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W.A.No.567,1458 and 1460 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**  
AND  
THE HONOURABLE MR.JUSTICE **G. ARUL MURUGAN**

**W.A.Nos. 567, 1458 and 1460 of 2024**  
**and CMP Nos.3936, 10380 and 10389 of 2024**

**WA No.567 of 2024**

S.Selvaraj

... Appellant

Vs.

1. The Assistant Commissioner of Labour,  
The Authority under TN Payment of  
Subsistence Allowance Act,1981  
Office of the Assistant Commissioner Of Labour,  
4<sup>th</sup> Floor, Collectorate, Salem.
2. The Deputy Commissioner of Labour,  
The Appellae Authority under TN Payment of  
Subsistence Allowance Act,1981  
Office of the Deputy Commissioner Of Labour,  
4<sup>th</sup> Floor, Collectorate, Salem.
3. JSW Steel Ltd.,  
Rep. by Associate Vice President – HR,  
Mr. B.E.Rajendran,  
Pottaneri Post, Mettur Taluk, Salem District.

...Respondents

**Prayer:** Writ Appeal filed under Clause 15 of the Letters Patent, to set aside



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the order dated 01.08.2023 passed in WP No.2235 of 2017.

**WA No.1458 & 1460 of 2024**

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S.Selvaraj

... Appellant

Vs.

1. JSW Steel Ltd.,  
Rep. by General Manager – HR & Administrations,  
Pottaneri Post, Mettur Taluk,  
Salem District.

2. The Assistant Commissioner of Labour,  
The Authority under TN Payment of  
Subsistence Allowance Act,1981  
Office of the Assistant Commissioner Of Labour,  
4<sup>th</sup> Floor, Collectorate, Salem.

3. The Deputy Commissioner of Labour,  
The Appellae Authority under TN Payment of  
Subsistence Allowance Act,1981  
Office of the Deputy Commissioner of Labour,  
4<sup>th</sup> Floor, Collectorate, Salem.

...Respondents

**Prayer:** Writ Appeal filed under Clause 15 of the Letters Patent, to set aside

the order dated 25.08.2023 passed in WP Nos.5388 and 5776 of 2018.

For Appellant : Mr.V.Muthu Manickam  
for Mr.V.Shanmuganathan

For Respondents : Mr.P. Anadakumar  
Government Advocate,  
for RR 1 & 2 in WA No.567 of 2024



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: Mr.S. John J Raja Singh,  
Additional Government Pleader,  
for RR 1 & 2 in WA Nos.1458  
& 1460 of 2024

: Mr.M.Vijayan  
for M/s. King & Partridge,  
for R3 in WA No.567 of 2024  
& for R1 in WA Nos.1458 &1460 of 2024

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### **COMMON JUDGMENT**

*(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)*

The employee is on Appeal aggrieved by the orders of the Writ Court sustaining the challenge made by the employer to the orders of the Authorities constituted under the Tamil Nadu Payment of Subsistence Allowance Act, 1981, hereinafter referred to *the Act, 1981*.

2. The appellant, who was employed as an Engineer with the respondent Company was suspended for certain delinquencies on  
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08.08.2009. An enquiry was conducted and he was ultimately removed from service on 30.11.2011 complaining that he has not been paid subsistence allowance in accordance with the provisions of *the Act, 1981*, the employee moved the Authority under the said enactment. Three applications were filed for three different periods. They are

- (i) PSA No.9 of 2011 for the period between 08.08.2009 and 31.03. 2011;
- (ii) PSA No.9 of 2012 for the period between 01.04.2011 and 30.11.2012; and
- (iii) PSA No.2 of 2014 for the period between 01.12.2012 and 31.12.2013.

3. The claim of the appellant was resisted by the respondent Management contending that the appellant is not an employee within the meaning of the definition of an employee under Section 2(a) of *the Act, 1981*. The Authority overruled the objections and allowed the applications under *the Act, 1981*. Aggrieved the Management preferred three Appeals in APSA Nos.12 of 2014, 2 of 2015 and 3 of 2015, the Appeals were

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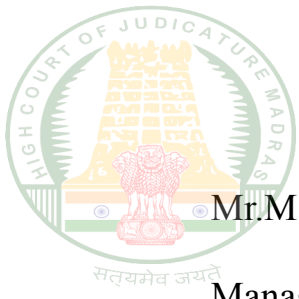
dismissed concurring with the order of the Authority under the Act.

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4. This led to three Writ Petitions being filed in the Writ Court in WP Nos.2235 of 2017, 5388 of 2018 and 5766 of 2018. While a common order came to be passed in WP No.5388 and 5766 of 2018, WP No.2235 of 2017 was disposed of separately.

5. The learned Singe Judge agreed with the contention of the Management and concluded that the appellant was engaged a supervisory capacity and he was drawing a salary of more than Rs.15,000/- per month and hence he won't be an employee within the definition of Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981. On the said conclusion, the learned Singe Judge allowed the Writ Petitions and set aside the orders passed by the Authorities under the Act. It is this order of the Writ Court that is under challenge in these Writ Appeals.

6. We have heard Mr.V.Muthu Manickam, learned counsel appearing for Mr.V.Shanmuganathan, for the appellant in all the appeals and 5/17



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Mr.M.Vijayan, learned counsel appearing for M/s. King & Partridge for the Management/R3 in WA No.567 of 2024, and the first respondent in WA Nos.1458 & 1460 of 2024 and Mr.S.Johh J.Raja Singh, Additional Government Pleader, for the respondents 1 & 2 in WA No.567 of 2024 and Respondents 2 & 3 in WA. Nos.1458 & 1460 of 2024.

7. Mr.V.Muthu Manickam, learned counsel appearing for the appellant in all the appeals would vehemently contend that from the nature of the duties set out in the very Charge Sheet issued to the appellant, it could be seen that he was not engaged in a supervisory capacity. Pointing out to the responsibilities that were assigned to the appellant, the learned counsel would contend that he cannot be termed as a supervisor in order to be excluded from the applicability of the enactment. The learned counsel would further argue that the learned Single Judge was in error in setting aside the orders of the Authorities under the Act solely on the ground that the appellant is employed in a supervisory capacity.

8. Contending contra, Mr.M.Vijayan, learned counsel appearing for



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the respondent/ Management would submit that the nature of the duties that are assigned to the appellant are only supervisory in nature and therefore, he cannot be termed as an employee within the meaning of Section 2(A) of *the Act, 1981*. He would also point out that admittedly the appellant was drawing more than Rs.15,000/- as salary. Our attention is also drawn to the claim in the plaint filed before the learned District Munsif, Mettur in O.S. No.304 of 2011, wherein the appellant/employee himself has stated that he was appointed in a supervisory capacity as Engineer in the despatch section. Therefore, according to the learned counsel, the learned Single Judge is right in his conclusion that the appellant was doing work supervisory in nature and since he is drawing a monthly salary of more than Rs.15,000/- he would not be entitled to the benefits of the enactment.

**9.** We have considered the rival submissions.

**10.** In order to invoke the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981, an employee should demonstrate that he would come within the definition of the term employee under the Act.



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Section 2(a) of the Act, 1981 defines an employee as follows:

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 1 [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*



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*managerial nature;*

**11.** In order to be covered by the definition of the term “employee”, the person who claims the benefit of the enactment should be able to show that he was doing any skilled, semi-skilled or unskilled, manual, supervisory, technical, clerical or any other kind of work or activities for hire or reward. In the charge sheet dated 28.02.2011, the nature of duties of the appellant have been set out as follows:

*“1. To coordinate with the Macheri Road Railway station authorities for placement of rakes and plan other related activities with the loading contractor M/s. JSKT.*

*2 Inspect the wagons on arrival and select the good wagons to be used for loading.*

*3 Hand over the selected lists of wagons to the Contractor along with the details of materials to be loaded.*



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4. *Supervising the loading.*
5. *Make final material loaded list.*
6. *Hand over the loading list to the Railway officials at Mechern Road Railway station.*
- 7 *Note the departure of the rake from Mecheri Road Railway station and inform Superiors.”*

12. Even in the appointment order though the appellant has been appointed as Engineer, the appointment order states that he should report to the Deputy General Manager and he will carry out the assignments made by the Deputy General Manager. It is not in dispute that the appellant was working in the despatch section looking after despatch of goods by Railway Wagons. The nature of his duties as could be gathered from the Charge Sheet dated 28.02.2011 are to coordinate and look after the work of loading the products of the respondent Company in the Railway Wagons for despatch. Except Clause 4 of the responsibilities assigned to him viz. Supervising the loading, all other acts are ministerial acts done by him in his capacity as an Employee.



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13. No doubt Mr.M.Vijayan, learned counsel appearing for the respondent/Management would vehemently contend that his job was to supervise the loading operations at the Railway Yard even though contractual workers were employed at the Railway Yard and he has been supervising their job, it would amount to supervising the job of the workers of the Company only as the workers of contractor also deemed to be the workers of the Company under the definition of the Contract Labour Act. The learned counsel would rely upon the judgment of the Hon'ble Supreme Court in ***Lenin Kumar Ray vs. Express Publications (Madurai) Ltd***, reported in ***2024 SCC Online SC 2987***, wherein the Hon'ble Supreme Court observed as follows:

*“15. The law is well settled that the determinative factor for “workman” covered under section 2(s) of the I.D. Act, is the principal duties and functions performed by an employee in the establishment and not merely the designation of his post. Further, the onus of proving the nature of employment rests on the*



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*person claiming to be a “workman” within the definition of section 2(s) of the I.D. Act.”*

**14.** In the case on hand we have concrete material in the form of appointment order as well as the Charge Sheet which shows the nature of work of the appellant. The word “Supervisor” has been defined as follows in Black’s Law Dictionary:

*“**Supervisor:** 1. One having authority over others a manager or overseer. Under the National Labor Relations Act, a supervisor is any individual having authority to hire, transfer, suspend, lay off, recall, promote, discharge, discipline, and handle grievances of other employees, by exercising independent judgment. 2. The Chief administrative officer of a town or county.”*

**15.** We have already narrated the nature of work that has been done by the appellant. Except Clause 4 which relates to supervising the loading



operations in the wagon all the other works done by him or not supervisory.

Even Clause 4 is only supervision of the loading operations and the same alone will not make his entire job supervisory in nature. We are, therefore, unable to agree with the contention of the learned counsel for the respondent that he was employed in supervisory capacity and since he was drawing a salary of more than Rs.15,000/-, the Act would not apply.

**16.** The next contention is that an employee would be entitled to subsistence allowance only till the date of his removal from service. Here, it is shown that the employee was removed from the service on 30.11.2011. Though it is claimed by the employee that the order of dismissal was not served upon him in the manner known to law, we find from the records that the order of dismissal was marked as an exhibit in the proceedings before the Authority in PSA No.2 of 2014. Therefore, the appellant cannot claim that he was unaware of the order of dismissal from service. Therefore, the appellant would be entitled to subsistence allowance only from the date of suspension i.e. 08.08.2009 till the date of dismissal i.e. 30.11.2011.



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**17.** We have already set out the periods to which the writ petitions are related. Insofar the Writ Appeal No.567 of 2024 is concerned, the period is between 08.08.2009 to March 2011, in Writ Appeal No.1460 of 2024 the period is from 01.04.2011 to 30.11.2012 and in Writ Appeal No.1458 of 2024, the period is between 01.12.2012 to 31.12.2013. We have already concluded that the workman was dismissed from service on 30.11.2011. Therefore, he would be entitled to subsistence allowance from 08.08.2009 to 30.11.2011, for the remaining period that is the day after the dismissal, the employee would not be entitled to subsistence allowance.

**18.** In fine we conclude that the appellant is an employee as defined under Section 2(a) of *the Act, 1981* and he would be entitled to subsistence allowance from the date of suspension i.e. 08.08.2009 till date of removal i.e. 30.11.2011. At the rates prescribed under Section 3 *the Act, 1981*, i.e. 50% for the first 90 days, 75% for the period between 91<sup>st</sup> day to 180<sup>th</sup> day and 100% of the last drawn pay from 181<sup>st</sup> day till date of dismissal.



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19. In the light of the above, the Writ Appeal No.567 of 2024 will stand allowed in toto, Writ Appeal 1460 of 2024 will stand partly allowed declaring the entitlement of the employee to the payment of subsistence allowance from 01.04.2011 to 30.11.2011. The Writ Appeal No.1458 of 2024 will stand dismissed on the ground that the employee had been dismissed even before the dates covered by the application in PSA No.2 of 2014. The payment of Subsistence Allowance Authority will disburse the subsistence allowance with interest accrued in terms of our order, the remaining amount will be refunded to the Employer/Management. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

**(R.SUBRAMANIAN, J.) (G. ARUL MURUGAN, J.)**  
24.02.2025

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Index : No  
Neutral Citation : No  
Speaking order



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To

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**R.SUBRAMANIAN, J.**  
**and**  
**G. ARUL MURUGAN, J.**

jv

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**24.02.2025**