



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2021

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.16583 of 2013

and

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

The Management,
O.1020 Tuticorin Co-operative store,
Thoothukudi,
represented by its President.

... Petitioner

VS

1.A.Mohan

2.The Assistant Commissioner of Labour,
(Authority under the payment of Subsistence
Allowance Act)
Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records passed by the second respondent in P.S.A.No.19 of 2012, dated 07.06.2013 and quash the same.

For Petitioner : Mr.S.M.Mohan Gandhi

For Respondents : Mr.A.Prasanna Rajadurai, for R-1
No appearance for R-2

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorari, to call for the records passed by the second respondent, dated 07.06.2013 and quash the same

2. The 1st respondent was initially appointed as Peon in the writ petitioner's stores in the year 1977, then promoted as Clerk and then finally promoted as Manager and has served in the capacity of Manager for a period of 7 years. When the first respondent was working as Manager, has appointed one Mr. Maraippan as "Weighter". The said Mariappan was not possessing proper education qualification. The allegation against the 1st respondent is that he had appointed the said Mariappan, with the knowledge that he was possessing proper educational qualification and concealed the fact. The 1st respondent has not intimated the said fact to the Co-



operative society. In the petitioner's shop the Salesman and the Manager are brothers both have concealed the entire facts and sent proposal for Mariappan's regularization. For this reason, the petitioner was suspended from service on 06.10.2008. After the issuance of show cause notice, enquiry was conducted following the principles of natural justice, the petitioner was dismissed on 22.11.2008. Aggrieved over the same, the petitioner has preferred an appeal under Section 153 of Co-operative Society Act before the Joint Registrar.

3. In the meanwhile, the petitioner has filed P.S.A.No.19 of 2012, claiming a sum of Rs.1,31,153/-. The writ petitioner management had contested the petition before the Joint Registrar stating that the petitioner comes under Managerial cadre and therefore, the petition is not maintainable under Section 2(a) of the Payment of Subsistence Allowance Act. For the proper appreciation, the said provision is extracted hereunder:

"2(a) "employee" means any person employed in or 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 expressed or implied but does not include any such person.

i) Who is employed mainly in a managerial or administrative capacity or

ii) Who being employed in a supervisory capacity (draws wages exceeding three thousand and five hundred rupees per mensem) or exercises, either by the nature of the duties attached to the office or by reason of the powers vested to him, functions mainly of a managerial nature."

4. Admittedly, the first respondent is working as Manager in the petitioner's Cooperative Stores and he cannot be considered as "employee" as per the said Act. However, the Labour Officer has proceeded stating that the petitioner management has not produced adequate evidence that the 1st respondent is serving as Manager. But, it is the contention of the writ petitioner Management that the first respondent has filed a petition before the Labour Court and he himself has stated that he was working as "Manager". There is no factual dispute between the Management and the first respondent. But the Labour Court has erred in stating that no evidence was produced. For the admitted facts evidence is not necessary.



5. In the meanwhile, the appeal filed before the Joint Registrar against the order of dismissal, the Joint Registrar had remanded back the case for a fresh consideration. After the fresh consideration, again the petitioner was dismissed from service on 18.02.2011. During the period of remand back, the petitioner is entitled to subsistence allowance. Therefore, calculating the entire period i.e., from 06.10.2008 to 19.02.2009, the first respondent is entitled to subsistence allowance. Now the question ought to be decided by this Court is whether the petition filed by the first respondent before the Assistant Commissioner of Labour is maintainable or not. As per the Act under Section 2(a) of the Payment of Subsistence Allowance Act, the first respondent will not come under the definition of employee, because the 1st respondent has served as Manager and Managerial cadre, cannot come under the said Act. Therefore, this Court is holding that the Assistant Commissioner of Labour has no power to grant subsistence allowance and entertain the petition to grant subsistence allowance.

6. But the core issue is that the petitioner / Co-operative Stores has challenged the payment of subsistence to the 1st respondent. Even though the 2nd respondent is not having power, this Court has power under Article 226 to mold the relief.

7. The 1st respondent was dismissed from service in the year 2011, the petition was filed before the Labour Officer in the year 2012, the writ petition was filed in the year 2013. At the time of filing the petition before the Labour Officer the 1st respondent was 56 years old. At this point of time, the first respondent cannot be directed to prefer the petition before the appropriate forum. Since payment of subsistence allowance is a beneficial legislation, this Court is of the considered opinion the 1st respondent is entitled to the subsistence allowance.

8. Therefore, this Court is directing the petitioner Management to grant subsistence allowance from 06.10.2008 to 09.01.2011 within four weeks from the date of receipt of a copy of this order. When admitting this writ petition there was an interim stay, directing the petitioner Management to pay subsistence allowance. Till date the petitioner has not paid. Since the interim order is not obeyed, this Court is imposing interest of 6% per annum. The interest shall be calculated after the expiry of eight weeks as stated in the interim order.

(*)9. The management shall pay the subsistence allowance to the first respondent.



10. With the above direction, the Writ Petition is **(*)disposed of.** No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

**(*)Corrected as per the Vide Court order
dated 21.01.2022 made in WP(MD)No.16583 of 2013**

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

jbr

To

The Assistant Commissioner of Labour,
(Authority under the payment of Subsistence
Allowance Act)
Tirunelveli.

+1 CC to M/s.A.PRASANNA RAJADURAI, Advocate (SR-38945[F]
dated 15/12/2021)

Order made in
W.P. (MD)No.16583 of 2013
15.12.2021

NSN (CO)

GC(10.01.2022) 4P 3C

GC(11.02.2022) 4P 3C