



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) .No.5200 of 2013

and

M.P (MD) Nos.1 and 2 of 2013

WEB COPY

The Management,
A 2190 Jampuduraikottai Primary,
Agricultural Co-operative Bank
Now Called us Jampuduraikottai Primary
Agricultural Co-operative Credit Society Ltd.,
Thro' its Special Officer,
Jampuduraikottai, Kodai Road Via,
Dindigul District.

... Petitioner

Vs.

1.V.Palanisamy

2.The Authority under the Tamil Nadu Payment of
Subsistence Allowance Act,
(The Assistant Commissioner of Labour)
Nehruji Nagar,
Dindigul.

3.The Appellate Authority under the Tamil Nadu Payment of
Subsistence Allowance Act,
(The Deputy Commissioner of Labour)
Thapalthanathi Nagar Main Road,
Krishnapuram Colony,
Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, calling for the records pursuant to the impugned order passed by the 3rd respondent made in PSA Appeal No.3/2012 dated 14.05.2012 and quash the same.

For Petitioner : Mr.P.Saravanan
For R1 : Mr.A.Hariharan
For R2 and R3 : No appearance

ORDER

This Writ Petition is filed for issuance of a writ of Certiorari to quash the impugned order of the third respondent dated 14.05.2012 in PSA Appeal No.3/2012.

2.The petitioner in the writ petition is a Co-operative Society, registered under the Tamil Nadu Co-operative Societies Act.

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

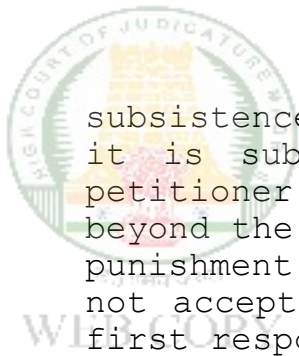


The first respondent in the writ petition was working as a clerk in the petitioner Society. It is stated by the petitioner that the first respondent is also in-charge of sales for some time and during that time, the first respondent committed misconduct. Pending disciplinary action against the first respondent, it is admitted by both parties that the first respondent was placed under suspension by an order dated 22.02.2008. Simultaneously, the petitioner Society issued charge memo dated 13.03.2008 against the first respondent. It is stated by the petitioner that the first respondent submitted his explanation on 25.03.2008 admitting the charges and that therefore, the petitioner Society passed final order on 02.04.2008 imposing the punishment of stoppage of increment for one year without cumulative effect. In the final order dated 02.04.2008, it is also stated that the period of suspension from 22.02.2008 to 02.04.2008 should be treated as leave on loss of pay. It is contended by the petitioner that the petitioner did not join duty, after receiving the order of punishment.

3.Be that as it may, the first respondent has again committed serious irregularities and misappropriation of funds. Pursuant to the enquiry under Section 81 of the Co-operative Societies Act, subsequent charge memo was issued to the first respondent and other employees, after finding that the concerned employees including the first respondent had committed misappropriation of funds from the Society. It is stated that the petitioner Society conducted a domestic enquiry and the first respondent was terminated from service on 29.12.2008, after holding that the charges against the first respondent were proved.

4.In the meanwhile, the first respondent filed an application before the second respondent under Section 3 of the Tamil Nadu Payment of Subsistence Allowance Act, 1981, claiming subsistence allowance for the period from 22.02.2008 to 29.12.2008. The petitioner contested the application on the ground that the first respondent is entitled to subsistence allowance only from 22.02.2008 to 08.04.2008. However, the second respondent by an order dated 25.01.2010, allowed the application and directed the petitioner to pay a sum of Rs.64,899/- towards subsistence allowance for the period from 22.02.2008 to 29.12.2008. Aggrieved by the order of the second respondent, the petitioner preferred an appeal before the third respondent, who dismissed the appeal by the impugned order dated 14.05.2012. Challenging the order of the second respondent and the appellate authority, the above writ petition is filed.

5.Though the learned counsel appearing for the petitioner raised several grounds, the main ground on which the petitioner wanted relief is by pointing out that the suspension of the first respondent was never extended beyond 08.04.2008. In other words, it is the specific case of the petitioner that the disciplinary proceedings initiated against the first respondent culminated in the punishment imposed on 08.04.2008. Since



subsistence allowance is payable only for the period of suspension, it is submitted that there is no statutory obligation for the petitioner to pay subsistence allowance to the first respondent beyond the final order passed by the disciplinary authority imposing punishment. The Original Authority and the Appellate Authority did not accept the contention of the petitioner on the ground that the first respondent was not allowed to join duty, after the final order was passed. The appellate authority did not consider the facts with reference to the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981. The facts are not in dispute. The order of suspension during the pendency of disciplinary proceedings, cannot be extended beyond the period on which the final order came to be passed by the disciplinary authority imposing punishment. Section 3 of the Tamil Nadu Subsistence Allowance Act, 1981, 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 per centum 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 per centum of the wages which the employee was drawing immediately before this suspension:

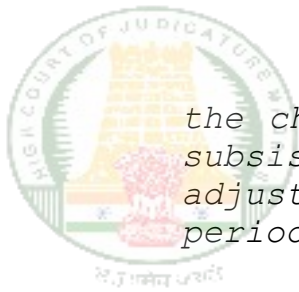
Provided further that where the period of suspension exceeds one hundred and eighty days, the employee shall be entitled to receive wages in full which the employee was drawing immediately before this suspension:

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 per centum 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 this 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



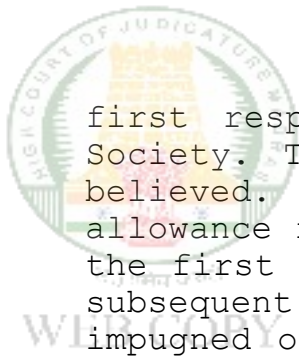
the charge based on which his suspension was ordered, the subsistence allowance paid to him for any period shall be adjusted against the full wages admissible to him for the period of suspension.

(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."

There is no other provisions under the Act to enable the person to claim subsistence allowance by projecting a case of suspension beyond the final order. The appellate authority has come to the conclusion that the first respondent was under suspension till 29.12.2008. It is to be noted that the petitioner himself has admitted before the third respondent that the final order was served on him immediately without any delay.

6.The first respondent during his cross-examination admitted that the final order was passed on 08.04.2008 and that a decision was also taken that the period of suspension will be treated as a period of leave on loss of pay. The appellate authority very strangely held that no order revoking the order of suspension was issued and therefore, it cannot be treated that the order of suspension had come to an end on 08.04.2008. The conclusions reached by the original authority as well as the appellate authority are perverse. When the Act does not contemplate the payment of subsistence allowance beyond the period of suspension, the petitioner has been given the benefit of Act. Subsequently, the final order has come imposing the punishment. It is to be noted that the order dated 08.04.2008 clearly indicates that the period of suspension shall be treated as period of leave on loss of pay. The order dated 08.04.2008 has become final and no appeal is preferred by the first respondent.

7.In such circumstances, this Court is unable to sustain the impugned order passed by the third respondent, confirming the order of the second respondent. The learned counsel appearing for the first respondent submitted that the petitioner is not entitled to canvass the correctness of the order passed by the second or third respondents, especially when it is admitted that no amount of subsistence allowance was paid to the first respondent. The learned counsel further submitted that the first respondent though was willing to join duty, he was prevented from joining the duty. The first respondent does not produce any papers to prove that the petitioner was prevented physically after the final order was passed on 08.04.2008. Not even a representation was submitted by the first respondent about any incident by which the first respondent was prevented from joining duty. May be, it is due to the subsequent charges which are grave in nature, the first respondent did not join duty. It is not for the petitioner Management to explain how the



first respondent did not attend or join duty in the petitioner Society. The case of the first respondent cannot be accepted or believed. The first respondent is not entitled to subsistence allowance for the period which is beyond the scope of the Act. Since the first respondent is not entitled to claim subsistence allowance subsequent to 08.04.2008, this Court is of the view that the impugned order of the third respondent confirming the order of the second respondent is illegal and hence, liable to be quashed.

8.It is submitted by the learned counsel appearing for the petitioner that the entire amount, as per the order of the third respondent had been deposited by the petitioner. It is further stated that 50% of the amount has been withdrawn by the first respondent, pursuant to the permission obtained by him through the Court. In such circumstances, the learned counsel appearing for the first respondent insisted that the amount that was already withdrawn by him should be allowed to be retained by him. This Court is unable to accept such an argument, as the petitioner is not entitled under the Tamil Nadu Payment of Subsistence Allowance Act, 1981.

9.For the reasons stated above, this Writ Petition is allowed and the order of the appellate authority viz., the third respondent, confirming the order passed by the second respondent, is set aside. This Court holds that the first respondent is not entitled to claim anything more than the amount calculated up to the period of final order. No costs. Consequently, connected miscellaneous petitions are closed. It is open to the petitioner to recover the excess amount which had already been withdrawn by the first respondent, pursuant to the order of this Court.

Sd/-

Assistant Registrar (P & A)

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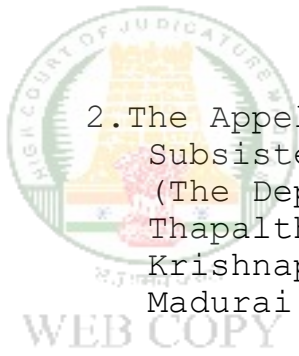
Sub Assistant Registrar(CS)

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

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+1 CC to M/s.A.HARIHARAN, Advocate (SR-27150[F] dated 25/08/2021)
+1 CC to M/s.R.SARAVANAN, Advocate (SR-27239[F] dated 25/08/2021)
+1 CC to M/s.GP (SR-27179[F] dated 25/08/2021)

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