



W.P.(MD).No.8499 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.8499 of 2019

and

W.M.P(MD)No.6646 of 2019

The District Manager,
Tamil Nadu State Marketing Corporation,
Sivagangai,
Sivagangai District.

... Petitioner

Vs.

1.A.Edwin Charles

2.The Deputy Commissioner of Labour,
(Officer under Tamil Nadu Subsistence allowance),
Office of Joint Commissioner of Labour,
Madurai-02.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned order dated 08/10/2018 passed by the 2nd respondent in P.S.A.No. 04 of 2017 and quash the same.

For Petitioner : Mr.H.Arumugam

For R1 : Mr.S.M.Mohan Gandhi



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For R2 : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

The present writ petition has been filed challenging an order, dated 08.10.2018 passed by the 2nd respondent in P.S.A.No.4 of 2017.

2. The petitioner is a company incorporated under the Companies Act, 1956. The 1st respondent was working as a supervisor in TASMACH Shop No. 7621. He was involved in a criminal case. Hence, the management suspended the 1st respondent from service from 08.11.2006. The 1st respondent had filed an application before the 2nd respondent claiming subsistence allowance for a period from 10.05.2010 to 10.03.2016. The contention of the respondent is that since the 1st respondent's employment is temporary and on contractual basis and he is not entitled to any pay based on the principles of "No Work No Pay" and hence the claim of subsistence allowance will not arise.

3. The petitioner has filed another writ petition in W.P(MD)No.13404 of



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2013 and batch and the validity of the order was under challenge. The 1st respondent therein had filed the application for subsistence allowance for the subsequent period claiming Rs.2,10,097/- (Rupees Two Lakh Ten Thousand and Ninety Seven only).

4. The learned Additional Government Pleader submitted G.O.Ms.No.3, Labour and Employment (E1) Department, dated 08.01.2018 wherein the Government has re-designated certain post and amendment to the Special Rules was issued. The contention of the petitioner is that the Deputy Commissioner of Labour is not the appropriate authority, but the Assistant Commissioner of Labour is the appropriate authority. However, based on the amended rules in G.O.Ms.No.3, the post of Assistant Commissioner of Labour is re-designated as Deputy Commissioner of Labour. Therefore, the issue raised in this writ petition is answered by producing G.O.Ms.No.3. Therefore, this writ petition cannot be entertained on this plea. Hence, the said plea is rejected.

5. The other pleas that are raised by the writ petitioner was already considered by the learned single Judge of this Court in W.P(MD)Nos.13404, 13306 & 18388 of 2013, dated 15.06.2022. The relevant portion of the order is



extracted hereunder:

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“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.

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



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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 TASMAL. 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.



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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."

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.



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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."

6. The learned Single Judge has held that though the TASMAC has no Certified Standing Orders, the Industrial Employment (Standing Orders) Act, 1946 will apply and by virtue of Section 10 A of Act 20 of 1946, TASMAC is bound to pay subsistence allowance. Therefore, this Court is also of the considered opinion that TASMAC is bound to pay the subsistence allowance and the order passed by the Deputy Commissioner of Labour is legally sustainable. Hence, this Court is not inclined to entertain this writ petition.

7. Therefore, this Writ Petition stands dismissed. The petitioner is directed to pay the subsistence allowance to the 1st respondent within a period of twelve (12) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.



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NCC : Yes / No
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Internet : Yes/ No

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To

The Deputy Commissioner of Labour,
(Officer under Tamil Nadu Subsistence allowance),
Office of Joint Commissioner of Labour,
Madurai-02.



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S.SRIMATHY, J.

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