeal before the Deputy Commissioner of Labour. Needless to say, this time limit has long expired due to the pendency of this Civil Revision Petition. Accordingly, it is just and necessary that the time taken to prosecute the Civil Revision Petition should be excluded while computing the period of limitation for filing an appeal and the said period is hereby excluded.

8. Accordingly, without expressing an opinion on the merits of the case, this Civil Revision Petition is disposed of by granting leave to the Revision Petitioner to file an appeal before the appropriate authority under the Tamil Nadu Payment of Subsistence Allowance Rules within a period of four weeks from the date of receipt of a copy of this order after complying with specified conditions in that regard. If such appeal is filed, the Appellate Authority shall consider the same on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar (CS-)

To

The Assistant Commissioner of Labour,
Dindigul.



Copy To:

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**

- +1 CC to M/s.R.SARAVANAN, Advocate (SR-84032[F] dated 29/08/2019)
+1 CC to M/s.V.O.S.KALAISELVAM, Advocate (SR-84135[F]dated 29/08/2019)

Order made in
C.R.P. (PD) (MD)No.8 of 2014
and
M.P (MD)No.1 of 2014
28.08.2019

Ls/rrg
ES/16.10.2019/4P/6C