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W.P.No. 6838 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

W.P.No.6838 of 2016

and

W.M.P.No.6088 of 2016

The Management of
Erode District Consumer Co-operative Whole Sale Stores Limited
Represented by R. Senthinayakee, General Manager (vs)
77/70, Perundurai Road,
Collectorate Post, Erode 638 011 .. Petitioner

Versus

1. The Appellate Authority under
Tamil Nadu Payment of Subsistence Allowance Act. 1981/
Deputy Commissioner of Labour
Office of the Deputy Commissioner of Labour,
Room No.414, 415,4th Floor,
District Collectorate Building, Salem 636 001.

2. The Controlling Authority under
Tamil Nadu Payment of Subsistence Allowance Act, 1981/
District Collectorate Building, Salem 636 001.

3. S. DurairajRespondents



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Prayer: This writ petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for relevant and connected records relating to the impugned order dated 30.11.2015 passed in the Appeal filed under Rule 5A of Tamil Nadu Payment of Subsistence Allowance Rules ,1981 in APSA No.1/2015 on the file of the first respondent and to quash the same and pass orders.

For Petitioner	:M/s. C.R. Pratap
For Respondents-1 and 2	: Mr.R.P. Murugan Raja Government Advocate
For Respondent-3	:Mr.K.V. Shanmuganathan

ORDER

This Writ petition is filed to issue a writ of certiorari calling for relevant and connected records relating to the impugned order dated 30.11.2015 passed in the Appeal filed under Rule 5A of Tamil Nadu Payment of Subsistence Allowance Rules ,1981 in APSA No.1/2015 on the file of the first respondent and to quash the same and pass orders.



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2. The facts of the case is that the when the 3rd Respondent was working as a salesman in the petitioner/Consumer Co-operative Whole Sale Stores Limited he has committed serious misconduct, due to which he was placed under suspension on 02.06.2011. Thereafter, he was also issued with a charge memo dated 16.08.2011 vide proceedings of the Registrar/Special Officer, calling for his explanation within 7 days therefrom. The third respondent sought further time of 10 days to submitting his explanation and the same was granted. Likewise, the third respondent sought time till the month of November 2011 for giving explanations to the charge memo which was issued on 16.08.2011. Thereafter, inorder to provide one more opportunity the Joint Registrar/Special officer of petitioner Co-operative Wholesale store vide proceedings dated 12.12.2011 initiated domestic enquiry against the third respondent. Only after that the third respondent submitted his explanation dated 13.12.2011 and the same was received on 14.12.2011. It is pertinent to note that the third respondent has also dragged the domestic enquiry proceedings beyond the period of 90 days. When this being the case, the 3rd respondent after a lapse of more than one year has



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filed a petition for condonation of delay before the second respondent in P.S.A IA No.8 of 2013 to claim subsistence allowance and the same was allowed on 23.12.2014 and directed the petitioner to pay a sum of Rs.4,08,470/- as subsistence allowance within a period 30 days from the date of receipt of a copy of the order. Being aggrieved with the amount ordered for payment as the same is very higher, the petitioner herein preferred an appeal before the the first respondent under Rule 5A of Tamil Nadu Payment of Subsistence Allowance Rules ,1981 in APSA No.1/2015 and the same was dismissed vide order dated 30.11.2015. Challenging the same the petitioner is before this Court.

3. The learned counsel for the petitioner submitted that the second respondent has misconceived the last drawn salary of the 3rd respondent herein as Rs.14,000/- per month, whereas the 3rd respondent last drawn salary was only Rs.10,761.80/- Further more, the 3rd respondent deliberately prolonged the period of suspension by not giving explanation to the charge memo and sought time. However, subsistence allowance cannot be granted for more than 50% beyond the period of 90 days. Hence prays to allow this petition.



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4. Per contra the learned Government Pleader submitted that the Learned Judge has passed the impugned order after taking note of the each and every aspects and there is no infirmity in it. Hence prays to dismiss this petition.

5. Heard both sides and perused the materials available on record.

6. Points that arise for consideration before this Court is that whether the 3rd respondent had intentionally dragged the suspension period by belatedly giving explanations to the charge memo, whether the last drawn salary of the 3rd respondent was wrongly arrived at the rate of Rs.14,000/- per month, whereas, the correct one is Rs.10,761.80/- and whether the petitioner is not entitled for subsistence allowance beyond the period of 90 days for more than 50%.

7. With regard to first point, the reason stated by the delinquent is that due to his health condition he was unable to give explanation to the charge memo on time and to controvert the same the petitioner has not



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produced any evidence. However, on a perusal of typed set of papers it is seen that in the letter dated 02.10.2011, the delinquent had stated that he had been affected by kidney stones and hence he could not submit his explanation on time. Accepting the same, the Petitioner/Management has also granted further time for submission of his explanation. Further in letter dated 24.10.2011 the 3rd respondent has sought time to peruse documents, the petitioner by its letter dated 31.10.2011 had permitted the 3rd respondent to peruse the documents on 08.11.2011. Though the 3rd respondent had not submitted his explanation on time, he had obtained permission from the authorities concerned. Hence the finding of the Court below that there is no delay on the part of the delinquent does not need any interference.

8. With regard to other point that there was an error in fixation of the last drawn salary, the petitioner has not proved that the last drawn salary of the 3rd Respondent was Rs.10,761.50/- by producing any proof i.e salary slip etc., and with regard to the issue that the 3rd respondent is not entitled for subsistence allowance beyond the period of 90 days for more than 50% is also not demonstrated perfectly. Hence this Court is



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not inclined to interfere with this findings of the Court below and the same is confirmed.

9. In view of the above, it is made clear that there is no merit in the submission made by the petitioner. Accordingly, this writ petition is dismissed. No order as to costs. Consequently the connected miscellaneous petition is closed.

28.06.2023

Speaking order : Yes/No
Neutral citation : Yes/No
Index : Yes/No
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To.

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V.BHAVANI SUBBAROYAN, J.

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