



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

W.A(MD)No.235 of 2012

and

M.P(MD)No.1 of 2012

WEB COPY

Arumugamangalam Primary Agricultural
Co-operative Bank,

Arumugamangalam,
Tuticorin District,

Rep. by its Special Officer.

... Appellant/2nd Respondent

Vs.

1.S.Jeyapaul

... 1st Respondent/Writ Petitioner

2.The Deputy Commissioner of Labour,
Appellate Authority under the Shops
and Establishment Act.

3.The Assistant Commissioner of Labour,
Tirunelveli.

... Respondents 2 & 3/Respondents 1 & 2

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to
set aside the order, dated 23.01.2012 made in W.P(MD)No.6393 of 2004
on the file of this Court.

Prayer in WP(MD)No.6393 of 2004:

Writ Petition filed under Article 226 of the Constitution of
India, praying to issue a Writ of Certiorari calling for the records
pertaining to the order of the first respondent which is made in
P.SA. No.7/2003 dated 23/01/2004 and quashing the same.

For Appellant : Mr.D.Sasikumar

For R - 1 : Mr.S.N.Mohan Gandhi

For RR 2 & 3 : Mr.M.Murugan,
Government Advocate.

JUDGMENT

**(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)**

This Writ Appeal is directed as against the order, dated
23.01.2012 passed in W.P(MD)No.6393 of 2004.

2. The said Writ Petition was filed by the first respondent/writ
<https://hcservices.ecourts.gov.in/hcservices/>



petitioner, who was working as Secretary in Arumugamangalam Primary Agricultural Co-operative Bank, Tuticorin District, challenging the proceedings in P.S.A.No.7 of 2003, dated 23.01.2004.

3.The appellant / second respondent-Management had placed the first respondent / writ petitioner under suspension with effect from 10.08.2000 on certain charges. Admittedly, subsistence allowance was not paid. Charges were framed and after enquiry, he was dismissed from service on 20.09.2003. The first respondent / writ petitioner was entitled for subsistence allowance from 11.08.2000 to 10.12.2001 which comes to Rs.96,605/-. As the subsistence allowance was not paid, the first respondent / writ petitioner had filed a petition before the third respondent-Assistant Commissioner of Labour, Tirunelveli for a direction to pay the subsistence allowance. The third respondent-Assistant Commissioner of Labour, Tirunelveli also had issued a direction for payment of 50% of the subsistence allowance for 90 days and 75% for the next 90 days and thereafter 100%. The said order granting subsistence allowance was challenged by the appellant / second respondent-Management by filing an appeal before the Appellate Authority. The Appellate Authority by order dated 23.01.2004, set aside the order of the third respondent-Assistant Commissioner of Labour, Tirunelveli and remanded the matter back to the third respondent-Assistant Commissioner of Labour, Tirunelveli for fresh disposal, which was challenged in the Writ Petition.

4.As the subsistence allowance is part of fundamental right guaranteed under Article 21 of the Constitution of India and as it relates to the survival of an employee during the period of suspension, the learned Single Judge had held that the first respondent / writ petitioner was entitled for subsistence allowance and directed the appellant / second respondent-Management to pay the subsistence allowance.

5.The appellant / second respondent-Management also had deposited the amount of the subsistence allowance viz., Rs.96,605/- in Indian Overseas Bank at Palayamkottai.

6.It is now stated that the first respondent / writ petitioner himself was dismissed from service, he is entitled to receive the above sum. However, there is no grounds available for the appellant / second respondent-Management to challenge the subsistence allowance payable and there is no merit in the case.

7.Accordingly, it is open to the first respondent / writ petitioner to withdraw the subsistence allowance, which is deposited in the Bank. If there is any interest payable on the amount, which is kept in the deposit, the first respondent / writ petitioner is entitled to withdraw the same along with interest.

<https://hcservices.ecourt.gov.in/hcservices> 8.In view of the above directions, this Writ Appeal is disposed of.



No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS II)

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/ /2021

Sub Assistant Registrar(CS)

ps

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Deputy Commissioner of Labour,
Appellate Authority under the Shops
and Establishment Act.

2.The Assistant Commissioner of Labour,
Tirunelveli.

+1 CC to M/s.GP (SR-2051[F] dated 25/01/2021)

W.A(MD)No.235 of 2012
21.01.2021

PK(CO)

KK(10.02.2021) 3P 4C