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W.P.No.28325 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 16.02.2024

ORDER PRONOUNCED ON : 05.04.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.28325 of 2018
and W.M.P.No.33033 of 2018

Venture Lighting India Limited,
A-30, D-5, Phase II, Zone B,
MEPZ – SEZ, Tambaram,
Chennai – 600 044,
Represented by its Managing Director.

... Petitioner

/Vs./

1.Assistant Commissioner of Labour II/Authority,
Under the payment of Subsistence Allowance Act,
DMS, Teynampet,
Chennai – 600 006.

2.V.Muthaiah

3.B.Mahesh Babu

4.R.Srinivasan

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to
issue a Writ of Certiorari, calling for the records pertaining to the impugned common



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order dated 17.04.2018 passed by the 1st respondent in PSA Nos.17, 18, and 20 of 2017 and quash the same.

For Petitioner : Mr.S.Ravindran, Senior Counsel for
M/s.K.V.Shanmuganathan

For R1 : Mr.P.Sanjay Gandhi
Government Advocate

For R2 to R4 : Mr.V.Ajoy Khose

* * * * *

ORDER

This writ petition is filed to call for the records pertaining to the impugned common order dated 17.04.2018 passed by the 1st respondent in PSA Nos.17, 18, and 20 of 2017 and quash the same.

2.The petitioner is a 100% export oriented company having its factory at MEPZ, SEZ. The petitioner is a manufacturer of Metal Halide Lamps. The respondents 2 to 4 were placed under suspension on various dates between 09.02.2014 and 21.08.2014 and they were paid the subsistence allowances as per the provisions of the payment of Subsistence Act 1981, during the period of suspension. The respondents 2 to 4 received the subsistence allowance paid to them without any demur and nearly two years after the receipt of the subsistence allowance the



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respondents 2 to 4 preferred applications before the first respondent stating that they were not paid the subsistence allowance in accordance with the Act. On condonation of delay in filing the application, the applications were taken in PSA Nos.17, 18 and 20 of 2017. During the pendency of the said applications, the respondents filed the amendment applications stating that they were entitled to production incentive.

3.The petitioner filed a counter denying the entitlement of the respondents to production incentives stating that the production incentive did not form a part of the wages and further as the respondents did not contribute towards production during the suspension period they were not entitled to production incentive during the period of suspension. The Labour Court on an appreciation of the entire materials on record found that the respondents were entitled to the relief prayed. The Labour Court allowed the applications by taking into account the production incentive allowance while computing the subsistence allowance and therefore, the Labour Court directed the petitioner to pay the difference in subsistence allowance to the respondents 2 to 4. Aggrieved by the order of the Authority the petitioner filed the above writ petition.

4.The counsel for the writ petitioner referring to the term "Wages" defined under Section 2(h) of the Payment of Subsistence Allowance Act r/w Section 2 (rr) of



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the Industrial Disputes Act submitted that the production incentive does not form a part of the wages and therefore, the authority erred in including the production incentive under Wages for calculating the difference in subsistence allowance payable to the respondents. The learned counsel further submitted that the Labour Court failed to note that the production incentive was payable only when the workmen actually contribute to the production. As the respondents were placed under suspension they did not contribute towards production and hence, the production incentive was erroneously included in the wages drawn by the respondents 2 to 4.

5.The learned counsel for the respondents 2 to 4 on the other hand submitted that the writ petition is not maintainable as the petitioner failed to avail alternate remedy of appeal under Rule 5 A of the Tamil Nadu Payment of Subsistence Allowance Act 1981 to the Deputy Commissioner of Labour. The learned counsel relied on the Judgments of this Court in the case of *The Management, Periya Karumalai Tea Producing and Company Limited Vs. Venmathi and Another* in *W.P.No.1388 of 2021 dated 08.04.2021* and in the case of *The Commissioner Vs. The Appellate Authority* in *W.P.(MD).No.333 of 2007 dated 04.03.2013* in support of his contention that the writ petition deserved to be rejected for failure to exhaust the alternate remedy.



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6. I have heard both the learned counsels and I have perused the materials placed on record.

7. It is seen that the order was passed by the authority on 17.04.2018 and the petitioner filed the writ petition on 05.10.2018. Admittedly the appeal had to be preferred within 60 days from the date of receipt of a copy of the order under Rule 5 A of the Rules of Tamil Nadu Payment of Subsistence Allowance Act 1981. The writ petitioner in the affidavit stated that as the Director incharge of PSA cases went on leave for more than two months from the first week of June 2018 to 10th August, 2018 the appeal could not be preferred in time. The learned counsel for the petitioner further stated that as there is no provision to condone the delay in the Act the petitioner was constrained to approach this Court under Article 226 of the Constitution of India. This Court in the case of ***The Management, Periya Karumalai Tea Producing and Company Limited Vs. Venmathi and Another*** in ***W.P.No.1388 of 2021 dated 08.04.2021***, while considering similar issue rejected the writ petition on the ground of limitation and stated that if the petitioner/Management was allowed to approach the Court after the period of limitation provided under the Act, it would amount to re-writing the legislature, which was not permissible. I am of the view that



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the said Judgment applies squarely to the facts of the present case. In the present case, the petitioner failed to exhaust the remedy of appeal under Rule 5 A of the Rules of Tamil Nadu Payment of Subsistence Allowance Act, 1981 within the statutory period of limitation and approached this Court stating that there is no provision for condoning the delay. As held by this Court in the above writ petition, if the writ petition is entertained, it would amount to rewriting the statute. Even on facts there is absolutely no explanation given by the petitioner as to the steps taken by him after August, 2018. Assuming that the authority was on leave between June 2018 to August, 2018, the petitioner approached this Court only on 05.10.2018, which is almost two months after 10.08.2018 and therefore, even on facts I find no plausible reason to entertain the writ petition. In view of the facts, I find absolutely no justification for invoking the extraordinary jurisdiction of this Court.

8. Accordingly, this writ petition stands dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition stands closed.

05.04.2024

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking order

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To

WEBGURU

Assistant Commissioner of Labour II/Authority,
Under the payment of Subsistence Allowance Act,
DMS, Teynampet,
Chennai – 600 006.

N.MALA, J.

ah

**PRE-DELIVERY ORDER IN
W.P.No.28325 of 2018**



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05.04.2024