



W.A.(MD)Nos.1027 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

and

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.(MD)No.1027 of 2024

and

C.M.P.(MD)No.7468 of 2024

1.The State of Tamil Nadu,
Rep. by its Secretary,
Agriculture Department,
Fort St.George, Chennai.

2.The Chief Engineer (Agri Engg),
Agricultural Engineering Department,
Nandanam, Chennai-35.

3.The Assistant Executive Engineer (Agri. Dep),
Thuckalay, Kanyakumari District.

: Appellants

Vs.

S.Victor

:Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act, to set aside the order passed in W.P.(MD)No.210 of 2021 dated 16.02.2024.



W.A.(MD)Nos.1027 of 2024

WEB COPY

For Appellants : Mr.A.Kannan,
Additional Government Pleader

JUDGMENT

[Judgment of the Court was delivered by **R.SURESH KUMAR, J.**]

This appeal has been directed against the order dated 16.02.2024 in W.P. (MD) No. 210 of 2021.

2.The respondent was working at the appellant Department and he has been placed under suspension on 13.12.2012 and he was allowed for subsistence allowance of 50% under the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 (in short 'the Act').

3.Subsequently, as per Section 3 of the Act, the subsistence allowance, after 90 days of suspension be enhanced to 75% of the last drawn wage, which has not been enhanced to 75%. However, from 01.05.2019, the employer/appellant, has enhanced the subsistence allowance from 50% to 75% in accordance with the provisions of Section 3 of the Act.



W.A.(MD)Nos.1027 of 2024

WEB COPY

4.In this context, it is the contention of the respondent that after completion of 6 months period from the date of suspension ie., from 13.06.2013, though the respondent was entitled to receive the enhanced subsistence allowance at 75%, it has not been enhanced and it was enhanced belatedly, only after nearly 5 years i.e., from 05.05.2018 alone. Therefore, for the period covering from 13.06.2013 to 30.04.2018, the difference of 25% of the subsistence allowance ought to have been allowed. Therefore, requiring the same, seeking for a mandamus, the respondent approached the Writ Court by filing the said Writ Petition.

5.The learned Single Judge, who heard the matter after taking note of the factual matrix as well as the provisions of the Act, namely, Section 3 of the Act, has allowed the said Writ Petition, through the impugned order dated 16.02.2024.

6.Though an attempt was made by the learned Additional Government Pleader appearing for the appellants to have a successful challenge against the order impugned, we are not impressed with the



W.A.(MD)Nos.1027 of 2024

submissions made by the learned Additional Government Pleader for the simple reason that as per the second proviso to Section 3 (1) of the Act, if at all there has been any delay caused in completing the disciplinary proceedings, which is attributable on the employee, the subsistence allowance shall for the period exceeding 90 days be reduced to 50% of the wages, which the employee was drawing immediately before his suspension.

7. Here, no such situation had arisen as the employer had come forward to enhance the subsistence allowance from 50% to 75% with effect from 01.05.2019. Therefore, even in the month of May, 2019 ie., on 01.05.2019 itself, the employer thought it fit to enhance the subsistence allowance into 75%, by thus, it has come to light that there has been no delay in completing the disciplinary proceedings attributable on the employee.

8. Therefore, the second proviso to Section 3(1) of the Act also is not available for the employer to press into service against the employee and the belated enhancement of the subsistence allowance from 50% to 75%, nearly after five years may not be justifiable, in view



W.A.(MD)Nos.1027 of 2024

WEB COPY

of the mandatory provisions, which are available under the Act. This aspect has been discussed by the learned Single Judge and ultimately, the learned Single Judge allowed the said Writ Petition through the impugned order.

9.Hence, we do not find any error in the said approach of the learned Single Judge as well as the conclusion reached therein. Therefore, the order impugned in this Writ Appeal is to be sustained. Since the appeal deserves to be dismissed, it is, accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.S.K.,J.] & [G.A.M.,J.]

19.06.2024

Neutral Citation : Yes/No

Index : Yes/No

Internet : Yes/No

ta



WEB COPY



W.A.(MD)Nos.1027 of 2024

R.SURESH KUMAR, J.
and
G.ARUL MURUGAN, J.

ta

Judgment delivered in
W.A.(MD)Nos.1027 of 2024

19.06.2024