

W.P.No.22854 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.01.2025

Delivered on : 29.04.2025

Coram:

THE HONOURABLE MR.JUSTICE P.DHANABAL

W.P.No.22854 of 2006

Dharmapuri District Central Co-operative

Bank Ltd.,

rep. by its General Manager,

Dharmapuri – 636 701.

... Petitioner

Vs.

1.The Appellate Authority,
Tamil Nadu Payment of Subsistence Allowance Act,
Salem.

2.The Assistant Commissioner of Labour/
Authority under Tamil Nadu Payment of
Subsistence Allowance Act,
Salem -17.

3.M.Muthu (died)

4.Suganthira

5.Balaji

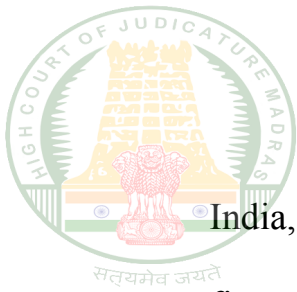
6.Sridevi

7.Kuppammal

... Respondents

*(R4 to R7 are substituted as LR's of deceased/R3 vide
order dated 30.07.2024 in W.M.P.No.6308 of 2020)*

PRAYER : Writ Petition filed under Article 226 of the Constitution of



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India, praying to issue a Writ of Certiorari to call for the records of the first respondent in P.S.A.A.No.4 of 2005, dated 31.05.2006 confirming the order of the second respondent in P.S.A.No.35 of 2004, dated 31.01.2005 and quash the same.

For petitioner : Mr. M.S. Palanisamy

For respondents : Mr. M. Murali [For R1 & R2]
Government Advocate.

R3 - died

Mr. G. Ethirajulu [For R4 to R7]

ORDER

This Writ Petition is filed by the petitioner challenging the order passed by the first respondent in P.S.A.A.No.4 of 2005, dated 31.05.2006 confirming the order of the second respondent in P.S.A.No.35 of 2004, dated 31.01.2005 and quash the same.

2. The case of the petitioner is that the third respondent, who was working as Manager of the petitioner's Bank, committed serious irregularities in the affairs of the bank. Hence, he was suspended from the service on 19.06.2001 and the disciplinary proceedings were initiated



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against him. The third respondent created false accounts and forged documents and thereby, misappropriated of a sum of Rs.22,83,000/-.

Therefore, Surcharge Proceedings were initiated against him and the same is in execution stage. While so, the third respondent filed a petition before the second respondent in P.S.A.No.35 of 2004, claiming subsistence allowances for the period from 01.02.2004 to 30.09.2004 and the second respondent, without considering the objection raised by the petitioner's bank, allowed the petition and ordered to pay subsistence allowance of Rs.1,18,800/- to the third respondent. The said order was challenged through appeal before the first respondent in P.S.A.A.No.4 of 2005, who is the Appellate Authority under the Tamil Nadu Payment of Subsistence Allowance Act (hereinafter referred as 'the Act') and the same was also dismissed. Therefore, by challenging the said order, the Writ Petition in W.P.No.25257 of 2004 was filed before this Court, wherein this Court remanded the matter back to the first respondent to consider the appeal under the Act. However, again the first respondent, without applying his mind, allowed the appeal filed by the third respondent. The third respondent was working as Manager of the bank. As per the Act, a person, who was drawing salary exceeding Rs.3,500/- p.m. will not come

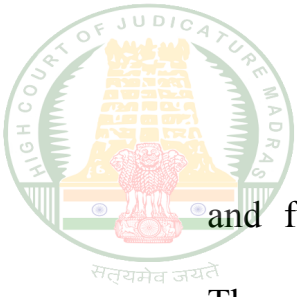


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under the purview of the the Act. Therefore, the third respondent is not entitled to avail subsistence allowance, as he was drawing salary of Rs.14,850/- p.m. However, the first respondent, without considering the same, passed the order. Therefore, the impugned order passed by the first respondent is liable to be set aside.

3. During the pendency of the Writ Petition, the third respondent died and his legal heirs were impleaded as R4 to R7.

4. The learned counsel for the legal heirs of the third respondent/respondents 4 to 7 would submit that the third respondent was suspended by the authorities. During his suspension period, no subsistence allowance was sanctioned for the third respondent. Thereby, he approached the concerned Authority and they awarded the subsistence allowance as per the Act. Further, the Appellate Authority had also confirmed the order passed by the Authority. The Assistant Commissioner of Labour/second respondent has analysed the judgment of the various High Courts and came to a conclusion that the third respondent is entitled to avail subsistence allowance and he has not come under Officer category



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and further, he had not been doing the duty of administrative post.

Therefore, the order passed by the second respondent is in order. The first respondent/Appellate Authority also confirmed the order. Therefore, the present petition is liable to be dismissed.

5. This Court heard both sides and perused the records.

6. The main contention of the petitioner is that the third respondent was working as Manager in Dharmapuri Central Co-op Bank Ltd. There is a Specific By-laws relating to the service conditions of the employees. As per the Special By-Laws, the Authority, competent to suspend an employee, may sanction a subsistence allowance at a rate not exceeding 50% of the basic pay to the suspended employee during the period of his suspension, who does not come under the purview of the Tamil Nadu Payment of Subsistence Allowance Act. In respect of suspended employees, who come under the purview of the Tamil Nadu Payment of Subsistence Allowance Act, the subsistence allowance shall be paid in accordance with Section 3 of the Tamil Nadu Payment of Subsistence Allowance Act. The petitioner, being Manager, will not come under the post of employee as per the Act. Therefore, he is entitled to 50% of the



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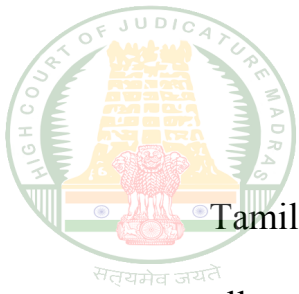
basic pay as subsistence allowance during the suspension period.

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7. According to the petitioner, the third respondent was working as Manager as per Section 2(a) of the Act and he will not come under the definition of employee. According to the respondents 4 to 7, the third respondent was not doing any administrative work, though he was in the post of Manager. Hence, he was not in any administrative work as per Section 2(a) of the Act.

8. The learned counsel for the petitioner also relied upon the judgment of this Court in ***Special Officer, No.989, M.Pakkam Primary Agricultural Co-operative Bank, Pakkam Vilage Vs. Srinivasan, reported in (2009) 7 MLJ 1025.***

On a careful perusal of the above said judgment, it reveals that the judgement will not be applicable to the facts of this case. In this case, the petitioner was working as Manager and was drawing salary of Rs.14,850/- p.m. There are Special By-Laws relating to service conditions of employees of the Dharmapuri Central Co-op Bank Ltd. As per the above said By-Laws, a person, who does not come under the purview of the



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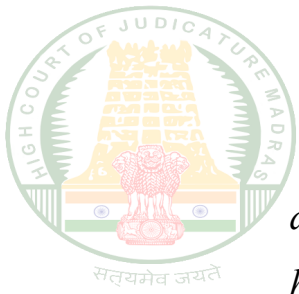
Tamil Nadu Payment of Subsistence Allowance Act, the subsistence allowance shall be paid at the rate of not exceeding 50% of basic pay during his suspension period. Therefore, the above said case will not be applicable to the facts of the present case.

9. The third respondent was drawing salary more than Rs.3,500/- p.m. i.e., Rs.14,850/- p.m. Therefore, he will not come under the purview of employee. Moreover, as per Section 2(a)(i), who is employed mainly in the administrative capacity, the person will not come under the purview of the employee. Section 2(a) of the Act, reads as follows:

“(a) “employees” means any person employed in, or in connection with the work or activities of any establishment to do any skilled, semi-skilled, 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 three thousand and five hundred rupees per mensem] or exercise, either by the nature of the



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duties attached to the office or by reason of the powers vested to him, functions mainly of a managerial nature;”

10. The third respondent was working as Manager and he was drawing salary of Rs.14,850/- p.m. Therefore, he will not come under the purview of employee under Section 2(a) of the Act. Therefore, the Tamil Nadu Payment of Subsistence Allowance Act will not be applicable to the 3rd respondent who was working as Manager and drawing a salary of Rs.14,850/- per month. However, the first and second respondent had discussed about the nature of work done by the third respondent, but failed to consider the salary drawn by the third respondent. Therefore, as per the Special By-laws relating to the service conditions of the employees of M/s. Dharmapuri District Central Co-operative Bank Ltd., a person, who is not covered under the purview of the Act, is only entitled to not exceeding 50% of the basic pay as subsistence allowance during the suspension period. Since the petitioner was working as Manager and was drawing salary of exceeding Rs.3,500/- p.m., the Tamil Nadu Payment of Subsistence Allowance Act would not attract and the By-laws only applicable to the third respondent. Therefore, the order passed by the respondents 1 and 2 by holding that the third respondent is entitled to



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subistence allowance under the Tamil Nadu Payment of Subsistence Allowance Act, is not correct and the 3rd respondent is covered by the special By-laws for service conditions of Dharmapuri Central Co-op Bank Ltd and as per By-laws, the third respondent is entitled to 50% of the basic salary as Subsistence Allowance. However, during the pendency of the Writ Petition, the third respondent died and the petitioner Bank also at the time of passing suspension order stated that the third respondent is entitled to subsistence allowance as per the Tamil Nadu Payment of Subsistence Allowance Act. Therefore, the amount already sanctioned to the third respondent need not be modified. Therefore, the order passed by the respondents 1 and 2 need not be set aside. In view of the said reasons, after demise of the third respondent, it is not appropriate to set aside the order passed by the Authorities.

11. In view of the above, this Writ Petition is dismissed.

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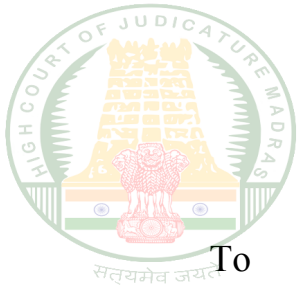
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Index:Yes/No

Neutral Citation:Yes/No

Speaking order/Non-speaking order

apd / mjs



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To

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Pre-delivery order made in
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