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W.P.(MD)No.14068 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.14068 of 2019 and
W.M.P.(MD)No.10553 of 2019

The Management,
1990, Agaramangudi Primary Agricultural
Co-operative Credit Society Limited,
represented by its Secretary,
Papanasam, Thanjavur District.

... Petitioner

vs.

- 1.The Joint Commissioner of Labour/
Appellate Authority,
(Under Tamil Nadu Payment of
Subsistence Allowance Act),
Trichy.
- 2.The Assistant Commissioner of Labour/
Original Authority,
(Under Tamil Nadu Payment of
Subsistence Allowance Act),
Office of the Assistant Commissioner
of Labour, Trichy.



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3.R.Ganapathy

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining the impugned order passed by the 1st respondent in P.S.A.Appeal No.5 of 2017, dated 05.10.2018, confirming the order passed by the 2nd respondent in P.S.A.No.2 of 2016, dated 07.08.2017 and to quash the same.

For Petitioner	: Mr.G.Mohankumar
For R1 & 2	: Mr.M.Lingadurai Special Government Pleader
For R3	: Mr.G.Thalaimutharasu

ORDER

This writ petition is filed for writ of Certiorari, to quash the impugned order appellate order passed by the 1st respondent in P.S.A. No. 5 of 2017, dated 05.10.2018, confirming the order passed by the 2nd respondent in P.S.A.No.2 of 2016, dated 07.08.2017.



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2.The 3rd respondent was employed as Salesman under the petitioner management and he was suspended from service for certain allegation. Disciplinary proceedings were initiated against him. Since the management has not paid the subsistence allowance, the 3rd respondent filed a petition before the 2nd respondent to direct the management to pay the subsistence allowances to the tune of Rs. 1,57,821/- for the period from 27.10.2011 to 26.04.2013. The said application was filed with a delay of 487 days. The management had filed a counter in the condone delay petition itself. But without passing any orders in the condone delay petition, the 2nd respondent has taken up the main application and heard the petition.

3. The management submitted before the authority that the delinquent has not produced any certificate showing that he was not gainfully employed elsewhere. The management has categorically stated



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before the authority that the delinquent was gainfully engaged in Tirupur. The delinquent has not filed any reply rebutting the contention of the management. The management has produced two evidences before the authorities, i.e., exhibits B2 and B4. Exhibit B4 is a photograph of the delinquent wherein he was wearing uniform to the post of Private Security. In spite of the evidence, the original authority has not considered the objection of the management and has not rendered any finding.

4. Hence, the management has preferred an appeal before the appellate authority. The appellate authority had not accepted the stand of the management and has confirmed the award passed by the original authority granting the entire subsistence allowances. Aggrieved over the same, the present writ petition is filed.



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5. The contention of the petitioner management is that once the management has proved that the delinquent is employed elsewhere, the right to claim subsistence allowance is lost and the management has relied on Section 3 of the Tamil Nadu Payment of Subsistence Allowance Act, wherein Sub Clause 2 it states as under:

“(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 than the establishment where he had been working immediately before his suspension.”

6. Both the original authority as well as the appellate authority has not taken the Sub Clause 2 of Section 3 of the Tamil Nadu Payment of Subsistence Allowance Act into consideration while considering the 3rd respondent petition.

7. In the cross examination, the delinquent has accepted that he



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was gainfully engaged elsewhere, however, it was only for 20 days. This stand of the 3rd respondent cannot be accepted. Once the delinquent is gainfully employed elsewhere, he has lost his right to claim subsistence allowance from the date he has engaged in another employment.

8. Therefore, this Court is of the considered opinion that the orders of both the authorities cannot be sustained, since the same is against the provisions of law as stated supra

9. The learned Counsel appearing for the petitioner submitted that subsequently, the entire disciplinary proceedings were concluded and the delinquent was dismissed from service.

10. Therefore, at this stage, remitting the matter back to the authorities will not serve any purpose. Therefore, this Court is restricting



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the amount of subsistence allowance for one year. The petitioner's last drawn salary is Rs.5243/-. The 2nd respondent is directed to calculate the same as under:

- i. For first 90 days (01.05.2011 to 29.07.2011) 50% amount.
- ii. For next 90 days (30.07.2011 to 27.10.2011) 75% amount.
- iii. For next six months(28.10.2011 to 28.04.2012)100% amount.

11. The said amount shall be paid to the 3rd respondent. The management has deposited the said amount before the authority. The authority shall pay as stated supra along with interest and the balance amount shall be returned to the management. If the amount was deposited in any Bank, the same shall be disbursed with accrued interest. If the amount is not carrying any interest, the 3rd respondent shall be paid 6% interest.



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12. With the above said observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No

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Internet : Yes

NCC : Yes / No

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To

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S.SRIMATHY, J

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