



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.03.2021**

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P(MD) .No.11666 of 2012

and

M.P. (MD) .No.1 of 2012

WEB COPY

THE SECRETARY
AMBASAMUDRAM SARVODAYA SANGAM,
VEERAVANALLUR,
TIRUNELVELI DISTRICT.

.. PETITIONER

VS

1 THE APPELLATE AUTHORITY UNDER THE
PAYMENT OF SUBSISTENCE ALLOWANCE ACT, 1981,
(DEPUTY COMMISSIONER OF LABOUR),
PALAYAMKOTTAI,
TIRUNELVELI.

2 THE AUTHORITY UNDER THE PAYMENT OF
SUBSISTENCE ALLOWANCE ACT, 1981,
[ASSISTANT COMMISSIONER OF LABOUR],
PALAYAMKOTTAI,
TIRUNELVELI

3 V.PONNAMBALAM

..RESPONDENTS

PRAYER: Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned order dated 30.04.2012, passed by the 1st respondent in P.S.A (Appeal)No.1 of 2011 confirming the order dated 19.08.2010 passed by the 2nd respondent in P.S.A.No. 4 of 2007 and quash the same as illegal.

For Petitioner : Mr.Jerin Mathew
for Mr.M.E.Ilango
For Respondent No.3 : Mr.S.Kumar

ORDER

This writ petition has been filed to quash the impugned order dated 30.04.2012, passed by the first respondent in P.S.A (Appeal) No.1 of 2011 confirming the order, dated 19.08.2010 passed by the second respondent in P.S.A.No.4 of 2007.

2. The case of the petitioner is that the petitioner is a co-operative society coming under the aegis of Sarvodaya movement. While the third respondent was working as salesman in the Porur



Branch of the petitioner society, he indulged in committing various misconducts. Hence, he was placed under suspension with effect from 29.08.2005. After due enquiry, he was dismissed from service by an order dated 16.03.2007. Thereafter, the third respondent filed an application in P.S.A.(Appeal)No.4 of 2007 before the original authority, second respondent, claiming subsistence allowance for the period from 01.09.2005 to 19.03.2007 in terms of the Payment of Subsistence Allowance Act and the said application was ordered in favour of the third respondent, by order, dated 19.08.2010. Aggrieved by the said order, the petitioner filed an appeal petition before the first respondent, however, the first respondent dismissed the said appeal by confirming the order of the second respondent against which the petitioner filed this writ petition.

3. The learned counsel for the petitioner would submit that initially, the third respondent was placed under suspension on 29.08.2005 and the subsistence allowance was paid to him for a period of six months, however, the third respondent did not co-operate with the enquiry and because of his non-participation the enquiry was prolonged, due to which the enquiry was concluded in his absence and the Disciplinary Authority imposed punishment retrospectively from the date of suspension and hence, he is not entitled for any further subsistence allowance. However, without considering the said aspect, the original authority, the second respondent and the appellate authority, the first respondent passed the order in favour of the third respondent is non-est in the eye of law. Accordingly, he prays for allowing this writ petition.

4. Per contra, the learned counsel appearing for the third respondent would submit that the third respondent is entitled to receive the payment of subsistence allowance during the suspension period. Hence, the order of the first respondent confirming the order of the second respondent is perfectly in order and thus, prays for dismissal of this writ petition.

5. Heard the submission made by the respective counsel and perused the materials placed on record.

6. Before this Court ventures into the merits of the contention raised on either side, it would be first necessary to bear in mind the scope and jurisdiction of this Court under Article 226 of the Constitution of India, while examining the correctness of the order of the Adjudicating Authorities. The Hon'ble Supreme Court in a catena of decisions has held that normally, a writ Court should not interfere with the order of the Adjudicating Authorities, unless the order is perverse. It has been further held that if the order is not irrational or perverse, the High Court should not interfere with the reasons in the order. Further, it has been held that this Court should not re-appreciate the evidence placed before the Adjudicating Authorities and substitute its own conclusions, merely because this Court is of opinion that a different conclusion could have been



arrived at on the available evidence. Bearing this legal principle in mind, this Court proceeds to examine the correctness of the impugned order.

7. In the present case, the core issue is whether the third respondent is entitled for payment of subsistence allowance during the suspension period though the dismissal order was passed with retrospective effect, but without hearing the third respondent. However, no punishment can be imposed retrospectively without conducting any disciplinary enquiry. Admittedly, the third respondent was placed under suspension with effect from 29.08.2005. However, the punishment was imposed only on 16.03.2007. The said punishment was imposed retrospectively from the date of suspension order, which illegal and unsustainable one. Hence, the Authority can impose a major punishment, however, the authority has no right to impose such a punishment retrospectively from the date of suspension order. The Authority ought to have conducted disciplinary proceedings based on the evidence. Further, as per the Payment of Subsistence Allowance Act, the employee, who is placed under suspension is entitled for subsistence allowance during the period of suspension. Hence, passing the dismissal order with retrospective effect will deprive the rights of the Employee for getting the subsistence allowance under the Subsistence Allowance Act. Further the Original Authority as well as the Appellate Authority passed a reasoned order under the Subsistence Allowance Act, which cannot be interfered with under Article 226 of the Constitution of India. Hence, in view of this Court, the order impugned in this writ petition is correct and there is no perversity or illegality.

8. In the light of the above discussion, I am not inclined to interfere with the order of the first respondent passed in P.S.A (Appeal)No.1 of 2011 confirming the order dated 19.08.2010 passed by the second respondent in P.S.A.No. 4 of 2007 and this writ petition stands dismissed accordingly. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

PJL

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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

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+1 CC to M/s.SPL GP (SR-10156[F] dated
10/03/2021)

+1 CC to Mr.M.E.ILANGO, Advocate (SR-
10493[F] dated 11/03/2021)

**W.P (MD) .No.11666 of 2012
09.03.2021**

VB (26.03.2021) 4P 5C