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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.16989 of 2013

The Management,
Pothanur Primary Agricultural Co-operative Bank Ltd.,
Rep. by its Secretary,
Pothanur, Namakkal District. ... Petitioner

Vs.

1.The Deputy Commissioner of Labour/
Appellate Authority,
Tamil Nadu Subsistence Allowance Act,
Salem.

2.The Assistant Commissioner of Labour
in the Office of Deputy Commissioner,
Salem.

3.Kanagasabapathy ... Respondents

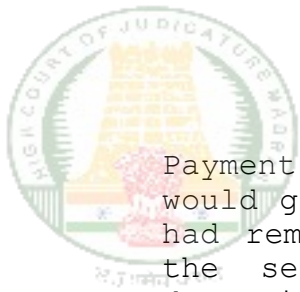
Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of 1st respondent dated 30.12.2012, made in A.P.S.A.No.2 of 2011, by reversing the order of 2nd respondent dated 11.01.2011, made in Substitution Case Nos.2/2001, 3/2001, 13/2004, 28/2005, 21/2006, 1/2008 and 31/2008 and quash the same.

For Petitioner : Mr.S.Umpathy

For Respondents: Mr.C.Selvaraj [R1 & R2]
Additional Government Pleader
Mr.K.Prem Kumar [R3]

ORDER

When the subsistence allowance for the suspension period of the third respondent between 01.03.2000 to 30.11.2001 was not paid, he had challenged the same before the Authorities and ultimately, the Hon'ble Division Bench of this Court in the third respondent's case reported in '2007(5) CTC 392' dated 12.10.2007, had observed that the provisions of the Tamil Nadu



Payment of Subsistence Allowance Act, 1981 (Act 43 of 1981) would govern his claim of subsistence allowance and accordingly, had remitted the matter back to the original authority, namely the second respondent herein, for the limited purpose of determining as to whether the third respondent herein, would fall under the definition of an 'employee' under Section 2(a) of the Act 43 of 1981.

2. By an order dated 11.01.2011, the second respondent had placed reliance on the oral and documentary evidence before him and had come to a conclusion that since the third respondent's duties are Managerial or Administrative in nature, he would fall under the exception to Section 2(a) and therefore, is not an 'employee' as defined under the Act 43 of 1981. The first respondent however, had reversed the finding of the second respondent and held that the third respondent herein, is a workman. Accordingly, the subsistence allowance for the period between 01.03.2000 to 30.11.2001 was determined as Rs.4,45,848/-.

3. The Hon'ble Division Bench while remanding the matter back to the original Authority had observed as follows:-

.....

"65. Unfortunately, neither the third respondent nor the second respondent have ventured to deal with the said issue in the proper manner. Therefore, even while holding that the appellant is entitled to invoke the provisions of the Act 43 of 1981 and while setting aside the order of the learned single Judge, we have no hesitation in setting aside the orders of the second and third respondents impugned in the writ petition and remit the matter back to the third respondent to take up the application of the appellant in PSA No.2 and 3 of 2002 and decide the same after giving a specific finding as to the question whether the appellant falls within the definition of an 'employee' as defined under the Section 2(a) of Act 43 of 1981 and in the event of the third respondent reaching a conclusion that the appellant satisfies the definition of an 'employee' he would be free to pass orders as to the question of subsistence allowance, if any, payable to the appellant.

66. We also hasten to add that the third respondent is not expected to decide the issue relating to the status of the appellant whether he is an employee or not as a preliminary issue. In other words, the said issue shall be dealt with along with



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the merits of the claim of the appellant. But, however, it is made clear that the issue relating to the status of the appellant as an employee shall be tried as the first issue along with other issues. We reiterate that there should not be any piecemeal trial of the proceedings."

4. The direction given in the aforesaid extract would hold good even to the Appellate Authority, since the present impugned order passed by the first respondent herein, is a continuation of the original proceedings of the second respondent. The Hon'ble Division Bench had remitted back the matter to the second respondent in order to render a specific finding on the question, as to whether the third respondent falls within the definition of an 'employee' under the Act 43 of 1981. Though the second respondent herein seems to have dealt with the evidence and rendered his views and ultimately, had come to a conclusion that the third respondent is not an 'employee', the first respondent had simply extracted the relevant portions of the evidence alone and by relying upon a portion of the Division Bench's order, had come to a conclusion that the third respondent herein is a workman.

5. Apart from a stray sentence in the order stating that the statements made in the cross-examination of the third respondent herein deserves consideration, there is no other independent finding rendered by the first respondent to arrive at a subjective satisfaction on the ultimate finding. Though the impugned order runs to about 10 pages, the only sentence which deals with the evidence rendered before the second respondent is that the 'cross examination deserves consideration'. In the absence of any other findings on the status of the third respondent's post, the order of the Appellate Authority could be termed as a non-speaking order and not in conformity with the directions of the Hon'ble Division Bench in the third respondent's case. Since this Court intends to remand the matter back to the Appellate Authority for re-consideration, the merits of the claim made by both the counsels herein, are not discussed.

6. In the result, the impugned order dated 30.12.2012, is set aside and the matter is remitted back to the first respondent for re-consideration. Both the counsels are at liberty to advance the oral arguments/written arguments before the first respondent herein afresh, based on the evidence already let in before the second respondent herein. On consideration of the arguments on either side, the first respondent herein, shall pass a detailed speaking order, within



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a period of three months from the date of receipt of a copy of this order. The Writ Petition stands ordered accordingly. No costs.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

1.The Deputy Commissioner of Labour/Appellate Authority,
Tamil Nadu Subsistence Allowance Act,
Salem.

2.The Assistant Commissioner of Labour
in the Office of Deputy Commissioner,
Salem.

+1cc to Mr.S.Umapathy, Advocate SR.No.20503

+1cc to Mr.K.Prem Kumar, Advocate SR.No.20273

W.P.No.16989 of 2013

SKM(CO)
GMY(19/04/2022)