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W.P.No.11458 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

CORAM :

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

W.P.No.11458 of 2017

The Management,
Tamil Nadu State Transport Corporation,
Ondiputhur Branch-2, Coimbatore.

...Petitioner

Vs.

1. The Deputy Commissioner Labour,
(Appellate Authority acting under the Payment of
Subsistence Allowance Act),
Coimbatore.
2. The Assistant Commissioner Labour,
(Authority acting under the Payment of
Subsistence Allowance Act),
Coimbatore.
3. P.Jayakumar

...Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the 2nd respondent being the Authority under the Payment of Subsistence Allowance Act in PSA.No.2/2013 dated 13.8.2015 and the consequential Appellate Authority order passed by the first respondent in APSA.No.3 of 2016 dated 06.2.2017 and quash the same.



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For Petitioner : Mr.A.Sundaravadhanan

For Respondents : Mr.M.S.Prem Kumar, GA, for R1 & 2
: Mr.V.Ajoy Khose, for R3

ORDER

This Writ petition has been filed seeking quashment of the order of the 2nd respondent dated 13.08.2015 made in PSA.No.2 of 2013 and the consequential order of the 1st respondent dated 06.02.2017 made in APSA.No.3 of 2016.

2. The case of the petitioner is that the 3rd respondent was working in the petitioner management as a driver. When he was assigned duty on 28.6.2012 to ply a bus from Coimbatore to Madurai, due to his rash and negligent driving, he lost control of the bus and hit a lorry on the rear side thereby resulting in an accident, in which, 8 passengers suffered injuries and out of which, one passenger died. In addition to that, the petitioner management suffered a loss of Rs.43,220/- altogether towards damages to the bus and the lorry and revenue loss. Pursuant to that, a criminal case was



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registered against the 3rd respondent and he was suspended from service from 10.07.2012 to 09.08.2012. Subsequently, the departmental proceedings were also initiated against the 3rd respondent. However, the 3rd respondent filed an application in PSA.No.2 of 2013 before the 2nd respondent seeking payment of Rs.1,69,889/- towards differential subsistence allowance for the period from 10.07.2012 to 23.07.2013, on the ground that, the order of suspension was extended till 23.07.2013 and the 2nd respondent, by order dated 13.08.2015, directed the petitioner management to pay a sum of Rs.32,888/- to the 3rd respondent towards differential subsistence allowance. As against the said order of the 2nd respondent, the 3rd respondent filed an appeal in APSA.No.3 of 2016 before the 1st respondent, who in turn, by order dated 06.02.2017, directed the petitioner management to pay the 3rd respondent a sum of Rs.1,39,513/- towards differential subsistence allowance to. Challenging the same, the petitioner is before this Court.

3. Learned counsel for the petitioner submitted that, for the accident committed by him, the 3rd respondent was placed under suspension from 10.07.2012 to 09.08.2012, based on the report of the Traffic Inspectors.



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However, he was subsequently directed to join duty from 09.08.2012, on obtaining necessary No Objection Certificate from the concerned RTO despite which, the 3rd respondent did not report for duty and he joined the duty only on 27.07.2013. While so, claiming subsistence allowance for the period from 09.07.2012 to 23.07.2013 is not sustainable and the 1st and 2nd respondents, without considering any of the above said facts, passed the present impugned orders, which is *per se* illegal and accordingly, prayed for appropriate orders.

4. Learned counsel appearing for the 3rd respondent submitted that, the 3rd respondent received the letter dated 23.10.2012 sent by the petitioner management directing him to join duty from 09.08.2012, only on 29.11.2012. It is pertinent to note that, though in the letter sent by the petitioner management it is stated that, the 3rd respondent has to join duty from 09.08.2012, however, the said letter itself was dated 23.10.2012 only, after the alleged revocation of suspension and the said letter was received by the 3rd respondent only on 29.11.2012 and the said delay cannot be put up against the 3rd respondent and he cannot be denied subsistence allowance



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for the said period. Further, though the 3rd respondent made several representation both personally as well as in the written format, requesting to allow him to join duty and stated that obtaining NOC from concerned RTO is not necessary and his License is not cancelled/suspended, however, there was no response on the part of the petitioner management. In such circumstance, all of a sudden, the petitioner management, vide letter dated 23.07.2013, directed the 3rd respondent to join the duty. Therefore, for the above said period from 09.07.2012 to 23.07.2013, during which period, the petitioner management did not allow the 3rd respondent to join duty in the absence of NOC from RTO, it is the duty cast upon the petitioner management to pay subsistence allowance to the 3rd respondent. Further, even as per the Subsistence allowance Act, 1981, the 3rd respondent is entitled for 50% pay for 90 days, 75% of pay for 180 days and thereafter full salary and though the above said facts were not considered by the 2nd respondent, the same has been elaborately considered by the 1st respondent and the present impugned order dated 06.02.2017 came to be passed, directing the petitioner management to pay the 3rd respondent a sum of



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Rs.1,39,513/- and the same does not warrants interference of this Court.

Accordingly, he prayed for dismissal of this Writ petition.

5. On the above said contentions, heard the learned Government Advocate appearing for respondents 1 and 2 and perused the material documents placed on record.

6. Admittedly, for alleged misconduct committed by him, the 3rd respondent was placed under suspension, vide proceedings of the petitioner management dated 09.07.2012 and subsequently, vide proceedings dated 29.10.2012, the 3rd respondent was allowed to join the duty from 09.08.2012, upon obtaining NOC from RTO, after surrendering/submitting his driving license before the concerned Police station and it is pertinent to note that, the above said proceedings of the petitioner management dated 29.10.2012 was sent by the petitioner management through registered post only on 29.11.2012 and the same was received by the 3rd respondent only on 29.11.2012 and the same is evident from Exhibits marked before the Labour Court.



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WEB COPY 7. Though the petitioner management directed the 3rd respondent to join the duty from 09.08.2012, upon obtaining NOC from RTO, after submitting his driving license before the concerned Police station, however, no proof was submitted by the petitioner management to show that the license of the 3rd respondent was suspended, while so, without any reason, directing the 3rd respondent to obtain NOC from the RTO is not sustainable.

8. In the aforesaid backdrop, the delay caused in allowing the workman to join duty and also unnecessarily asking him to obtain NOC, thereby, leading to delay in joining cannot be put against the workman and for the said period the workman is entitled to subsistence allowance, which aspect has been rightly considered in the appeal and order has come to be passed, which is well reasoned and legally sustainable and does not require any interference. Accordingly, the petitioner management is directed to settle the entire benefits as ordered by the 1st respondent within a period of two weeks from the date of receipt of a copy of this order.



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WEB COPY 9. With the above observations and directions, this Writ petition stands dismissed. No costs.

25.07.2023

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Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

To

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