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WP.No.12354 of 2018

In the High Court of Judicature at Madras

Dated : 04.9.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.12354 of 2018
& WMP.No.14496 of 2018

The Management, Salem
District Central Cooperative
Bank Ltd., Head Office,
Cherry Road, Salem-1.

...Petitioner

Vs

1.The Assistant Commissioner of
Labour (Authority under the
Payment of Subsistence Allowance
Act, 1981), Office of the Deputy
Commissioner of Labour, Salem.

2.Thiru K.Murugesan

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records in P.S.A. No.9 of 2015 on the file of the Assistant Commissioner of Labour, Office of the Deputy Commissioner of Labour, Salem - the first respondent and quash the order dated 05.12.2017 read with the order passed in I.A.No.2 of 2015 dated 21.8.2015.



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For Petitioner : Mr.M.R.Raghavan
For R1 : Mr.M.S.Premkumar, GA
For R2 : No appearance

ORDER

This is a petition filed by the petitioner seeking to quash the orders respectively (i) dated 05.12.2017 in P.S.A.No.9 of 2015 and (ii) dated 21.8.2015 in I.A.No.2 of 2015, both on the file of the first respondent.

2. The facts leading to filing of this case are as follows :

(i) The second respondent was employed in the petitioner bank. During the course of employment, he was found to have indulged in certain criminal misconducts. A criminal case was also registered against him. Thereafter, he was suspended from service by order dated 31.8.2005 i.e on the date of his retirement. Earlier, he filed an application before the first respondent seeking subsistence allowance. However, it was dismissed as withdrawn on 15.9.2009.

(ii) In the criminal case, by the judgment of the Judicial Magistrate No.2, Salem dated 22.4.2008, the second respondent was found guilty of the



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offences under Sections 408 read with 109 of the Indian Penal Code and convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for three months. At the instance of the second respondent by filing an appeal, the said judgment was confirmed by the Additional District and Sessions Court, Salem in CrI.A.No.79 of 2008 by judgment dated 14.10.2011.

(iii) After the judgment was rendered by the Appellate Court, the second respondent filed I.A.No.2 of 2015 before the first respondent seeking to condone the delay in filing the application for payment of subsistence allowance and it was allowed on 21.8.2015. Thereafter, the main case was taken up for hearing and ultimately, by order dated 05.12.2017, the first respondent directed the petitioner to pay the second respondent a sum of Rs.24,92,372/-. Challenging the same, the petitioner is before this Court.

3. The learned counsel for the petitioner submits that the second respondent was convicted by the Criminal Court in C.C.No.232 of 2004 vide order dated 22.04.2008. Prior to the said conviction, the second



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respondent filed an application No.22 of 2006 before the first respondent on 30.06.2006 seeking subsistence allowance for the period from 31.08.2005 till 30.06.2006, however, during the enquiry the second respondent, withdrew the said application, which was later dismissed on 15.09.2009. He further submits that suppressing the above said facts, the second respondent filed another application in P.S.A.No.9 of 2015 before the first respondent seeking subsistence allowance, which was subsequently allowed by the first respondent vide order dated 15.12.2017 which is contrary to law and is wholly unsustainable. Hence, he prayed to allow this writ petition.

4. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the first respondent. Though the second respondent was served and his name printed in the cause list, none appears for him.

5. Admittedly, the second respondent was convicted by the learned Judicial Magistrate II Salem, in C.C.No.232 of 2004 vide order dated 22.04.2008, as against which, the second respondent preferred an appeal in



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C.A.No.79 of 2008, however, the learned Additional District and Session Judge, Salem vide order dated 14.10.2011 confirmed the earlier order of conviction dated 22.04.2008. It is also seen that prior to the said conviction, the second respondent has filed an application seeking subsistence allowance before the first respondent in application No.22 of 2006 on 30.06.2006 which was dismissed as withdrawn vide order dated 15.09.2009. However, even after the said conviction, the second respondent has filed another application in P.S.A.No.9 of 2015 before the first respondent seeking subsistence allowance, the first respondent without considering the conviction of the second respondent and the withdrawal of the earlier application filed by the second respondent, has mechanically allowed said application vide order dated 05.12.2017 with a direction to the petitioner management to pay the subsistence allowance, which is wholly unsustainable.

6. As rightly pointed out by the learned counsel for the petitioner, once the second respondent is convicted for a penal offence, he would not be entitled for claiming any relief from the petitioner. Accordingly, the



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impugned award dated 05.12.2017 passed by the first respondent in P.S.A.No.9 of 2015 on the file of the first respondent read with the order passed in I.A.No.2 of 2015 dated 21.08.2015 are set aside.

7. Accordingly, this writ petition is allowed with the above terms. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No

To

The Assistant Commissioner of Labour (Authority under the Payment of Subsistence Allowance Act, 1981), Office of the Deputy Commissioner of Labour, Salem.



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