



W.P.(MD)No.21808 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.21808 of 2015

M.Kala

... Petitioner

Vs.

1.The Deputy Commissioner of Labour,
Appellate Authority under Tamil Nadu,
Subsistence Allowance Act 1981,
Tirunelveli.

2.The Assistant Commissioner of Labour,
Appellate Authority under Tamil Nadu
Subsistence Allowance Act 1981,
Tirunelveli.

3.The Correspondent,
Sri Krishna Polytechnic College,
“Dwaraka” Kaliyankadu,
Nagercoil – 3,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, calling for the records relating to the impugned order of the 1st respondent in Case No. PSA(A) 18/2013, dated



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25.05.2015 quash the same and consequently direct the 3rd respondent to disburse the subsistence allowance of Rs.1,47,008/- as per the order of the 2nd respondent in PSA Nos.12/2012 and 22/2012 dated 20.6.2013 together with interest at the rate of 6% p.a., within a reasonable time as may be fixed by this Court.

For Petitioner : Mr.H.Thayumanaswamy

For R1 and R2 : Mr.D.Sadiq Raja,
Additional Government Pleader

For R3 : Mr.S.Ramesh

ORDER

This writ petition is filed challenging the impugned order, dated 25.05.2015, and the consequential order passed by the 1st and 2nd respondents, whereby, subsistence allowance was denied to the petitioner.

2. The petitioner joined in the 3rd respondent college on 15.09.1994, as Junior Assistant. At the time of joining, the petitioner had paid “staff deposit” of Rs.50,000/- and the college had issued receipt on 17.10.1996. The petitioner was posted as Assistant and fixed salary of Rs.5,000/-p.m. The petitioner was not granted any yearly increments on par with his juniors. Therefore, the petitioner



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demand increment on par with the Juniors. Annoyed over the demand, the 3rd respondent had issued show cause notice on 30.04.2010, alleging that on 28.04.2010, the petitioner had taken Check Register from the table of one Assistant and then kept the same on his table at 4'o clock. Thereafter, the petitioner was placed under suspension, charge memo was issued, after enquiry the petitioner was dismissed from service on 16.06.2010.

3. The contention of the petitioner is during the suspension period, the petitioner was not paid any subsistence allowance. The petitioner is entitled to the same since the petitioner was not gainfully employed elsewhere. But the contention of the respondents is that the dismissal order was passed from the date of the suspension order, hence the petitioner is not entitled to subsistence allowance and the respondents are not liable to pay the same.

4. The subsistence allowance is paid during suspension period, that too on monthly basis in lieu of salary to the delinquent in order to sustain himself. Even though the employee is facing disciplinary proceedings, he cannot be deprived of the statutory benefit of subsistence allowance. The respondents are



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treating the subsistence allowance as if it is payable after completion of disciplinary proceedings, which is totally wrong. Hence declining the subsistence allowance, since the dismissal order was passed by giving effect from the date of suspension is legally not sustainable.

5. The next contention that was raised by the 3rd respondent is that the petitioner has invested in shares in the very same college and receiving some benefits from the shares and the petitioner is gainfully earning through share business, therefore the petitioner is not entitled to claim any subsistence allowance. The Learned Counsel for the petitioner submitted that earning from share business cannot be cited as reasons for declining subsistence allowance. This Court is of the considered opinion that earning from share business or receiving rental income from properties cannot be cited for declining subsistence allowance, since those income are permitted even during any employment. Gainfully employed means the delinquent has to join any job for salary and it is an admitted fact that the petitioner was not gainfully employed for salary elsewhere. Granting of subsistence allowance during suspension period is statutory duty on the part of the employer and the employee is entitled to receive



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the same. Therefore this Court is of the considered opinion that the petitioner is entitled to subsistence allowance during the period of suspension.

6. The learned counsel appearing for the 3rd respondent submitted that the petitioner was employed for salary elsewhere from 01.03.2012 onwards, which fact was not denied by the petitioner. Therefore, this Court is of the considered opinion that the petitioner is entitled to subsistence allowance for a period from 16.06.2010 to 28.02.2012. Also entitled to applicable statutory interest. The learned counsel appearing for the 3rd respondent submitted a sum of Rs.1,47,088/-was deposited before the 2nd respondent. Therefore, the petitioner is entitled to withdraw the said amount that is applicable for the period from 16.06.2010 to 28.02.2012. The 2nd respondent is directed to quantify the amount and pay the same along with applicable interest. The said exercise shall be completed within a period of six weeks, from the date of receipt of a copy of the order.



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7. With this observation, this writ petition is allowed. No Costs.

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Internet : Yes

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To

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S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No. 21808 of 2015**

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