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W.P.No.4186 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

W.P.No.4186 of 2020 and
W.M.P.No.4945 of 2020

Sunguvarchatram Growers Co-operative
Bank Limited,
Sunguvarchatram,
Sriperumbudur Taluk,
Kancheepuram District.

... Petitioner

Vs.

1. The Appellate Authority under Payment
of Subsistence Allowance Act, 1981,
The Joint Commissioner of Labour - II,
Chennai - 600 006.

2. The Controlling Authority under the Payment
of Subsistence Allowance Act, 1981.
The Assistant Commissioner of Labour - II,
Chennai - 600 006.

3. K.Thangam

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
seeking for issuance of a Writ of Certiorarified Mandamus, calling for
the records from the respondents 1 and 2 pertaining to the Orders, dated



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28.09.2018 made in I.A.No.1 of 2018 in P.S.A.Appeal No.2 of 2002 and quash the same and direct the first respondent to condone the delay of 5140 days and to proceed with the appeal on merits.

For Petitioner : Mr.B.Hari Babu

For Respondents : Mr.D.Gopal,
Government Advocate
Mr.S.N.Ravikumar for R3

ORDER

The 3rd respondent was working as a Salesman in the Writ Petitioner Cooperative Bank and he was suspended from service with effect from 04.12.1997 on the ground that he misappropriated a sum of Rs.14,50,350/-. This has been admitted by the 3rd respondent himself in the departmental enquiry and therefore he was dismissed from service on 17.10.2001. However, the 3rd respondent raised an Industrial dispute before the Deputy Commissioner of Labour, Thenampet, Chennai and the said petition was dismissed. Thereafter, the 3rd respondent filed a petition before the 2nd respondent / Controlling Authority, Assistant Commissioner of Labour, Chennai in P.S.A.No.2 of 2002, seeking subsistence Allowance for the period from 23.11.1999 to 18.10.2001.



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The said petition was allowed by the 2nd respondent vide his orders dated 24.04.2003. Thereafter, the Writ Petitioner / Management filed an appeal before the 1st respondent / Appellate Authority under the Payment of Subsistence Allowance Act, 1981, the Joint Commissioner of Labour - II, Chennai along with a petition in I.A.No.1 of 2018, for condoning the delay of 5140 days in filing the appeal. The said petition was dismissed by the 1st respondent on 28.09.2018. Aggrieved over the same, the present Writ Petition is filed.

2. Mr.B.Hari Babu, learned counsel for the petitioner contended that the 3rd respondent is actually entitled to 50% of his salary towards subsistence allowance and on the contrary, the 2nd respondent/Controlling Authority had awarded 100% subsistence allowance. Therefore, he prayed for allowing the present Writ Petition.

3. Per contra, Mr.D.Gopal, learned Government Advocate appearing for the respondents 1 and 2 contended that the 3rd respondent was suspended on 04.12.1997 and he was not paid any amount towards



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subsistence allowance from the date of the order of suspension. He, therefore contended that the order passed by the 2nd respondent Controlling Authority is perfectly in order. More over since the Management did not file any appeal within 60 days i.e., the period of limitation stipulated under the Payment of Subsistence Allowances Act, the Writ Petition is liable to be dismissed.

4. It is seen from the records that the 3rd respondent Workman was suspended from service on 04.12.1997 and he had sought for 100 % subsistence allowance for the period from 23.11.1999 to 18.10.2001. It is admitted that the 3rd respondent was dismissed from service only on 17.10.2001. Therefore, he is entitled to 100 % subsistence allowance for the period 23.11.1999 to 17.10.2001. Further more, the petitioner Management did not file any appeal within the period of limitation prescribed under the Payment of Subsistence Allowance Act.

5. In this regard, the learned counsel for the petitioner contended that since they did not receive the copy of the order passed by



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the 2nd respondent Controlling Authority, they could not file an appeal before the appellate Authority within the prescribed time. This contention of the counsel for the Writ petitioner cannot be accepted for the simple reason that the Writ Petitioner had participated in the proceedings before the respondent and they were aware of the Order passed by the concerned authority.

6. In the circumstances, I do not find any reason to interfere with the orders passed by the respondents 1 and 2. Hence, the Writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Speaking/Non-Speaking order
vum



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R. HEMALATHA, J.

vum

To

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