



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD) No.10185 of 2013

and

M.P.(MD) No.1 of 2013

WEB COPY

The Management,
Z-322 Thirubuvanam Silk Handloom Weavers
Cooperative Production and Sales Society Limited,
represented by its Administrator/Assistant Director,
Thirubuvanam, - 612 103, Thanjavur District. ... Petitioner

vs.

- 1.The Deputy Commissioner of Labour,
Office of the Deputy Commissioner of Labour,
Thiruchirappalli - 20.
- 2.The Assistant Commissioner of Labour (Gratuity),
Office of the Deputy Commissioner of Labour,
Tiruchirappalli - 20.

3.K.Varadharajan ... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned order passed by the first respondent in P.S.A.A.No.1 of 2012, dated 19.12.2012 confirming the order passed by the second respondent in P.S.A.No.16 of 2005, dated 21.12.2011 and quash the same.

For Petitioner	: Mr.D.Shanmugaraja Sethupathi
For R1 and R2	: Mr.K.S.Selva Ganesan
	Government Advocate
For R3	: Mr.R.Subramanian

O R D E R

This Writ Petition is filed to quash the impugned order passed by the first respondent in P.S.A.A.No.1 of 2012, dated 19.12.2012 confirming the order passed by the second respondent in P.S.A.No.16 of 2005, dated 21.12.2011.

2.Heard Mr.D.Shanmugaraja Sethupathi, learned Counsel for the petitioner and Mr.K.S.Selva Ganesan, learned Government Advocate appearing for the first and second respondents.

3.The petitioner is a Cooperative Society for Weavers and is registered under the provisions of Tamil Nadu Societies Registration

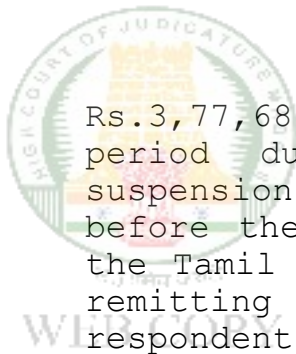
<https://hcservices.ecourts.gov.in/hcservices/>



Act. The third respondent in this Writ Petition was working in the petitioner Society as a Clerk. While the third respondent was working in Chennai Sales Centre, it is alleged that he has misappropriated a sum of Rs.9,54,419.70/-, which is the amount, the third respondent has failed to remit after selling and realising the price for the materials produced by the Society. Immediately after the misappropriation, it is alleged that the third respondent took leave from 26.10.1998 to 03.11.1998 and even after the expiry of the leave period, it is further stated that the third respondent did not report duty and absconded. The petitioner issued a charge memo to the third respondent for the alleged misconduct of misappropriation as well for unauthorized absence. The third respondent was placed under suspension in contemplation of the disciplinary proceedings, by order, dated 18.11.1998.

4.It is stated by the petitioner in the affidavit filed in support of this Writ Petition that the third respondent has approached the management of the Society to drop the proceedings under the pretext that he would remit the entire amount stated to have been misappropriated by him. A few representations, dated 04.11.1998 and 05.01.1999 are produced before this Court to indicate that the third respondent had undertaken to settle the amount misappropriated from the Society within a period of two months from the date of his representations. The third respondent's father also gave an undertaking on 09.07.1999 to stall the criminal prosecution being proceeded against the third respondent. It is also the specific case of the petitioner that the third respondent and his father adopted dilatory tactics to avoid disciplinary proceedings and criminal proceedings with an intention to delay the disciplinary proceedings. It is admitted that a charge memo was issued on 18.08.2004 with specific charges against the third respondent for misappropriation as well as for unauthorized absence. A criminal case was also registered against the third respondent in Cr.No.6 of 2005 by Commercial Crime Investigation Wing for the offences punishable under Sections 408, 477(A) r/w 109 of IPC.

5.Despite the fact that a charge memo was issued on 18.08.2004, it is stated that the third respondent came up with an explanation only in 2006. It is admitted that the third respondent was imposed with a punishment of termination by order, dated 11.01.2007. Thereafter, the third respondent filed an application before the second respondent for getting subsistence allowance for the period of suspension by invoking the provisions of Tamil Nadu Payment of Subsistence Allowance Act, 1981. The petitioner management resisted the third respondent's claim mainly on the grounds that the third respondent had dragged the disciplinary proceedings and hence he is not entitled to subsistence allowance and that the third respondent is not an employee, but, was working as a person in managerial cadre, as an Officer of the Society. The second respondent, by order, dated 21.11.2011, allowed the



Rs.3,77,689/- towards payment of subsistence allowance for the period during which the third respondent was placed under suspension. Thereafter, the petitioner preferred a statutory appeal before the first respondent, who is the Appellate Authority under the Tamil Nadu Payment of Subsistence Allowance Act, 1981. After remitting the amount, which was directed to be paid to the third respondent, the appeal was entertained but dismissed by the first respondent by order, dated 19.12.2012. Aggrieved by the order of second respondent, as confirmed by the first respondent, the petitioner Management has preferred the above Writ Petition.

6.The learned Counsel for the petitioner submitted that the third respondent is not an employee and that therefore, the provisions of Tamil Nadu Payment of Subsistence Allowance Act, 1981, is not applicable. The learned Counsel for the petitioner then submitted that the third respondent, who has admitted the charge of misappropriation to the tune of Rs.10,00,000/-, is not entitled to invoke the provisions of Tamil Nadu Payment of Subsistence Allowance Act, 1981, on moral grounds. The learned Counsel for the petitioner further submitted that the third respondent was adopting dilatory tactics with a clear intention to drag on the departmental proceedings as well as the criminal proceedings.

7.Pointing out that the third respondent submitted his explanation after the period of two years from the date of charge memo, it is contended by the learned Counsel for the petitioner that the third respondent is entitled to only 50% of subsistence allowance during the period of suspension. It is alleged by the petitioner that the third respondent did not cooperate for the domestic enquiry. Completion of departmental proceedings was delayed only by the conduct of the third respondent. Since the third respondent was responsible for the delay in completing the departmental proceedings, it is contended by the learned Counsel for the petitioner that the impugned order of first respondent confirming the order of the second respondent is unsustainable, as they have not considered the provisions of Section 3 of Tamil Nadu Payment of Subsistence Allowance Act, 1981.

8.The learned Counsel for the petitioner also pointed out that the respondents 1 and 2 did not consider the issue based on the admitted facts and materials. The learned Counsel also advanced an argument that the third respondent, who is claiming subsistence allowance, has to plead and prove that he was not gainfully employed during the period of suspension and that he is not entitled to subsistence allowance in the present case in view of the specific stand taken by the petitioner management that the third respondent was gainfully employed during the period of suspension.

9.The learned Counsel for the third respondent, however, <https://www.cesrindia.gov.in/hcsc/hcsc> referred to the findings of the second respondent and the statutory



provisions enabling the third respondent to claim subsistence allowance at the rates prescribed under Section 3 of the Act.

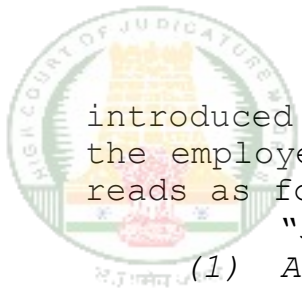
10. This Court considered the facts and the reasonings of the authorities, who have considered the applications submitted by the third respondent claiming subsistence allowance for the period during which he was placed under suspension. From the facts, this Court is fully convinced that the third respondent is guilty of grave charge of misappropriation. The allegations against the third respondent is that he had misappropriated nearly a sum of Rs.9,54,419/-. The case of the petitioner is that the third respondent has failed to remit the amount realised/collected sale of goods to the Society. It is seen from the correspondence that the third respondent has submitted letters to the effect that a huge amount has to be recovered from the customers and that he would settle the amount due to the Society after collecting the said amount from the customers. A similar representation was also submitted by the father of the third respondent.

11. Though several grounds were raised by the petitioner, the petitioner has not come forward to explain under what circumstances the issuance of charge memo was delayed. It is to be noted that the misappropriation was during the time when the third respondent was handling the amounts by selling commodities produced by the petitioner Society. The actual misappropriation was proved in the connected proceedings and punishment was also imposed. It is also admitted that the punishment of dismissal has become final, as no further revision or appeal is preferred by the third respondent.

12. Though this Court is also convinced that the third respondent has committed misconduct of misappropriation, while he was holding a responsible position, this Court is able to see that no prompt action was taken against the third respondent to recover the amount that was misappropriated by the third respondent from the petitioner Society. Be that as it may, this Court, in the present context, has only a limited jurisdiction to decide whether the order impugned in the Writ Petition can be sustained or not. As indicated above, the learned Counsel for the petitioner focussed the following issue:

"Whether the third respondent, who misappropriated a huge sum to the tune of Rs.9.5 lakhs from the petitioner Society, can be shown any indulgence by giving subsistence allowance for the period during which the third respondent was placed under suspension?"

13. The third respondent has played fraud to siphon off a big sum from the Society taking advantage of his official position. In such circumstances, the learned Counsel for the petitioner raised an issue as regards reimbursement of the amount to the Society. The argument is not supported by any of the provisions of the Act. The



introduced to provide for the payment of subsistence allowance to the employee during the period of suspension. Section 3 of the Act reads as follows:

"3.Payment of subsistence allowance-

(1) An employee who is placed under suspension shall, during the period of such suspension, be entitled to receive payment from the employer as subsistence allowance, an amount equal to fifty percentum of the wages which the employee was drawing immediately before suspension, for the first ninety days reckoned from the date of such suspension:

Provided that where the period of suspension exceeds ninety days but does not exceed one - hundred and eighty days, the employee shall be entitled to receive, after the said period of ninety days, a subsistence allowance equal to seventy -five percentum of the wages which the employee was drawing immediately before his suspension:

Provided also that where the enquiry or criminal proceeding is prolonged beyond the period of ninety days for reasons directly attributable to the employee, the subsistence allowance shall, for the period exceeding ninety days, be reduced to fifty percentum of the wages, which the employee was drawing immediately before his suspension.

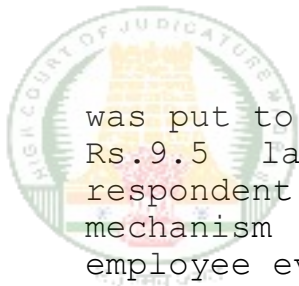
(2) An employee shall not be entitled to receive any subsistence allowance if he accepts any other employment during the period of his suspension in any establishment other than the establishment where he had been working immediately before his suspension.

(3) An employee shall not, in any event, be liable to refund or forfeit any part of the subsistence allowance admissible to him under sub-section (1)

Provided that where the employee is exonerated of the charge based on which his suspension was ordered, the subsistence allowance paid to him for any period shall be adjusted against the full wages admissible to him for the period of suspension.

(4) The subsistence allowance under sub-section (1) shall be paid by the employer to the employee on the date or dates on which the wages due to the employee, but for his suspension, would have become payable."

14. Section 4 of the Act deals with the mode of recovery of money due from an employer. The Authorities under the Act considered the entire evidence in the light of the pleadings and proceedings. In such circumstances, this Court cannot infuse any moral principle to interpret the statutory provisions, especially having regard to the objects set out in the enactment. The Society



was put to much hardship by losing substantial amount to the tune of Rs.9.5 lakhs, which had been misappropriated by the third respondent. Unfortunately, the Act does not provided either a mechanism to collect the amount due to the management from the employee even if the employee has misappropriated a huge amount.

WEB COPY

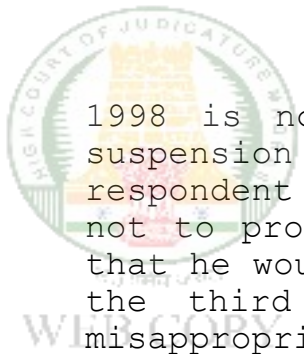
15.The next submission of the learned Counsel for the petitioner is that the third respondent, who is working in the managerial cadre, is not entitled to invoke the provisions of the Tamil Nadu Payment of Subsistence Allowance Act. It is true that the employee is entitled to subsistence allowance. The Act defines the word "employee", to mean any person employed in connection with the work or activities of any establishment to do any skilled, semi-skilled or unskilled, manual, supervisory, technical, clerical or any other kind of work or activities for hire or reward, whether the terms of employment be express or implied.

16.Since the word employee has been broadly defined, the contention of the learned Counsel for the petitioner that the third respondent was working in a managerial cadre and that he is not entitled to subsistence allowance cannot be countenanced. Even according to the learned Counsel for the petitioner, the third respondent was employed only a Clerk. It is not demonstrated before this Court that the third respondent was employed as an Officer in a managerial cadre. The second respondent, after considering the nature of work allotted to the third respondent and other factors, has specifically found that the third respondent is only an employee of the petitioner Society. The finding of the Original Authority was also upheld by the Appellate Authority in the appeal petition preferred by the petitioner.

17.The only issue remaining is whether the third respondent is entitled to the full subsistence allowance, as contemplated or only a fraction namely, 50%, as it was argued by the learned Counsel for the petitioner. In support of his contention, the learned Counsel for the petitioner produced before this Court a series of communications, by which the third respondent and his father had requested that the petitioner Society ought not to have initiated departmental proceedings. It is not in dispute that the third respondent was placed under suspension in contemplation of disciplinary proceedings. Though a charge memo was issued to the third respondent on 10.11.1999, the disciplinary proceedings was not proceeded further in order to complete within a reasonable time. When the petitioner states that the delay was on account of dilatory tactics adopted by the third respondent, it is contended by the learned Counsel for the third respondent that the third respondent did not cause the delay nor any of his activities could be cited as a reason for the delay.

18.This Court has no direct evidence except the communications.

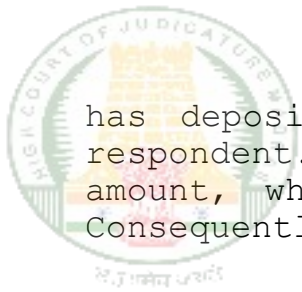
<https://hccases.courtsgov.in/services/> The fourth respondent issued charge memo only in the year



1998 is not in dispute. The third respondent was placed under suspension immediately after the charge memo. Initially, the third respondent appears to have made an attempt to pursue the petitioner not to proceed with the departmental proceedings under the pretext that he would make good the loss caused to the Society on account of the third respondent's conduct. The enquiry relating to the misappropriation was commenced in the year 2004. However, the third respondent submitted his explanation only about two years after the charge memo. In the said circumstances, this Court is of the view that the third respondent should have avoided the delay by cooperating with the petitioner management.

19. Considering the scope of Section 3 of the Act, this Court is of the view that the employee is not entitled to subsistence allowance, as required under Section 3 of the Act, in case, the enquiry or criminal proceedings is prolonged beyond the period of 90 days for reasons directly attributed to the employer. The provisions of Section 3 of the Act specifically provides reduction of subsistence allowance upto 50% of the wages, when the enquiry or criminal proceedings are prolonged beyond the period of 90 days for the reasons, which are directly attributable to the employee. In this case, the third respondent is found to have committed serious irregularity by misappropriating a huge amount from the petitioner Society. The money misappropriated by the third respondent is not recovered. In such circumstances, this Court is of the view that Section 3 of the Act should be considered in the light of the facts. The petitioner at the earliest point of time, did not initiate the departmental proceedings with a hope that the amount could be reimbursed to the Society. The volume of money misappropriated by the third respondent is also relevant and this Court, in a case of this nature, should also consider the interest of the Cooperative Society and its members. The members of the Cooperative Society are Weavers and the money misappropriated was the money payable to the members for their products. In view of the conduct exhibited by third respondent that he had caused loss to the tune of several lakhs and the money misappropriated by the third respondent was three times more than the third respondent's claim from the management, the third respondent cannot be shown any indulgence. In the absence of any statutory provisions to protect the interest of the Society, this Court can atleast reduce the quantum by limiting the liability to 50% of the wages.

20. In view of the discussion above, this Court is inclined to partly allow this Writ Petition. Accordingly, this Writ Petition is partly allowed and the third respondent is entitled to a sum calculated at 50% of the wages. The petitioner is liable to pay 50% of wages even for the period beyond 90 days. The direction of the first respondent is modified by directing the petitioner to pay 50% of the wages for the entire period of suspension, ie., from 04.11.1998 to 31.08.2004. To this extent, this Writ Petition is



has deposited the entire amount as per the order of the second respondent. Hence, the petitioner is entitled to withdraw excess amount, which is lying to the credit of proceedings. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

WEB COPY

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cmr

To

- 1.The Deputy Commissioner of Labour,
Office of the Deputy Commissioner of Labour,
Thiruchirappalli - 20.
- 2.The Assistant Commissioner of Labour (Gratuity),
Office of the Deputy Commissioner of Labour,
Tiruchirappalli - 20.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-27061[F] dated
24/08/2021)

+1 CC to M/s.GP (SR-27203[F] dated 25/08/2021)

W.P.(MD) No.10185 of 2013

23.08.2021

RD(2.09.2021) 8P 5C