



WEB COPY



W.P. Nos. 6915 of 2023 etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. Nos. 6915, 6942, 6943, 6946, 6761 & 6769 of 2023
and
W.M.P.Nos. 7015, 7017, 7019, 7040, 7041,
7044, 7045, 7046, 7048, 6845, 6848,
6852, 6856, 6859 & 6861 of 2023**

W.P. No. 6915 of 2023:

B.Suresh Babu

... Petitioner

-VS-

The District Manager,
The Tamil Nadu State Marketing
Corporation Limited,
Udhagamandalam,
Niligiris.

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari to call for the records of the respondent in his proceeding in Na.Ka.No. A1/1961/2018 dated 06.02.2023 and quash the same.

For Petitioners : Mr. K.M.Ramesh
Senior Counsel
For Mr. K.Bharathi (in all WPs)

For Respondents : Mr. K.Sathishkumar (in all WPs)



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COMMON ORDER

WEB COPY Heard Mr. K.M.Ramesh, Learned Senior Counsel for the Petitioners and Mr. K.Sathishkumar, Learned Counsel takes notice for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Respondent is the agency vending liquor to the public across the State of Tamil Nadu and had employed the Petitioners at its Shop No. 8220 in the Nilgiris. In view of the disciplinary proceedings initiated against the Petitioners relating to certain misconduct said to have been committed by them in the course of employment, the Respondent by proceedings in Na.Ka.No.A1 /1961 /2018 dated 06.02.2023 has placed them under suspension pending enquiry, which is assailed in these Writ Petitions. The grievance ventilated by the Petitioners is that the Respondent cannot place them under suspension in the absence of any express provision in the service conditions governing their employment. Further, it is complained that the subsistence allowance has not been paid to the Petitioners during the period of suspension and consequently, they are not in a position to effectively defend themselves in the enquiry without any succor for their sustenance, which is in violation of the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 (hereinafter referred to as 'the Act' for short).



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3. The Respondent contends that it is an intrinsic right of an employer to suspend an employee pending enquiry in the disciplinary proceedings initiated against him, and the Petitioners are not entitled to any emoluments during the period of suspension on the principle of 'no work no pay' in the absence of any such right under contract or legal provision. It is asserted that the suspension is necessary for the proper conduct of the enquiry and that the provisions of the Act are not applicable to the shops where the Respondent vends liquor to the public.

4. Having regard to the rival submissions, it must be pointed out that the Constitution Bench of the Hon'ble Supreme Court of India in ***V.P.Gidroniya -vs- State of Madhya Pradesh*** [(1970) 1 SCC 362] has reiterated that under the ordinary law of master and servant, the power to suspend the servant without pay could not be implied as a term in an ordinary contract of service between the master and the servant, but must arise either from an express term from the contract itself or a statutory provision governing such contract. Further, the absence of such power, either in express terms in the contract, or under the rules expressed under some statute, would mean that the master would have no power to suspend the workman, and even if he does so in the sense to forbid the



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employee to work, he will have to pay the wages during the so-called period of suspension. However, when there is power to suspend either in the contract of employment or the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relationship of the master and the servant with the consequence that the servant is not bound to serve and the master is not bound to pay for the said period. In other words, the general principle is that an employer can suspend his employee pending enquiry into his misconduct, and the only question that can arise in such suspension will relate to the extent of his wages payable during the period of such suspension. That apart, it is beyond any cavil as reiterated by the Hon'ble Supreme Court of India in ***Fakirbhai Fulabhai Solanki -vs- Presiding Officer*** [(1986) 3 SCC 131] that when a suspended employee is unable to defend himself in the enquiry due to non-payment of subsistence allowance, it would result in invalidating the disciplinary proceedings.

5. In the instant case, the Respondent has taken a stand that there is no express provision in the contract or the law governing the employment of its employees relating to suspension pending enquiry, and that the provisions of the Act is not applicable to shops where it vends liquor. In that event, the natural consequence that would follow is that the Respondent would have to pay the



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full amount of wages to the Petitioners on the dates on which it falls due for the period during which they are placed under suspension pending enquiry in the disciplinary proceedings. Viewed from that perspective, it must be held that even though the Respondent may not be able to extract work from the Petitioners during the period they are placed under suspension pending enquiry in the disciplinary proceedings, in the absence of an express provision to the contrary, it is mandatory that the Respondent has to pay subsistence allowance at the rate provided under the Act if it is applicable, failing which full amount of wages would be payable on the dates on which it falls due. In the event of the Respondent failing to carry out the said obligation, the Petitioners shall be entitled to pursue their legal remedies in that regard before the proper forum in accordance with law.

6. In the result, these Writ Petitions are disposed on the aforesaid terms. Consequently connected Miscellaneous Petitions are closed. No costs.

13.03.2023

Sgl

Index: Yes/No

NCS : Yes/No

Note: Issue order copy by 10.07.2023.



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To

1. The District Collector,
Tiruvannamalai District
At Tiruvannamalai.
2. The Tahsildar,
Chengam,
Tiruvannamalai District.
3. The Block Development Officer,
Chengam, Tiruvannamalai District.



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P.D. AUDIKESAVALU, J.

Sgl

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