



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN
W.P. (MD)Nos.13404, 13306 and 18388 of 2013

and

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

WEB COPY

W.P. (MD)No.13404 of 2013

The District Manager/Deputy Collector,
TASMAC,
I.M.F.L.,
Sivagangai District.

... Petitioner

vs.

1.P.Murugan

2.The Deputy Commissioner of Labour,
(Appellate Officer under the Tamil Nadu
Subsistence Allowance Act),
Madurai.

... 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 23.02.2012, passed by the second respondent in PSAA No.1 of 2011 and quash the same.

For Petitioner	:	Mr.S.Satheesh Kumar for Mr.H.Arumugam
For R1	:	Mr.S.M.Mohangandhi
For R2	:	Mr.D.Gandhiraj Special Government Pleader

W.P. (MD)No.13306 of 2013

The District Manager/Deputy Collector,
TASMAC,
I.M.F.L.,
Sivagangai District.

... Petitioner

vs.

1.A.Edwin Charles

2.The Deputy Commissioner of Labour,
(Appellate Officer under the Tamil Nadu
Subsistence Allowance Act),
Madurai.

... 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 03.04.2012, passed by the



WEB COPY

second respondent in PSAA No.5 of 2011 and quash the same.

For Petitioner	:	Mr.S.Satheesh Kumar for Mr.H.Arumugam
For R1	:	Mr.S.M.Mohangandhi
For R2	:	Mr.D.Gandhiraj Special Government Pleader

W.P. (MD)No.18388 of 2013

1.The Manager/Tahsildar,
TASMAC,
I.M.F.L. Depot,
Sivagangai.

2.The District Manager/Deputy Collector,
TASMAC,
I.M.F.L.,
Sivagangai District.

... Petitioners

vs.

1.A.Edwin Charles

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.5/2011[DCL/TIN] and quash the same.

For Petitioner	:	Mr.S.Satheesh Kumar for Mr.H.Arumugam
For R1	:	Mr.S.M.Mohangandhi
For R2	:	Mr.D.Gandhiraj Special Government Pleader

C O M M O N O R D E R

The common issue involved in all these writ petitions is the grant of subsistence allowance to the first respondent by the authorities under the Tamil Nadu Payment of Subsistence Allowance Act, 1981.

2. The first respondent in W.P.(MD).No.13306 of 2013 and W.P.(MD).No.18388 of 2013 was appointed as Supervisor on a consolidated pay and on a contractual basis on 31.01.2004. When the first respondent was working as Shop Supervisor in the TASMAC in

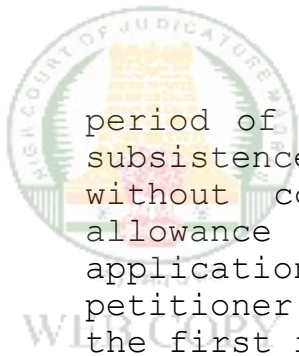


Sivagangai District, he was involved in criminal case. Therefore, the Management suspended him with effect from 08.11.2006. Subsequently, an enquiry was conducted and he was removed from service on 06.05.2016. In the meanwhile, the first respondent approached the authorities for grant of subsistence allowance. But, he was not granted the subsistence allowance. Therefore, he filed an application before the Assistant Commissioner of Labour, for the grant of subsistence allowance for the period from 09.05.2008 to 09.05.2010 in P.S.A.No.3 of 2011, that was resisted by the petitioner. However, the Assistant Commissioner of Labour, directed the petitioner to pay subsistence allowance of Rs.72,097/- for the period from 09.05.2008 to 09.05.2010. Against which, the petitioner has filed an appeal before the Deputy Commissioner of Labour in P.S.A.No.5 of 2011. The Deputy Commissioner of Labour, Madurai had confirmed the order of the Assistant Commissioner of Labour and dismissed the appeal. Challenging the said dismissal order, W.P. (MD).No.13306 of 2013 is filed.

3. Similarly, the first respondent filed P.S.A.No.10 of 2008 before the Assistant Commissioner of Labour, for grant of subsistence allowance for the period from 08.11.2006 to 08.05.2008. That application was allowed. The appeal filed against the order before the Deputy Commissioner of Labour in P.S.A.No.5 of 2011 was dismissed. Challenging the dismissal of this appeal, W.P.(MD).No.18388 of 2013 was filed.

4. In W.P.(MD).No.13404 of 2013, the first respondent was working as Shop Supervisor in the TASMAL, Sivagangai District. Since he was involved in a criminal case, the Management issued suspension order dated 27.04.2009. He filed an application under the Tamil Nadu Subsistence Allowance Act, claiming subsistence allowance from 27.04.2009 to 28.10.2009, before the Assistant Commissioner of Labour. The Assistant Commissioner of Labour ordered to pay a sum of Rs.13,125/- as subsistence allowance on 04.04.2011. Against the order, the petitioner preferred an appeal in P.S.A.No.1 of 2011 before the Deputy Commissioner of Labour, Madurai. The said appeal was partly allowed with the modification of the period of entitlement of subsistence allowance and in all other aspects, the order of the Assistant Commissioner of Labour was confirmed. Challenging the said order in appeal, the petitioner filed the W.P. (MD)No.13404 of 2013.

5. The learned counsel appearing for the petitioners in these cases raised two common grounds. One is that the first respondent in these writ petitions were appointed as the Supervisor, on a consolidated pay and on a contractual basis and they are not permanent employees. Therefore, they are not covered by the definition of 'employee' under Section 2 of the Tamil Nadu Payment of Subsistence Allowance Act, 1981. Next submission of the learned counsel for the petitioner is that the applications seeking for subsistence allowance were filed out of time i.e., not within a



period of one year from the date the cause of action for claim of subsistence allowance arose and there was a huge delay. However, without considering the huge delay in filing the subsistence allowance applications, the authorities below allowed the applications. On these grounds, the learned counsel for the petitioner challenged the order granting subsistence allowance to the first respondent in these cases.

6. Per contra, the learned counsel appearing for the first respondent submitted that once an employee is suspended, it is his fundamental right to be paid subsistence allowance for subsistence. However, the petitioner not only paid the subsistence allowance, but seriously agitated the matter before the Assistant Commissioner of Labour and then before the Deputy Commissioner of Labour. Even after both the authorities found in favour of the first respondent and ordered the grant of subsistence allowance, they filed these writ petitions, challenging the orders passed by the Deputy Commissioner of Labour. These continuous litigation caused the delay of filing the subsistence allowance applications. The issue with regard to the delay in filing the subsistence allowance applications was taken up by the petitioner before the authorities. The authorities after having found that the reason stated by the first respondent in all these writ petitions for the delay in filing the applications was a genuine, accepted the reason and condoned the delay. Therefore, it is not open for the petitioner to raise the issue of delay aspect now. He further submitted that Section 2 of the Tamil Nadu Payment of Subsistence Allowance Act, 1981, defines the term 'employee'. The first respondents, who were employed as Supervisors were doing every other work in a TASMAL Shop. They were also paying less than Rs.3,500/-. They are squarely covered by the definition of 'employee' under Section 2 of the Tamil Nadu Payment of Subsistence Allowance Act, 1981. He also pressed into service the order passed in W.P.Nos.24146 and 24394 of 2009, to buttress the claim of entitlement of subsistence allowance to the TASMAL employees, the first respondent, in particular in these cases.

7. This Court has considered the rival submissions and perused the materials available on record.

8. This Court considered the orders passed by the authorities. The submission of the learned counsel for the petitioner with regard to the delay was taken up before the Assistant Commissioner of Labour and before the Deputy Commissioner of Labour. Both the authorities have found the reason stated by the first respondent for the delay in filing of the applications claiming subsistence allowance was real and genuine and thus condoned the delay. As rightly pointed out by the learned counsel for the first respondent that the petitioner is not paying subsistence allowance even after the order passed by the Assistant Commissioner of Labour, preferred the appeal before the Deputy Commissioner of Labour and then filed these writ petitions. Payment of subsistence allowance is a



continuous process till the departmental enquiry is concluded. It gives a continuous cause of action for a delinquent. Therefore, the considered view of this Court is that the delay aspect has been considered favourably by the authorities below. This Court does not want to interfere with the finding given with regard to the delay.

WEB COPY

9. The next contention with regard to the claim of the petitioner that the first respondent in all writ petitions are the Supervisors and therefore, they are not an 'employee' as defined under Section 2 of the Tamil Nadu Payment of Subsistence Allowance Act, 1981. It is pertinent to refer the provision under Section 2 (a) of the said Act.

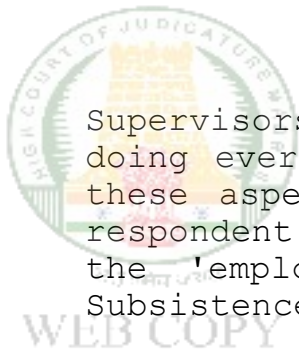
"Section 2(a): "employee" means any person employed in, or in connection with the work or activities of, any establishment to do any skilled, semi-skilled or unskilled, manual, supervisory, technical, clerical or any other kind of work or activities for hire or reward, whether the terms of employment be expressed or implied, but does not include any such person.

(i) who is employed mainly in a managerial or administrative capacity; or

(ii) who, being employed in a supervisory capacity draws wages exceeding three thousand and five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested to him functions mainly of a managerial nature."

10. Section 2 (a) (ii) of the said Act refers about the person employed in a supervisory capacity exercising the duties attached to the office or functions mainly of the managerial nature, and drawing wages exceeding three thousand and five hundred per mensem and excludes him from the definition of the term 'employee'. In these cases before hand, it is the submission of the learned counsel for the first respondent that the first respondent in all these writ petitions are receiving only a sum of Rs.3,000/- per month as wages.

11. It appears from the impugned order in W.P.(MD).No.13404 of 2013 that the first respondent Murugan was drawing a sum of Rs.3,500/- per month as wages. There is a dispute with regard to a consolidated pay band of Murugan. It is seen in the affidavit of the first respondent that he was drawing a sum of Rs.4,000/- per month. On the other hand, the counter of the petitioner shows that the Murugan was appointed on a consolidated sum of Rs.3,500/- per month. The Deputy Commissioner of Labour found that the Murugan was paid at the rate of Rs.3,500/- per month. This Court is inclined to take the finding of the Deputy Commissioner of Labour that the first respondent Murugan received a sum of Rs.3,500/- per month as wages. Thus, in the considered view of this Court, though the first respondent in all the writ petitions had been appointed as



Supervisors, as per the submission of their learned counsel they are doing every other work in the TASMAC. Taking into consideration of these aspects, this Court comes to the conclusion that the first respondent in all these writ petitions come under the definition of the 'employee' under Section 2 of the Tamil Nadu Payment of Subsistence Allowance Act, 1981.

12. When the similar issue came up before this Court in W.P.Nos.24146 and 24394 of 2009, the Hon'ble MR.JUSTICE K.CHANDRU observed as follows:

"7.The Tamil Nadu Legislature has passed the Tamil Nadu Payment of Subsistence Allowance Act, 1981 (Act 43 of 1981) providing for subsistence allowance in case of any workman who is suspended. Under Section 3 of the Act 43 of 1981, it is stated that 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. The said section has delineated the rate of subsistence allowance payable to an employee.

11.This Court has already held in respect of TASMAC that the provisions of the Industrial Employment (Standing Orders) Act, 1946 (Act 20 of 1946) will apply to the employees engaged by the TASMAC and by virtue of Section 12A of Act 20 of 1946, the Model Standing Orders will also apply to the said employees. Under the said Act, it is immaterial whether an employee is engaged temporary, casual or permanent. But in all those cases the provisions of the Model Standing Orders will have to be applied. Under Model Standing Order 17(4)(b), an employer is bound to pay subsistence allowance. Here also the Model Standing Order contemplates payment of subsistence allowance both on the ground of disciplinary proceedings pending or criminal proceedings pending against the employee and the rate of payment of subsistence allowance is also mentioned therein.

12.Apart from these legal provisions, the Parliament has introduced Section 10A under Act 20 of 1946, which reads as follows:

"Section 10A. Payment of subsistence allowance. (1) Whether any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance.

(a) at the rate of fifty per cent, of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and ...

13. Therefore, every employer 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/TASMAC there are no Certified Standing Orders, the Industrial Employment (Standing Orders) Act, 1946 will apply to them and by virtue of Section 10A of Act 20 of 1946, they are bound to pay subsistence allowance."

WEB COPY

13. From the reading of this order, it is made clear that though the TASMAC has no Certified Standing Orders, the Industrial Employment (Standing Orders) Act, 1946, will apply and by virtue of Section 10A of Act 20 of 1946, TASMAC is bound to pay subsistence allowance.

14. Admittedly, in these cases, the first respondent was not paid the subsistence allowance from the date of suspension, which they are legally entitled to. This Court finds that there is no merit in these writ petitions, challenging the order passed by the Deputy Commissioner of Labour.

15. In this view of the matter, the orders passed by the Deputy Commissioner of Labour in PSAA No.1 of 2011, dated 23.02.2012, PSAA No.5 of 2011, dated 03.04.2012 and PSA(Appeal) No.5/2011[DCL/TIN], dated 31.01.2012 are confirmed and these Writ Petitions are dismissed.

16. It is represented by the learned counsel for the petitioner that the subsistence allowance was already deposited before the authorities. Therefore, the first respondent in all these writ petitions are permitted to withdraw the amount by filing appropriate petitions. If not deposited, the writ petitioner is directed to pay the amount within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

akv

To

1.The Deputy Commissioner of Labour,
(Appellate Officer under the Tamil Nadu
Subsistence Allowance Act),
Madurai.



2.The Deputy Commissioner of Labour,
(Appellate Officer under the Tamil Nadu
Subsistence Allowance Act),
Tirunelveli.

+1CC to Mr.H.Arumugam, Advocate, Sr.No. 26642/2022

W.P. (MD)Nos.13404, 13306 and 18388 of 2013
15.06.2022

CK(CO)
KB(30.06.2022) 8P 4C