



W.P(MD)No.16082 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2024

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.16082 of 2016

and

W.M.P.(MD)No.11754 of 2016

The Regional Manager,
T.N.C.S.C.(Tamil Nadu Civil Supply Corporation)
Dindigul

...Petitioner

Vs.

1.K.Dhandapani

2.The Deputy Commissioner of Labour,
Dindigul

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of certiorari, calling for the records relating to the impugned order of the second respondent herein in P.S.A.Appeal No.1 of 2015 dated 04.01.2016 and quash the same.

For Petitioner : Mr.G.Mohankumar

For R1 : Mr.D.Srinivasa Raghavan



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ORDER

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Tamil Nadu Civil Supply Corporation, Dindigul, has filed this petition as against the order passed by the Deputy Commissioner of Labour, Dindigul in P.S.A.Appeal.No.1 of 2015, dated 04.01.2016.

2.The first respondent was working as an Assistant Quality Inspector in the petitioner Corporation Godown. Based on the criminal case registered by the CSCID Police on 03.11.2012 in Crime No.395 of 2012 that the first respondent has smuggled 405 bags of rice meant for Public Distribution System with other accused, the first respondent was arrested on 06.11.2012 and was placed under suspension on 08.11.2012. The first respondent has filed the application in P.S.A.No.4 of 2013 before the Assistant Commissioner of Labour that the writ petitioner Management has not provided him subsistence allowance as per the Subsistence Allowance Act. The Assistant Commissioner of Labour has allowed that application by order dated 22.12.2014, directing the writ petitioner to pay a sum of Rs.77,055/- as subsistence allowance for the period from 08.11.2012 to 12.08.2013. As against which, an appeal filed by the petitioner Corporation before the second respondent/Deputy



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Commissioner of Labour in P.S.A.Appeal.No.1 of 2015 was dismissed by order dated 04.01.2016. As against which, this petition is filed.

3.The learned Counsel for the petitioner submits that the first respondent is in the cadre of Supervisor in-charge of a godown and his functions are managerial in nature. However, without considering the same, the Assistant Commissioner of Labour and the second Respondent/Deputy Commissioner of Labour appellate authority have decided the issue. Therefore the order passed in P.S.A.Appeal No.1 of 2015 needs to be set aside. He also submits that without any discussion as to whether the first respondent falls under the managerial cadre or an employee as defined under Section 2(a) of Tamil Nadu Payment of Subsistence Allowance Act, 1981, the orders have been passed in both in P.S.A.No.4 of 2013 and P.S.A.Appeal No.1 of 2015.

4.The learned Counsel for the first respondent submits that the petitioner was suspended in the year 2012 and subsistence allowance was not paid. In order to harass the first respondent, the petitioner Corporation Management is filing application after application. He further submits that the first respondent is only an employee. Though he



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is designated, as Supervisor, his nature of work is not managerial in nature and therefore, the authorities under the Subsistence Allowance Act have rightly decided that the first respondent is entitled for subsistence allowance.

5.This Court has considered the rival submissions made.

6.The first respondent was suspended on 08.11.2012 by the petitioner Corporation on his involvement in a criminal case. Any person, who is suspended, is entitled for subsistence allowance as per Clause 18 of the Employees Service Regulation, 1989 and the same is extracted as under:

"18. An employee who is placed or deemed to have been placed under suspension shall be entitled to the following payment on the orders of the authority competent to pass the suspension order:

(a) In respect of those who are not covered under Tamilnadu Payment of Subsistence Act, 1981, for the first 6 months subsistence allowance of an amount equal to 50% of the pay together with proportionate allowances thereof Including Dearness Allowance, City Compensatory Allowance and House Rent Allowance admissable to the place which is ordered to be his Head Quarters as per the suspension order. The special pay, If any, that was being drawn at the time of suspension shall not be taken into account.



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(b) For the period beyond 6 months the subsistence allowance as in 18(a) be Increased by 50%, provided the sanctioning authority is satisfied that the delay in disposal of the disciplinary proceedings is not attributable to the delinquent and provided he would not have attained the age of 58 years."

7.This regulation is applicable to those employees, who are not covered under the Tamilnadu Subsistence Allowance Act, 1981. The case of the petitioner and the first respondent is that the workman is entitled for subsistence allowance as per the Tamilnadu Payment of Subsistence Allowance Act, 1981. Tamilnadu Payment of Subsistence Allowance Act defines the employee as under:

"2. Definitions:- In this Act, unless the context otherwise requires,-

(a) "employee" means any person employed in, or in connection with the work or activities of, any establishment to do any skilled, semi-skilled or unskilled, manual, supervisory, technical, clerical or any other kind of work or activities for hire or reward, whether the terms of employment be expressed or implied, but does not include any such person-

(i) who is employed mainly in a managerial or administrative capacity; or

(ii) who, being employed in a supervisory capacity [draws wages exceeding fifteen thousand rupees per mensem] or exercises, either by the nature of the duties attached to the office or by reason of the powers vested to him, functions mainly of a managerial nature;"



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8. Therefore, as per Section 2(a) (ii) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981, the nature of the duties attached to the office has to be decided first whether it is managerial in nature or not.

9. Admittedly, the first respondent is an employee, who has been employed as Supervisor (in-charge of Godown) and also he was receiving a salary more than a sum of Rs.20,000/- at that relevant point of time and without deciding whether his functions are mainly of managerial in nature or not, the authorities under the Payment of Subsistence Allowance Act have decided the issue and therefore, this Court is inclined to set aside the order passed by the second respondent, dated 04.01.2016 and remand back the matter to the Deputy Commissioner of Labour. The petitioner and the first respondent shall file necessary papers before the Deputy Commissioner of Labour, Dindigul District, within a period of two weeks, from the date of receipt of a copy of this order and the Deputy Commissioner of Labour, Dindigul District, shall decide the issue whether the petitioner is entitled for the subsistence allowance as defined under Section 2(a) (ii) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981, by finding out



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whether he was in managerial capacity or not, within a period of eight weeks thereon. The petitioner and the first respondent shall co-operate to the Deputy Commissioner of Labour, Dindigul District.

10. With the above direction, this writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

23.09.2024

Internet : Yes
Index : Yes/No
NCC : Yes/No

LR

To

The Deputy Commissioner of Labour,
Dindigul.



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