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W.P. No.10709 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2025

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.10709 of 2022

M/s. Aruljothi Kaithari Nesavalur Kooturavu
Urpathi Matrum Virpanai Sangam Ltd.,
represented by its President K.P. Mahalingam .. Petitioner

vs.

1. G.S. Nagarajan S/o. Saravanan

2. The Joint Commissioner of Labour (i/c),
Appellate Authority under
The Tamil Nadu Payment of
Subsistence Allowance Act, 1981
Kunnur at Erode.

3. The Deputy Commissioner of Labour /
Authority under the Tamil Nadu Payment on
Subsistence Allowance Act, 1981.
Salem District. .. Respondents

PRAYER: The Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari to call for the records of the 2nd respondent in APSA No.2 / 2021 dated 11.12.2021 and to quash the same.

For Petitioner : Mr. D. Soundar Raj

For Respondent : Mr. V. Ajay Khose [for R1]



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Mr. E.P. Senniyangiri,
Government Advocate [for R2 & R3].

ORDER

This Writ petition has been filed as against the order passed by the 2nd respondent in APSA No.2/2021 dated 11.12.2021.

2. The learned counsel for the petitioner would submit that inadvertently, the affidavit of another case was wrongly submitted in this case and therefore, sought for adjournment to file a proper affidavit in this case. But in spite of several adjournments, no fresh affidavit has been filed. Therefore, this Court is inclined to pass order based on the available records.

3. According to the petitioner, the 1st respondent was appointed as a 'Salesman' in the petitioner Society on casual basis on 06.02.1996 and then on consolidated wages from 01.01.2002. As per G.O. Ms. No.04, Handlooms, Handicrafts, Textiles and Khadi (D1) Department dated 07.01.2014, the Government has directed the Societies to fix the scale of pay of employees, who worked in the Society for a longer period. Based on the above order, the scale of pay to be fixed as 1980-90-2880-110-3980 to the 1st respondent and Dearness Allowance to be calculated without adding Personal Pay and his total pay comes to Rs.8344/- as per January 2013. But he had fixed his salary by



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adding Personal Pay in his basic pay and claimed DA for the period from 01.01.2013 to 31.05.2017 and thus caused loss to the tune of Rs.2,30,981/- to the petitioner Society. When the same was questioned by the petitioner, the respondent proceeded on leave from 06.07.2017 to 12.07.2017 and from 13.07.2017 onwards, he was unauthorizedly absent. Therefore, a Charge Memo was issued against him, thereby, enquiry was conducted by following the principles of natural justice and the Enquiry Officer furnished Enquiry report that the charges against the 1st respondent were proved. Thereafter, the 1st respondent filed a petition before the 3rd respondent claiming Subsistence allowance from the date of suspension i.e., from 13.07.2017 to 30.09.2019 for a sum of Rs.1,94,346/-. The petition was dismissed by fixing the monthly salary of the 1st respondent as Rs.7,040/-. Aggrieved by the said order of the 3rd respondent, the 1st respondent preferred an appeal before the 2nd respondent in APSA No.2 of 2021. The Appellate Authority allowed the appeal and directed the petitioner to settle a sum of Rs.1,47,730/- after deducting a sum of Rs.33,280/- already paid to the 1st respondent for the period from 10.10.2017 to 30.04.2018. Since the 1st respondent misappropriated the funds of the Society, he is not eligible for subsistence allowance. But, the Appellate Authority failed to consider that the 1st respondent failed to join duty after availing casual leave and he was



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unauthorizedly absent and the 1st respondent wrongly prepared his salary fixation, thereby caused loss to the tune of Rs.2,30,986/- to the Society.

Therefore, the order passed by the Appellate Authority is liable to be quashed.

4. The learned counsel appearing for the 1st respondent would submit that the 1st respondent was appointed as a 'Salesman' in the Society as a daily wager and thereafter, his pay was regularized and he is working for more than 23 years as a 'Salesman'. While so, on 13.07.2017, without any notice, the petitioner Society refused to give work to the 1st respondent. While so, the 1st respondent sent request to the petitioner, but no reply from the petitioner. Thereafter, on 27.11.2017, he received a Charge Memo dated 24.11.2017 and he requested to send the documents from the petitioner, but no documents were produced and the 1st respondent was suspended from service, but no subsistence allowance was paid to him. From 13.07.2017, no subsistence allowance was paid to the 1st respondent. While so, on 28.06.2018, a sum of Rs.33,280/- was paid through cheque in the name of the 1st respondent by calculating the subsistence allowance for a period from 10.10.2017 to 30.04.2018. The petitioner had not calculated the subsistence allowance in accordance with law. As per the Tamil Nadu Payment of Subsistence Allowance Act, for the first 3 months, the subsistence allowance is 50% and



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thereafter, from 3 months to 180 days, 75% and if the suspension period exceeds 180 days, then 100% of the salary has to be paid. But the same has not been followed by the petitioner Management. The 1st respondent already filed a petition for subsistence allowance for the period from 13.07.2017 to 30.09.2019 and the same is pending. Now he has filed the subsistence petition for the period from 13.07.2017 to 30.09.2020. Therefore, the 1st respondent is liable to the difference of subsistence allowance. The Authority after hearing both sides passed a reasoned order by admitting the claim of the 1st respondent. The Appellate Authority, after elaborate discussion, passed a reasoned order. Therefore, the Writ petition is liable to be dismissed.

5. Heard both sides and perused the entire materials available on record.

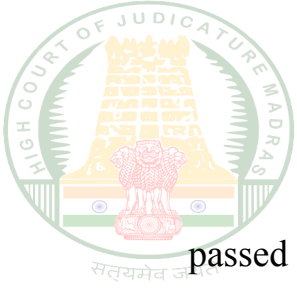
6. In this case, it is an admitted fact that the 1st respondent was suspended from service for a particular period and the Authority fixed the pay as Rs.7,040/- per month for the period from 10.10.2017 to 07.01.2018. Thereafter, from 08.01.2018 to 07.04.2018 fixed 75% and from 08.04.2018 to 15.10.2019, 100% was fixed and calculated Rs.1,81,010/-. The above said calculation has been made as per the provisions of Tamil Nadu Payment of Subsistence Allowance Act. There is no dispute in respect of the period of



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suspension. However, according to the petitioner, the 1st respondent caused loss to the Society to the tune of Rs.2,30,986/- and the same has to be adjusted from the Subsistence Allowance. As far as Subsistence allowance is concerned, it cannot be adjusted for any other payments and the other payments have to be recovered from the employee in the manner known to law. Therefore, the petitioner has to take separate steps to recover the said amount. Already disciplinary proceedings were also initiated against the 1st respondent for the said loss and it is pending. While so, it is not appropriate to adjust the said amount, that too from the Subsistence allowance. Therefore, the above said contention of the petitioner is not acceptable.

7. The Appellate Authority under the Payment of Subsistence Allowance Act has passed a reasoned order and fixed the salary of the 1st respondent as Rs.7,040/-, whereas the 1st respondent claimed Rs.531/- per day. Therefore, the Appellate Authority has passed an elaborate order after applying mind and after discussion held that there are no grounds to allow the appeal. The Authority under the Payment of Subsistence Allowance Act has not considered the amount already paid by the petitioner. But however, the Appellate Authority after deducting the amount already paid by the petitioner, awarded a sum of Rs.1,47,730/- with interest. Therefore, the above said order



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passed by the Appellate Authority is in order and it does not warrant interference by this Court.

8. In view of the above discussions, the Writ petition is dismissed.

There shall be no order as to costs.

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Index : Yes/No.
Speaking order/non-speaking order
mjs

P. DHANABAL, J.,

mjs

To

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