



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.11.2021

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THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.18497 of 2013

and

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

- 1.The Manager/Tahsildar,
TASMAC,
I.M.F.L Depot, Sivagangai District.
- 2.The District Manager/Deputy Collector,
TASMAC,
I.M.F.L, Sivagangai District. ... Petitioners

vs

- 1.Thalai Muthu
- 2.The Deputy Commissioner of Labour,
[Appellate Officer under the Tamil Nadu
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 relating to the impugned order, dated 31.01.2012, passed by the second respondent in PSA [Appeal] No.3/2011[DCL/TIN] and to quash the same.

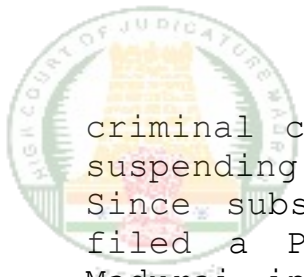
For Petitioners : Mr.H.Arungam
For R-1 : Mr.S.M.Mohan Gandhi

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorari, to call for the records relating to the impugned order passed by the second respondent, dated 31.01.2012, and to quash the same.

2.The first respondent is working as a Salesman in the Writ Petitioner TASMAC Shop No.7621. Since he was involved in a

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criminal case, a Suspension order, dated 11.12.2008, was issued, suspending the first respondent from 19.12.2008 to 19.03.2009. Since subsistence allowance was not paid, the first respondent filed a Petition before the Assistant Commissioner of Labour, Madurai in S.A.7/2009. The Petition was allowed, vide order, dated 11.01.2010, directing the petitioners to pay a sum of Rs.3,600/- (Rupees Three Thousand and Six Hundred only) to the first respondent.

3. Aggrieved over the same, the petitioners filed an appeal before the second respondent i.e., the Deputy Commissioner of Labour. The second respondent, vide order, dated 31.01.2012, confirmed the order of the Assistant Commissioner of Labour. Aggrieved over the same, the present Writ Petition is filed.

4. Heard Mr.H.Arungam, learned Counsel appearing for the petitioner and Mr.S.M.Mohan Gandhi, learned Counsel appearing for the first respondent.

5. The learned counsel appearing for the petitioner had fairly submitted that the TASMAL has enacted an Act in the year 2014 thereby, stating that all the subsistence allowances are allowed to the suspended employees. However, this Writ Petition is prior to 2014 and the period involved is from the year 2008 to 2009.

6. The Act is a benevolent Act. Even though the Tamil Nadu Payment of Subsistence Allowance Act, 1981 is not applicable to TASMAL, the beneficial legislation has to be applicable, irrespective of the applicability of the Act.

7. In **N.Renganathan vs District Manager, Tamil Nadu State Marketing Corporation Limited**, reported in **2010 SCC OnLine Mad 3171**, this Court has held as follows:

"13. Therefore, every employee who is covered by Act 20 of 1946 is now statutorily bound to pay subsistence allowance whether or not there is any Certified Standing Orders available in the establishment. Though in the respondent/TASMAL there are no Certified Standing Orders, the Industrial Employment (Standing Orders) Act, 1946 will apply to them and by virtue of Section 10 A of Act 20 of 1946, they are bound to pay subsistence allowance."

8. Following the above said judgment, this Court is of the view that the first respondent is eligible for the subsistence allowance. This is applicable only to the post of Salesmen and not to the Supervisory post. Therefore, the order passed by the



Assistant Commissioner of Labour and the Appellate Authority
i.e., the Deputy Commissioner of Labour is confirmed.

9. Accordingly, the Writ Petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (Crl)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

tmg/jbr

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

The Deputy Commissioner of Labour,
[Appellate Officer under the Tamil Nadu
Subsistence Allowance Act]
Tirunelveli.

+1 CC to M/s.H. ARUMUGAM, Advocate (SR-34527[F] dated
15/11/2021)

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RK/SKN(22/11/2021) 3P 3C