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WA.Nos.295, 299 and 303 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.08.2023

Coram:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.Nos.295, 299 and 303 of 2023
and C.M.P.Nos.3078, 3031 and 2995 of 2023

The Joint Registrar/Managing Director,
Dharmapuri District
Central Co-operative Bank,
Dharmapuri

... Petitioner in the above W.As

Vs.

1.The Appellate Authority/
Deputy Commissioner of Labour,
(Payment of Subsistence Allowance Act),
Collectorate Building, Salem – 1.

2.Assistant Commissioner of Labour,
Tamilnadu Payment of Subsistence Allowance Act,
Collectorate Building, Salem – 1.

.... Respondents in the above W.As

3. K.Dhandapani

.... Respondent in W.A.No.295 of 2023

3. G.Venkataraman

....Respondent in W.A.Nos.299 and 303
of 2023

Common Prayer: Appeals filed under Clause 15 of the Letters Patent against
orders, all dated 23.09.2019 made in W.P.Nos.27498, 27497 of 2013 and



24201 of 2012 on the file of this Court.

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For Appellant in all Writ Appeals : Mr.M.S.Palanisamy

For Respondents in all Writ Appeals: Ms.V.Yamunadevi

Special Govt. Pleader – R1 and R2

Mr.R.M.D.Nazurullah

for M/s.K.V.Shanmuganathan

- R3

COMMON JUDGMENT

(Judgment of the Court was delivered by S.VAIDYANATHAN,J.)

The present appeals have been preferred by the Central Co-operative Bank challenging one portion of the order of the learned single Judge directing the appellant/Management to pay subsistence allowance of 50% of the salary within a period of eight (8) weeks from the date of receipt of a copy of that order.

2. The case of the Management is that due to the grave misconduct committed by R3 which resulted in the loss to the bank, they were placed under suspension. Charges have been framed and enquiry officers were appointed. On the ground of non-payment of subsistence allowance, the employees concerned have approached the Assistant Commissioner of Labour, Authority under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 (in short 'PSA PSA 1981 Act') contending that they are entitled to



subsistence allowance initially at the rate of 50% for 90 days, thereafter 75% upto 180 days and thereafter full wages after a period of 6 months.

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3. As far as Dhandapani/ R3 in W.A.No.295 of 2023 is concerned, the Assistant Commissioner of Labour/Original Authority held that he was a workman and entitled to subsistence allowance as prayed for. Aggrieved against the same, the Management has preferred an appeal.

4. The Deputy Commissioner of Labour/Appellate Authority has confirmed the order of the Original Authority and directed payment of subsistence allowance.

5. As far as Venkataraman/R3 in W.P.Nos.299 and 303 of 2023 is concerned, two applications have been made claiming subsistence allowance for two different periods, viz., 03.03.2005 to 01.08.2006 and 02.08.2006 to 02.04.2009. The original authority, for the period 03.03.2005 to 01.08.2006 held that he was a workman and directed payment of subsistence allowance. As against this order, the Management has deposited the amount and preferred an appeal to the Appellate Authority, who confirmed the order of the original authority.

6. For the subsequent period, viz., 02.08.2006 to 02.04.2009, the contention of the Management that Venkataraman is not a workman and he was a Manager was accepted by the original authority and that there is no



need for deposit of any amount, as the employee suffered an adverse order.

However, in the appeal, the appellate authority set aside the order of the Original Authority and held that he is a workman and is entitled to the benefit of subsistence allowance.

7. Aggrieved by the orders of the appellate authority, the Management has preferred Writ Petitions, which were allowed by this Court, however directed the Management to pay subsistence allowance of 50% of the salary to the employees concerned. Aggrieved by the said direction, the Management is before this Court.

8. Learned counsel for the appellant would submit that the learned single Judge while holding that the employees have to approach the authority under the Tamil Nadu Cooperative Societies Act, 1983 (in short '1983 Act') ought not to have directed payment of subsistence allowance. Furthermore, R3 in W.A.Nos.299 and 303 of 2023 is not workman and his cadre is of managerial nature. Hence, the Tamil Nadu Payment of Subsistence Allowance Act is not applicable to him.

9. Per contra, learned counsel for the third respondents would submit that if two enactments provide for remedial measures, the one which is favourable to the employee can be chosen by him. Hence, the employees are entitled to get subsistence allowance as per the provisions of the PSA 1981



Act and the Authorities under the said Act has jurisdiction to entertain their applications. Furthermore, the Appellate Authority has categorically held that the Management has not established the fact that R3 Venkataraman was holding the post in the cadre of managerial nature.

10. Heard the learned counsel on both sides and perused the materials placed before us.

11. The original authority, being a fact finding authority, has rendered a finding that Dhandapani is a workman under the appellant Management. As far as Venkataraman is concerned, the original authority has held in favour of the Management for the period 03.03.2005 to 01.08.2006 and against the Management for the period 02.08.2006 to 02.04.2009.

12. The appellate authority confirmed the findings of the original authority in the case of Dhanadapani and Venkataraman for the first set of period, however reversed the findings of the original authority for the subsequent period in the case of Venkataraman.

13. As regards the contention of the Management that Venkataraman was a Manager and not entitled to subsistence allowance for the subsequent period, the appellate authority has categorically rendered a finding that the employer has not established that Venkataraman was discharging work mainly of managerial nature and hence the employee would be entitled to



subsistence allowance and set aside the order of the original authority dated 08.08.2011 in PSA No.1 of 2010 for the period between 02.08.2006 to 02.04.2009. For the earlier period, viz., 03.03.2005 and 01.08.2006, the employee had the benefit of the order of both the original as well as the appellate authority.

14. Aggrieved by the orders of the appellate authority in confirming the order of the original authority in two cases, viz., P.S.A.Nos.6 of 2010 and 16 of 2008 (W.A.Nos.295 and 303 of 2023) and reversing the order in the case of PSA No.1 of 2010 (W.A.No.299 of 2023) Writ Petitions have been filed before this Court.

15. Learned single Judge while dealing with the contention of the Management that application filed under Tamil Nadu Payment of Subsistence Allowance Act, 1981 ought not to have been entertained by the original authority as the Management comes under the provisions of the Tamil Nadu Cooperative Societies Act, 1983 held that the Tamil Nadu Payment of Subsistence Allowance Act, 1981 will not apply to the employees and that in view of the special enactment, viz., Tamil Nadu Cooperative Societies Act, 1983 (in short '1983 Act'), the employees will have to seek redressal only under the 1983 Act and the Rules thereunder.

16. Having held so, the learned single Judge directed the Management



to pay subsistence allowance of 50% of salary within a period of eight (8) weeks from date of receipt of a copy of that order. Aggrieved by such direction, the Management is before this Court in these appeals.

17. For the sake of convenience, the definition 'employee' as defined under Section 2(a) the PSA 1981 Act reads as follows:

2. Definitions. In this Act, unless the context otherwise requires, -

(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, electrical 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;'

18. A perusal of different provisions contained in the PSA 1981 Act and Rules reveals that the said Act exclusively deals with payment of subsistence allowance and whoever falls within the definition of 'employer', 'establishment' and 'industry' as defined under Section 2(b), (c) and (e)

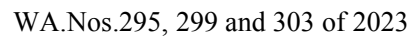


respectively would be governed by the provisions of the said Act. Similarly, whoever falls within the definition of 'employee' as defined under Section 2(a) would be entitled to receive the subsistence allowance for the period of suspension pending disciplinary proceedings.

19. Even though no appeal has been filed by the workmen, they defended these appeals stating that when there are two enactments applicable to the employee, it is open to them to choose one, which is beneficial, and it is not necessary that they have to approach the authority under the 1983 Act. The remedy may be available in case the authority has held that R3 are not workmen, but when they held to be workmen, they are entitled to seek relief either under the PSA 1981 Act or under 1983 Act.

20. When there are two enactments, the employee may choose the one which gives relief and protects their benefits. In the case of *Sant Ram v. Rajinderlal* reported in *AIR 1978 S.C. 1601*, the Hon'ble Supreme Court said that welfare legislation must be interpreted in a third World perspective favouring the weaker and poor class. It has also been held that interpretation of labour legislations should be done by the Courts with more concern with the colour, the context and the content of the Statute rather than its literal import.

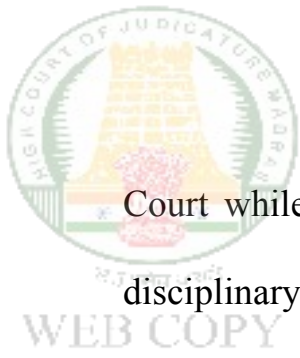
21. In the case of *Nirchiliya and others V. Management of Saffire*.



13. *The Apex Court in Capt. M.Paul Anthony v. Bharat Gold Mines Ltd., and another (1999) 3 SCC 679, of course while considering the payment of subsistence allowance in a case of Government Servant, had in fact, observed that an act of non payment of subsistence allowance could be linked to slow poisoning and if the employee is not permitted to sustain himself on account of non payment of subsistence allowance, he would gradually be starved to death. Further, in Jagdamba Prasad Shukla V. State of U.P. and others (2000) 7 SCC 90, the Apex court has held that the payment of subsistence allowance is a matter of right and not a bounty.*”

26. The aforesaid view has been fortified by the First Bench of this Court in the case of *The Registrar V. M.Elango (W.A.No.1352 of 2019 dated 10.02.2020)*.

27. In the case of **B.D. Shetty And Others vs M/S. Ceat Ltd. And Another.** reported in **2002 (2) Bom.C.R.(S.C.) 601**, the Hon'ble Supreme



Court while dealing with the question whether the `delay in completion of disciplinary proceedings directly attributable to the conduct of a workman under Section 10-A(1)(b) of Industrial Employment (Standing Orders) Act, 1946 held that where a workman is suspended by the employer, pending investigation or inquiry, such a workman has a statutory right to get subsistence allowance and a statutory obligation is cast upon the employer to pay subsistence allowance at the rate mentioned. The Apex Court further held as follows:

When a workman approaches a competent court bonafidely to protect himself from prejudice likely to be caused by continuing proceedings simultaneously in domestic inquiry as also in the criminal case grounded on the same set of facts and succeeds in getting order from a competent judicial authority staying further proceedings in the disciplinary proceedings till the disposal of the criminal case, it cannot be said that delay on that account in completion of disciplinary proceedings is directly attributable to the conduct of such workman. It cannot be denied that a workman is also entitled for a free and fair trial in the criminal case. Hence, if a workman, in order to protect himself from the prejudice that may be caused by simultaneous proceedings, approaches a competent judicial authority and that authority, on being satisfied, taking into consideration the facts and circumstances of



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the case, stays further proceedings in a domestic inquiry pending a criminal trial, delay caused on that account in completion of domestic inquiry cannot be directly attributable to the conduct of such workman because granting stay of further proceedings in a domestic inquiry does not depend on the pleasure or mere wish of a workman himself. May be, in a given case the court may refuse to stay disciplinary proceedings. It is open to the employer to oppose granting order by a competent court staying disciplinary proceedings on all the grounds available to him. If a workman is to be denied subsistence allowance at the rate of 75% under Section 10- A(1)(b), even in a case where he may have a legal right and a good case on merit to get order from a competent court staying domestic inquiry pending criminal trial, he may be forced to suffer in silence. During the period of suspension he has to support his family and survive to fight or defend his case. It appears, reference to the delay directly attributable to the conduct of the workman in the said provision is obviously to the one where the workman unjustifiably, deliberately or designedly drags on or prolongs the domestic inquiry. To put it in other way, a workman cannot be permitted to take advantage of delay caused by himself in the absence of any order passed by a court. If such a delay is also to be taken as covered by Section 10- A(1)(b) it may amount to in a way putting restraint or clog on the exercise of legal right of a



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workman to approach a court of law out of fear of losing subsistence allowance at the rate of 75%. It is one thing to say that in a given case there should be no stay of disciplinary proceedings. It is another thing to say that in case stay is granted there will be delay in completion of disciplinary proceedings, which is directly attributable to the conduct of a workman. Merely because legal proceedings will be pending in a court or before other authority and they take sometime for disposal, may be inevitably, that itself cannot be the ground to deny subsistence allowance to a workman against a statutory obligation created on the employer under Section 10-A(1)(b). One must not lose site of the fact that the Act is a beneficial piece of legislation and the provision of subsistence allowance made is intended to serve a definite purpose of sustaining the workman and his family members during the bad time when he is under suspension pending inquiry. This provision is enacted with a view to ensure social welfare and security. Hence, such a beneficial piece of legislation has to be understood and construed in its proper and correct perspective so as to advance the legislative intention underlying its enactment rather than abolish it. Assuming two views are possible, the one, which is in tune with the legislative intention and furthers the same, should be preferred to the one which would frustrate it.

28. In the case of **Amiya Kumar Biswas vs United Bank Of India And**



Ors. reported in 2006 (4) CHN 53, a Division Bench of the Calcutta High Court held that it is a basic principle of the service law that where an employee is put on suspension, he must get the subsistence allowance as per rules. Following the decision in the case of Andhra Bank V. W.T.Seshachalam reported in 2005 AHC 302, the Calcutta High Court held that even as per the general principles of service jurisprudence, the subsistence allowance payable under the rules cannot be tinkered with.

29. In the present case, the learned single Judge has not dealt with the issue as to whether the employees are workmen or not, however, the learned Judge proceeded on the basis whether the matter fall under the 1983 Act or PSA 1981 Act, which is not correct.

30. In light of the aforesaid judgments mentioned supra, the contention of the employees that after having held that they are workmen and the said finding has not been interfered with by the learned single Judge, directing them to go before the Authority under 1983 Act is not correct, is well founded.

31. The contention that the employees will have to recourse the remedy only under the PSA 1981 Act may not be correct. Though Section 4 of the PSA 1981 Act deals with recovery of money due from an employer, apart from Section 4, there are penal provisions prescribed under the Act, like



Section 9, wherein the employer will have to be prosecuted in Criminal Court and to take appropriate action in terms of Section 11.

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32. Since the payment of money due to the employee more so, the subsistence allowance is a property within the meaning of Article 300 A of the Constitution of India, it cannot be deprived except in accordance with law. In the present case, the same has been deprived and the employees had the benefit of the order of the appellate authority which has been interfered with by the learned single Judge holding that they are entitled to 50% of the same and directing the employees to approach the different forum.

33. The definition under Section 2(a) of the PSA 1981 Act and 2(s) of the Industrial Disputes Act, 1947 are no way different. The Apex Court in the case of Anand Bazar Patrika (P) Ltd. vs. The Workmen reported in (1970) 3 SCC 248 held that minor relegation of duties, which are Supervisory in nature, cannot convert the office work of a Senior Clerk in-charge into that of a Supervisor. It was further held that when a person executes the Supervisory work and incidentally, for a fraction of time, looks after the Clerical Work, then he can be called as a Supervisor and the similar is the situation for a Clerk doing Supervisory work temporarily for a specified period, which cannot at any stretch of imagination be said that he is not a Workman.

34. Though the aforesaid judgment is rendered in the context of



Industrial Disputes Act, 1947, the same principle will apply to the present case also. In the present case, when the appellate authority, who is a fact finding authority, has rendered a finding that R3 are workmen, we do not find any justification to interfere with the same.

35. In light of the discussion supra, we are of the view that the order of the appellate authority needs to be confirmed. Accordingly, the impugned orders stand set aside and these Writ Appeals are dismissed.

36. The appellant/Management is directed to remit the amount as ordered by the appellate authority, if already withdrawn, within a period of one month from date of receipt of a copy of this order and thereafter, R3 in these appeals are entitled to withdraw the same. In case of non-deposit within the time granted now, the employer shall deposit the same with interest at the rate of 12% per annum from the date of the order of the Appellate Authority. If the amount is lying in deposit, R3 shall withdraw the same with accrued interest forthwith. No costs. Connected Miscellaneous Petitions are also dismissed.

(S.V.N.,J) (K.R.S.,J)
02.08.2023

Index: Yes/No
Speaking/Non-speaking order
Neutral citation: Yes/No
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- To
- 1.The Appellate Authority/
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Collectorate Building, Salem – 1.
 - 2.Assistant Commissioner of Labour,
Tamilnadu Payment of Subsistence Allowance Act,
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