



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:22.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.(MD).No.9479 of 2012 and M.P.(MD).Nos.1 of 2012 & 3 of 2013

Tamil Nadu Civil Supplies Corporation,
Rep. through its Regional Manager,
Anna Nagar, Madurai.

:Petitioner

-Vs-

1.The Joint Commissioner of Labour,
Dasildar Nagar, Anna Nagar, Madurai-20.

2.The Assistant Commissioner of Labour,
142/1, Sundram Theatre Road,
Near Appollo Hospital, K.K.Nagar, Madurai-20.

3.P.M.Kaliyaperumal

4.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
Old No.42, Thambusamy Street, Kilpauk, Chennai. :Respondents
[the 4th respondent is hereby given up]

PRAYER:Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned order passed by the 1st respondent in P.S.A Appeal No.1 of 2012 dated 23.02.2012 confirming the order passed by the 2nd respondent in P.S.A.Nos. 7 and 8 of 2011 dated 17.10.2011 and quash the same.

For Petitioner : Mr.G.Mohankumar

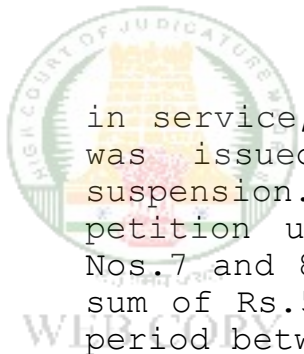
For Respondent Nos.1 and 2: Mr.A.Karthik, Government Advocate

For Respondent No.3 : No appearance

ORDER

This writ petition has been filed to quash the impugned order dated 23.02.2012 passed by the first respondent in P.S.A. Appeal No.1 of 2012 confirming the order passed by the 2nd respondent in P.S.A.Case Nos. 7 and 8 of 2011 dated 17.10.2011.

2.The case of the petitioner is that the third respondent was appointed as a packer in the Tamil Nadu Civil Supplies Corporation and was later promoted as Bill Clerk and was working as Manager in the managerial capacity in the cadre of Bill Clerk at Sapttur Block Direct Purchase Centre and he was the person in charge of the above centre and the nature of duty assigned to him was that he should procure paddy from the farmers in accordance with its standards and transport the same to the godown. In such circumstances, certain allegations were made against the third respondent that while he was



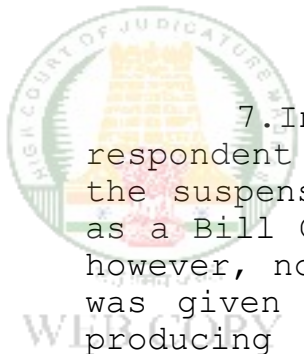
in service, he demanded extra money from the farmers for which he was issued with charge memo and later he was placed under suspension. In the suspension period, the third respondent filed a petition under the Payment of Subsistence Allowance Act in Case Nos.7 and 8 of 2011 on the file of the second respondent claiming a sum of Rs.57,259/- and Rs.33,936/- as subsistence allowance for the period between 24.03.2009 to 31.05.2010 and 01.06.2010 to 31.01.2011 respectively. The said petitions were allowed by condoning the delay. Challenging the said order, the petitioner filed appeal before the respondent in PSA.No.1 of 2012. The said appeal was allowed. Aggrieved by the above said concurrent findings the present writ petition is filed by the Tamil Nadu Civil Supplies Corporation.

3.The learned counsel for the petitioner would submit that before the authority, the petitioner Corporation had taken a stand that the third respondent was employed in the managerial capacity. Hence, the payment of subsistence allowance is not applicable to the third respondent, however, the said ground was rejected by the authority under the Payment of Subsistence Allowance Act, which is non-est in law. Accordingly, he prays for allowing the writ petition.

4.Per contra, the learned counsel appearing for the third respondent in his counter stated that the third respondent was working as a Bill Clerk and he never done any supervisory or managerial duties during his long service of 27 years and hence, he 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.

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 the 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. Admittedly, the third respondent was working as a Bill Clerk, which is not the post of managerial capacity and however, no records were produced to prove that the third respondent was given in-charge of Supervisor and Manager. In the absence of producing such documents by the petitioner, this Court cannot interfere with the order of the Adjudicating Authority. 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 dated 23.02.2012 in P.S.A. Appeal No.1 of 2012 confirming the order passed by the 2nd respondent in P.S.A.Case Nos. 7 and 8 of 2011 dated 17.10.2011 and this writ petition stands dismissed accordingly. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (AD II)

/ True Copy /

Sub Assistant Registrar (CS)

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 Joint Commissioner of Labour,
Dasildar Nagar, Anna Nagar, Madurai-20.
- 2.The Assistant Commissioner of Labour,
142/1, Sundram Theatre Road, Near Appollo Hospital,
K.K.Nagar, Madurai-20.

+1 CC to M/s.R.VIJAYA KUMAR, Advocate (SR-6553[F]dated 22/02/2021)
+1 CC to M/s.SPL GP (SR-6688[F] dated 23/02/2021)

PJL (PA) DKS (CO)
RP/11.05.2021/3P/5C.

W.P (MD) .No.9479 of 2012
22.02.2021