



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2021

CORAM:

THE HONOURABLE DR JUSTICE ANITA SUMANTH

W.P. (MD) No.2334 of 2018

and W.M.P (MD)No.2538 of 2018

WEB COPY

The Management,
T.C.85, Thoothukudi District Central
Cooperative Bank Limited,
Rep. by its Managing Director,
No.109/5-D, Ettayapuram Road,
Thoothukudi.

... Petitioner

Vs.

1.The Deputy Commissioner of Labour,
Appellate Authority under Tamil Nadu,
Payment of Subsistence Allowance Act,
O/o the Deputy Commissioner of Labour,
Madurai.

2.The Assistant Commissioner of Labour,
Authority under Tamil Nadu Payment of
Subsistence Allowance Act,
Tirunelveli.

3. Leela

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari to call for the records pertaining to the impugned order passed by the second respondent vide P.S.A.No.8/2011 dated 20.09.2012 and consequential order passed by the first respondent vide P.S.A.A.No.2/2017 dated 31.07.2017 and quash the same.

For Petitioner	:	Mr.D.Shanmugaraja Sethupathi
For R1 & R2	:	Mr.K.S.Selvaganesan
		Additional Government Pleader

O R D E R

Heard Mr.Shanmugaraja Sethupathi, learned counsel for the petitioner and Mr. Selvaganesan, learned Additional Government Pleader for the respondents 1 and 2. Service is not complete upon the third respondent. Private service ordered on the last occasion has also been returned with an endorsement 'no such addressee'.

2. However, in view of the fact that the writ petition is not being entertained for the reasons set out in the paragraphs to follow, non-service upon the third respondent may not be so material.



3. The petitioner is the Thoothukudi District Central Cooperative Bank Limited (petitioner/employer) and challenges an order passed by the District Collector on 31.07.2017 ordering payment of subsistence allowance (SA) to the third respondent (employee/R3).

4. The first ground argued is that the period for which the SA was paid includes a period of three months which represents delay on the part of R3 in responding to show cause notices issued to her. Thus, and since the delay is fully attributable to R3, no fault attributed to the petitioner and consequently, no liability to SA.

5. However, I am of the view that this argument is liable to be rejected seen in the light of the proviso to Section 3 of the Tamil Nadu Payment of Subsistence Allowance Act (Act). The relevant provision and proviso thereto, read thus:

3. Payment of subsistence allowances: (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 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.

6. Section 3 provides for the payment of SA and the thrust of the third proviso is upon a situation where the employee concerned has delayed matters willfully. Such burden of proving undue and wilful delay falls wholly upon the employer. In the present case, excepting to seek the benefit of the proviso, there are no materials placed on record by the petitioner to show that the employee has prolonged the period of enquiry unreasonably.

7. Mere reliance upon the proviso to Section 3 cannot serve to discharge the burden placed upon the employer, except if there are materials brought on record by the aggrieved party to establish unreasonable delay, consciously designed to obtain undue and unfair benefit. This has not been done in this case. This argument is thus rejected.



8. The second ground agitated is that R3 was in fact gainfully employed during the period of enquiry. Again, apart from a bald assertion as aforesaid, no material is placed on record to establish this allegation. It is incumbent upon the petitioner to have produced proof in this regard which has not been done and hence, I reject this argument as well.

9. The impugned order stands confirmed and this Writ Petition, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

CM

To,

1.The Deputy Commissioner of Labour,
Appellate Authority under Tamil Nadu,
Payment of Subsistence Allowance Act,
O/o the Deputy Commissioner of Labour,
Madurai.

2.The Assistant Commissioner of Labour,
Authority under Tamil Nadu Payment of
Subsistence Allowance Act,
Tirunelveli.

+1 CC to M/s.SPL GP (SR-37897[F] dated 09/12/2021)

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-38067[F] dated 09/12/2021)

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SK(CO)

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