



WEB COPY



W.P.Nos.5388 & 5776 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

W.P.Nos.5388 of 5776 of 2018
and W.M.P.Nos.6630 & 7210 of 2018

JSW Steel Limited,
rep. By its General Manager – HR,
Pottaneri Post, Mettur Taluk,
Salem District-636 453

... Petitioner
(in both petitions)

Vs.

1. The Assistant Commissioner of Labour,
The Authority under Tamil Nadu,
Payment of Subsistence Allowance Act, 1981,
Office of the Assistant Commissioner of Labour,
4th Floor, Collectorate,
Salem.

2. The Deputy Commissioner of Labour,
The Appellate Authority under Tamil Nadu,
Payment of Subsistence Allowance Act, 1981,
Office of the Assistant Commissioner of Labour,
4th Floor, Collectorate,
Salem.

3. S.Selvaraj

... Respondents
(in both petitions)



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PRAYER in W.P.No.5388 of 2018: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the file of the second respondent and to quash the impugned order made in APSA 3 of 2015 dated 25.01.2017 confirming the order passed by the first respondent made in PSA No.2 of 2014 dated 23.02.2015 and consequently, direct the first respondent to return the sum of Rs.2,87,833/- (Rupees Two Lakhs Eighty Seven Thousand Eight Hundred and Thirty Three Only) deposited by the petitioner.

PRAYER in W.P.No.5388 of 2018: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the file of the second respondent and to quash the impugned order made in APSA 2 of 2015 dated 11.05.2017 confirming the order passed by the first respondent made in PSA No.9 of 2012 dated 11.03.2013 and consequently, direct the first respondent to return the sum of Rs.4,82,820/- (Rupees Two Lakhs Eighty Two Thousand Eight Hundred and Twenty Only) deposited by the petitioner.

For Petitioner : Mr.M.Vijayan
(in both Petitions) for M/s.King and Partridge

For Respondents : Mr.S.John J.Raja Singh,
(in both Petitions) Additional Government Pleader
for RR1 & 2
Mr.K.V.Shanmuganathan for R3

COMMON ORDER

Though these Writ Petitions were listed separately in the cause list, since the issue involved in both petitions are one and the same, this Court is inclined to dispose of these petitions by way of this common order.



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2. The writ petitions have been filed seeking to quash the order passed by the second respondent in APSA Nos.2 & 3 of 2015 dated 11.05.2017 & 25.01.2017 respectively confirming the order passed by the first respondent made in PSA Nos.2 of 2014 & 9 of 2012 dated 23.02.2015 & 11.09.2013 respectively and consequently, direct the first respondent to return the respective amounts in these Writ Petitions.

3. It is the case of the petitioner that the third respondent joined as an Engineer in the petitioner's company on 06.07.2005 and was in-charge of dispatching the finished goods at Macheri Road Railway Station. He was inter alia in charge of loading the finished goods in the wagons at Macheri road Railway Station; co-ordinate with the railway officials; to inspect the wagons on arrival and select the goods wagons to be used for loading; hand over the selected lists of wagons to the contractor along with details of materials to be loaded; supervise the loading; prepare party-wise and wagon-wise finished goods loaded list for the rake etc.,

4. On 29.06.2009, the 3rd respondent was at the Macheri Railway Station for selecting the goods wagons loading the finished goods. A consignment of steel belonging to railways had come by mistake in wagon



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No.3. During the inspection of the wagon, the 3rd respondent found that it had come loaded with steel angles and he planned to steal the Railway property and had unloaded the steel angles with the help of unloading contractors. The Railway police detected the theft subsequently, arrested the 3rd respondent on 28.07.2009 and he was lodged in the central staff, Salem from 28.07.2009 and a criminal case is under trial at Judicial Magistrate, Mettur.

5. A charge sheet dated 28.02.2011 was issued to the 3rd respondent for violation of company's code of conduct and the explanation submitted by the third respondent was not satisfactory. An Enquiry Officer was appointed and after conducting enquiry, the EO submitted his report on 16.05.2011 holding that the charges levelled against the third respondent were proved. Thereafter, he was dismissed from service on 30.11.2011. Aggrieved over the same, the 3rd respondent filed an application before the first respondent claiming subsistence allowance for respective periods. The first respondent without considering the facts, mechanically passed the respective orders directing the petitioner to pay the respective amounts to the third respondent. As against the said order, the petitioner has filed respective appeals before the second respondent. The second respondent has also confirmed the same vide the



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impugned orders dated 23.02.2015 & 23.02.2015. Challenging the said order, the petitioner has filed these Writ Petitions before this Court.

6. The learned Additional Government Pleader appearing for the petitioner submitted that admittedly the third respondent was appointed as Engineer and he was posted to work at Pothaneri, Mettur Taluk, Salem District and he was also working under the concerned officer of SISCOL. Further, the very same third respondent has filed a civil suit in O.S.No.304/2011 challenging the disciplinary proceedings initiated by the petitioner Management and the said plaint has been marked, in which, he categorically admitted that he was appointed as an Engineer in despatch section and was holding supervisory role and he is not an employee. However, the same was not properly appreciated by the original authority as well as the appellate authority and the contra finding arrived at by the appellate authority in terms of Section 2 of the Tamil Nadu Payment of Substance Allowance Act, ordering to make respective payments to the third respondent, which is unsustainable one and the said order is perverse and the same is liable to be dismissed.



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7. The learned counsel appearing for the third respondent submitted that the third respondent in his plaint admitted that he was appointed as an Engineer and the appointment order given by the petitioner, in which, the petitioner has mentioned the third respondent as an Engineer. The engineer is skilled person and further he was under the control of the Deputy General Manager or concerned authority. That appointment order itself shows that the third respondent is not employed in supervisory capacity. Hence, he is coming within the definition of Section 2 of the Tamil Nadu Payment of Substance Allowance Act. Hence, the learned counsel prays that the appellate authority has rightly passed the order, which does not warrant any interference.

8. Heard the learned counsel for the petitioner and the learned counsel for the third respondent and perused the materials available on record.

9. The points for consideration is whether the third respondent is an employee as defined under Section 2(a)(ii) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981?

10. The third respondent, who is the workman, was appointed as an Engineer in the petitioner management and he was working under the Deputy



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General Manager of SISCOL. On the earlier occasion, the third respondent was placed under suspension by the petitioner and also a criminal case was register against him by the Railway Department as if he stole the railway property, for which, charge sheet has also been registered. Subsequently, disciplinary proceedings were initiated by the petitioner Management against the third respondent. The said proceedings were challenged before the Civil Court in O.S.No.304/2011 and the same was marked as Ex.M2. In the said plaint, in paragraph No.3, the third respondent admitted that he was appointed as an Engineer in the dispatch section to oversee dispatch of finished products by rail. The third respondent himself admitted that he was appointed as supervisory capacity. Hence, his admission is covered under Section 2(a)(ii) of the Tamil Nadu Payment of Substance Allowance Act. For better understanding, the said section is extracted hereunder:

"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, 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 1 [draws wages exceeding fifteen thousand



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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; "

11. In the present case, the third respondent himself admitted that he has been appointed as supervisory capacity as Engineer. Therefore, the third respondent cannot be brought within the ambit of "employee" under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 since he is an "Officer" as defined under the definition section 2(19) of the Tamil Nadu Cooperative Societies Act, 1983 and as such he is not entitled to file an application before the respondents 1 & 2 herein so as to become entitled to get an order as passed by the said authority, which is impugned herein since the respondents 1 & 2 are ousted from assuming jurisdiction in such matters.

12. In result, the above writ petition deserves to be allowed and, accordingly, the same is allowed and the impugned orders passed by the first respondent is set aside. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

25.08.2023

Index : Yes / No

Netrual Citation Case : Yes / No

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M.DHANDAPANI, J.

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