



W.P.No.31929 of 2018
and W.M.P.No.37164 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

W.P.No.31929 of 2018
and W.M.P.No.37164 of 2018

The Management,
K.Mohammed Basheer & Co.,
Represented by its Manager T.Aadil Ahmed,
M.C.Road, Vinnamangalam,
Minnoor - 635 807,
Ambur Taluk,
Vellore District.

... Petitioner

Vs.

1.K.Kasthuri

2.Controlling Authority,
Under Payment of Subsistence Allowance Act,
Assistant Commissioner of Labour,Vellore.

3.Appellate Authority,
Under Payment of Subsistence Allowance Act,
Joint Commissioner of Labour, Vellore.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the third respondent in P.S.A.(A) No.2/2018 dated 28.09.2018 and quash the



W.P.No.31929 of 2018
and W.M.P.No.37164 of 2018

WEB COURT same.

For Petitioner : Mr.S.Thamizharasi
For R1 : No appearance
For RR2 & 3 : Ms.C.Meera Arumugam, AGP

ORDER

The writ petitioner is the Management. The first respondent K.Kasthuri joined service of the writ petitioner Management on 01.03.2011. On 20.12.2014, she was placed under suspension as per Standing Orders 21(g)(h)(i) for which the charges were framed against her for misconduct. The Enquiry Officer conducted a domestic enquiry and on 01.06.2015, he submitted his report wherein he held that the charges against the first respondent were proved. Since the Management did not pay Subsistence Allowance during the period of enquiry from 20.12.2014 to 31.04.2015, as per Section 3(2) of the Payment of Subsistence Allowance Act, she approached the Assistant Commissioner of Labour, Vellore in PSA 17/2016 for directing the Management to pay her Subsistence Allowance amounting to Rs.21,422/-. The Assistant Commissioner of Labour, Vellore directed the present writ petitioner to



W.P.No.31929 of 2018
and W.M.P.No.37164 of 2018

pay the Subsistence Allowance of Rs.21,422/-.

2. Aggrieved over the same, the Management filed an appeal in PSA(A).No.2/2018 before the Joint Commissioner of Labour, Vellore. In both the applications, the main contention of the Management was that the first respondent was gainfully employed by conducting a chit transaction, selling of clothes and lending money for interest to various persons. Therefore, according to them, as per the Certified Standing Orders if an employee is gainfully employed elsewhere, he / she is not entitled to get Subsistence Allowance during the period of suspension.

3.Ms.S.Thamizharasi, learned counsel for the writ petitioner contended that the Management was not given any opportunity to cross examine the first respondent and was also not given an opportunity to adduce three documents in support of their contentions. The documents which were relied upon the Management are as follows :

- i. The Standing Certified Orders
- ii. The Enquiry Officer's Report



W.P.No.31929 of 2018
and W.M.P.No.37164 of 2018

WEB COPY iii. The Order of Termination dated on 01.06.2015.

4.In the instant case, both the Assistant Commissioner as well as the Joint Commissioner of Labour, Vellore had held that the Management have not proved by adducing acceptable evidence that the first respondent was gainfully employed or making profits from out of her own business and I fail to understand as to how the above documents would prove the same. It is also seen from the records that the first respondent filed the proof affidavit and other documents on 29.11.2016 and on that day, the Management did not cross examine her. Thus, they have not availed the opportunity of cross examining the witness on the day when she was present before the Assistant Commissioner of Labour, Vellore.

Section 3(2) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 reads as follows :

“3.Payment of subsistence allowance-

(2)An employee shall not be entitled to receive any subsistence allowance if he accepts any other employment during the period of his suspension in any establishment other



W.P.No.31929 of 2018
and W.M.P.No.37164 of 2018

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5. Admittedly, in the instant case, the Management did not pay the Subsistence Allowance and both the Labour Courts had quantified the amount to be paid to the first respondent. It is now contended by the learned counsel for the writ petitioner that they had already deposited the amount to the credit of the Assistant Commissioner of Labour, Vellore. The first respondent is at liberty to withdraw the amount.

6. With the above observations, this Writ Petition is disposed of. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

15.11.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To

Page 5 of 7



W.P.No.31929 of 2018
and W.M.P.No.37164 of 2018

WEB COPY

1. Controlling Authority,
Under Payment of Subsistence Allowance Act,
Assistant Commissioner of Labour, Vellore.

2. Appellate Authority,
Under Payment of Subsistence Allowance Act,
Joint Commissioner of Labour, Vellore.

R. HEMALATHA, J.



WEB COPY



W.P.No.31929 of 2018
and W.M.P.No.37164 of 2018

mtl

W.P.No.31929 of 2018
and W.M.P.No.37164 of 2018

15.11.2023