

W.P. Nos.14381 of 2020 & 23255 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 27.03.2025

PRONOUNCED ON : 09.04.2025

PRESENT:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.P.Nos.14381 of 2020 & 23255 of 2021

and

W.M.P.Nos. 17846 of 2020 & 24542 of 2021

The Superintending Engineer,
Tamil Nadu Generation & Distribution
Corporation (TANGEDCO),
Krishnagiri Electricity Distribution Circle,
Formerly Dharmapuri Electricity Distribution Circle,
Krishnagiri – 636 905
Tamil Nadu.Petitioner in both W.P.s

Vs.

1.The Assistant Commissioner of Labour,
O/o. The Deputy Commissioner of Labour,
Authority under the Payment of Subsistence
Allowance Act, 1971
Salem.

2.The Joint Commissioner of Labour
Authority under the Payment of Subsistence
Allowance Act, 1971,
Salem.

3.Tmt.Ammaiya (Alias) Thimmakka



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W/o.(Late) Muniappa,

Dharmapuri, Now at 38/50,

26th Main road, 36th cross panchankarai,

2nd stage, Opp., to fire station,

Dhobighat,

Bangalore – 560 070.

....Respondents in W.P.No.14381 of 2020

1.The Controlling Authority under Payment
Of Gratuity Act,
Office of Joint Commissioner of Labour
Salem – 8.

2.Mrs.Thimakka @ Ammaya,

W/o.Late. T. Muniyappa,

C/o.Sankarappa, 3850,

26th Main 36th Cross,

Banshankari 2nd stage, Opp., fire station,

Near Dhobi Ghat,

Bangalore – 560 070.

....Respondents in WP 23255 of 2021

Prayer in W.P.No.14381 of 2020:

To issue a Writ of Certiorari calling for the records of the 2nd Respondent in APSA No.4 of 2019 and quash its order dated 26.11.2019 confirming the order of the 1st Respondent in PSA No. 9 of 2017 dated 09.01.2019 and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in W.P.No.23255 of 2021:

To issue a Writ of Certiorari calling for the records of the First respondent in P.G.No.68 of 2019 and quash its order dated 02.03.2021



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and pass such further or other orders as this Hon'ble Court may deem fit in the circumstances of the case.

Prayer in WMP No.17846 of 2020:

To grant an interim injunction restraining the 2nd Respondent from disbursing the sum of Rs.7,08,864/- (Rupees seven lakh and eight thousand eight hundred and sixty four only) deposited to the credit of APSA No.4 of 2019 pending disposal of the writ petition and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in WMP No. 24542 of 2021:

To stay the operation of the order of the 1st Respondent in P.G.No.68 of 2019, dated 02.03.2021, pending disposal of the Writ Petition and pass such further or other orders as this Hon'ble Court may deem fit in the circumstances of the case.

Appearance of Parties:

For Petitioner : Mr.Venkatesh Prasad A.P.
In both WPs For M/s.T.S.Gopalan & Co,
Advocates.

For Respondents 1 and 2
In WP No.14381/2020
and : Mr.K.Suresh, Govt. Advocate For Respondent
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In WP No.23255/2021



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For Respondent 3
In WP 14381/2020

and

: Mr.S.Ayyadurai, Advocate

For Respondent 2
In WP 23255/2021

COMMON JUDGEMENT

Heard.

2. Both writ petitions have been filed by the petitioner, who is the Superintending Engineer, Krishnagiri Electricity Distribution Circle, Tamil Nadu Generation and Distribution Corporation (TANGEDCO). The contesting respondent in both writ petitions—namely, the third respondent in the first writ petition and the second respondent in the second writ petition—is the same individual: the widow of the late T. Muniappa, who served as a Line Inspector in TANGEDCO. The other respondents are the statutory authorities under the Tamil Nadu Payment of Subsistence Allowance Act, 1981, and the Controlling Authority under the Payment of Gratuity Act, 1972, respectively. Although the subject matter of the two writ petitions differs—one concerning a claim for subsistence allowance and the other for gratuity—the parties are identical, and the claims arise out of the service and death of the same employee. Therefore, the matters have been heard together and are being



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disposed of by this common judgment.

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W.P.No.14381 of 2020 (claim for subsistence allowance)

3. In this writ petition, the contesting respondent is the wife and legal heir of the late T. Muniappa, who was employed as a Line Inspector with TANGEDCO. He was dismissed from service by the petitioner, the Superintending Engineer, by order dated 08.03.2013, with effect from 24.12.2005. During the period of his suspension, he was not paid any subsistence allowance. Aggrieved by the non-payment, the widow of the deceased employee filed a petition under Section 4 of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 before the first respondent —Assistant Commissioner of Labour, Salem—who is the designated Controlling Authority under the said Act. The period of suspension in question, pending a criminal case, extended from 24.12.2005 to 08.03.2013. T. Muniappa passed away shortly thereafter, on 05.07.2013.

4. It was subsequent to his demise that the widow of late T. Muniappa filed a claim for subsistence allowance. It is relevant to note that the said employee had been implicated in a criminal case and was convicted by the Sessions Court, Krishnagiri, in S.C. No. 26 of 2007, wherein he was



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sentenced to life imprisonment. Challenging the said conviction, he preferred Criminal Appeal No. 589 of 2009 before this Court. A Division Bench of this Court upheld the conviction but altered the offence to one under Section 304 Part II of the Indian Penal Code, and accordingly modified the sentence to rigorous imprisonment for a period of five years.

5. Notwithstanding the conviction, the petitioner—TANGEDCO—issued the final order of dismissal only on 08.03.2013, based on the judgment of this Court. However, the dismissal was given retrospective effect from 24.12.2005, i.e., the date of suspension. Following the conviction and subsequent demise of the employee on 05.07.2013, his widow filed an application claiming the subsistence allowance that had accrued during the period of suspension. As there was a delay of 1,545 days in filing the claim, the widow filed an interim application in I.A. No. 4 of 2017 in the unnumbered Payment of Subsistence Allowance Appeal. The petitioner—TANGEDCO contested the application, contending that the delay had not been explained on a day-to-day basis. However, by order dated 23.10.2017, the delay was condoned, and the subsistence allowance claim was taken on file as PSA No. 9 of 2017.



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6. The first respondent allowed the appeal and held that the contesting respondent, as the widow and legal heir of the deceased employee, was entitled to receive the subsistence allowance due to her late husband. It found that late T. Muniappa had been placed under suspension with effect from 24.12.2005 and that, despite reaching the age of superannuation on 31.05.2006, no further orders were passed by the employer, and the suspension continued until the eventual dismissal order dated 08.03.2013. Therefore the authority calculated the subsistence allowance payable as follows:

From 25.12.2005 till 24.03.2006 @ 50% pay

For first 90 days (Rs.7,198 x 90 x 50) = Rs. 12,458/-

26 x 100

From 25.03.2006 till 22.06.2006 @75% pay

For next 90 days (Rs.7,198 x 90 x 75) = Rs. 18,687/-

26 x 100

From 23.06.2006 till 07.03.2013 @100% pay

For 2448 days (Rs.7,198 x 2448) = Rs.6,77,719/-



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WEB COPY Total amount payable by the Management = Rs.7,08,864/-

7. Aggrieved by the order passed by the first respondent, the petitioner–TANGEDCO preferred an appeal under Rule 5A of the Tamil Nadu Payment of Subsistence Allowance Rules, 1981, by filing P.S.A. Appeal No. 4 of 2019 before the second respondent–Appellate Authority. In compliance with the statutory requirement for pre-deposit as a condition for maintaining the appeal, the petitioner forwarded a cheque for Rs.7,08,864/- to the first respondent. The Appellate Authority, by order dated 26.11.2019, dismissed the appeal in APSA No. 4 of 2019. It is against the said order of the Appellate Authority that the petitioner has filed the present writ petition in W.P. No. 14381 of 2020.

8. When the matter was taken up for admission on 07.10.2020, this Court admitted the writ petition and granted an interim stay. The order passed by this Court on that date reads as follows:

“Learned counsel for the petitioner would further submit that, this writ petition has been filed against the order of the appellate Authority under Subsistence Allowance Act. In the meanwhile, by proceedings dated 08.05.2019, the petitioner TANGEDCO has sent a cheque for a sum of Rs.7,08,864/- being the amount ordered by the said



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Authority in the said proceedings. However, the petitioner has stated in the said communication dated 08.05.2019 that, since TANGEDCO is preferring appeal against the order passed by the appellate Authority under the Subsistence Allowance Act, the said amount paid through the cheque need not be disbursed to the third respondent ie., the widow of the employee. Only in that juncture, this writ petition has been filed. Therefore, the learned counsel for the petitioner, on instructions, would submit that, as the erstwhile employee ie., the late husband of the third respondent had already received subsistence allowance upto September 2008 and thereafter from September 2008 till March 2013 since he is entitled to get the provisional pension, which is equivalent to the subsistence allowance amount which comes to about Rs.2.40 Lakhs only, for the said amount alone the employee was entitled to and beyond which he is not entitled to. Therefore, the petitioner has got a presentable case in this writ petition challenging the order passed concurrently by the authorities under the Subsistence Allowance Act. Hence, the learned counsel would submit that, this petitioner does not have any objection in disbursing an amount of Rs.2.40 lakhs alone out of the total amount deposited before the second respondent ie., Rs.7,08,864/- by a Cheque dated 07.05.2019 to and in favour of the third respondent after getting proper acknowledgement and identification of the third respondent. In this regard, if no communication or request is made by the third respondent, the second respondent Office can send a communication to the third respondent about this development and accordingly, after getting the necessary request to that effect, the aforesaid disbursement can be effected. The needful as indicated above shall be done within two months from the date of receipt of a copy of this order.”

9. Before the Appellate Authority, the petitioner–TANGEDCO contended

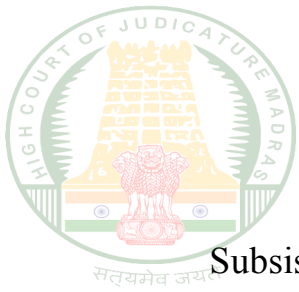


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that the late T. Muniappa, having been convicted of a criminal offence constituting grave misconduct, was not entitled to subsistence allowance.

It was argued that the conviction involved moral turpitude and, just as such conduct would disqualify an employee from receiving gratuity under the relevant rules, a similar interpretation should be applied to claims under the Tamil Nadu Payment of Subsistence Allowance Act, 1981. It was further submitted that Muniappa was placed under suspension on 24.12.2005 and attained the age of superannuation on 31.05.2006. Since no final order of dismissal had been passed until 08.03.2013, it was contended that his service was deemed to have continued beyond the age of 58, and he should not be permitted to derive any additional benefit arising from that extended period.

10. The Appellate Authority rejected all the contentions raised by TANGEDCO and held that the legal heir of the deceased employee is entitled to claim the amount due to the employee. Rule 5(1) of the Tamil Nadu Payment of Subsistence Allowance Rules, which expressly permits an application in Form 4 to be filed by the legal representative of the employee. The Authority further observed that the purpose of the



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Subsistence Allowance Act is to ensure that an employee has the means to subsist during the period of suspension. The death of an employee does not entitle the employer to evade the statutory dues payable to the deceased employee. The Statement of Objects and Reasons for enacting Tamil Nadu Act 43 of 1981, which reads as follows:

“Government have accordingly decided to undertake legislation to make it obligatory on the Managements to pay subsistence allowance to the employees during the period of their suspension, pending enquiry.”

11. The necessity for enacting Tamil Nadu Act 43 of 1981 arose from the fact that many employers were unwilling to incorporate appropriate provisions regarding subsistence allowance in their standing orders, as required under the Industrial Employment (Standing Orders) Act, 1946. Subsequently, Parliament amended the Industrial Employment (Standing Orders) Act by introducing Section 10A through Amending Act 18 of 1982, which came into force with effect from 17.05.1982. The text of Section 10A is extracted below:

“Payment of subsistence allowance.--(1) Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance-



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(a) at the rate of fifty per cent of the wages which workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and

(b) at the rate of seventy-five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.”

12. Since the petitioner–TANGEDCO is the successor-in-interest to the erstwhile Tamil Nadu Electricity Board, which had framed and certified standing orders applicable to both workmen and non-workmen categories, the provisions of the amended Section 10A of the Industrial Employment (Standing Orders) Act would squarely apply to its employees covered under the said Act. Moreover, Tamil Nadu Act 43 of 1981 received the assent of the President of India on 21.07.1981, and therefore, by virtue of Article 254(2) of the Constitution of India, it would prevail and apply as the law in the State of Tamil Nadu. Accordingly, the contrary contentions raised by the Board in its written submissions are without merit and stand rejected.

13. The petitioner–TANGEDCO contended that it is a statutory corporation, and in the absence of a statutory right, the contesting



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respondent, being the legal heir of a deceased employee who had attained superannuation, cannot lay claim to subsistence allowance. It was further submitted that the erstwhile Tamil Nadu Electricity Board, under Section 79(c)(k) of the Electricity (Supply) Act, 1948, had framed service regulations, which alone would govern the conditions of service of employees upon reaching the age of superannuation. It was further argued that the third respondent would be entitled to receive subsistence allowance only for the period from 24.12.2005 (date of suspension) to 31.05.2006 (date of superannuation). For the period from 01.06.2006 to 08.03.2013 (date of dismissal), the petitioner contended that only provisional pension would be payable and not subsistence allowance.

14. In support of the above contentions, learned counsel for the management placed reliance on the judgment of the Hon'ble Supreme Court in **Southern Power Distribution Company Limited of Andhra Pradesh (APSDCL) v. M/s. Hinduja National Power Corporation Limited**, reported in **2022 SCC OnLine SC 133**. Particular reliance was placed on the observations made in paragraph 100 of the judgment, which reads as follows:



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“Undisputedly, the appellants – DISCOMS are instrumentalities of the State and as such, a State within the meaning of [Article 12](#) of the Constitution of India. Every action of a State is required to be guided by the touchstone of nonarbitrariness, reasonableness and rationality. Every action of a State is equally required to be guided by public interest. Every holder of a public office is a trustee, whose highest duty is to the people of the country. The Public Authority is therefore required to exercise the powers only for the public good.”

15. Though the argument advanced by the petitioner may, at first glance, appear persuasive, it does not withstand legal scrutiny. It has been consistently held by various courts, including in relation to the erstwhile Tamil Nadu Electricity Board as well as other State Electricity Boards of different states, that the service regulations of the Board will not have any application in the teeth of the certified standing orders certified for that Board.

16. The Hon’ble Supreme Court, in its decision in **Salem Erode Electricity Distribution Company Ltd. v. Salem Erode Electricity Distribution Company Limited Employees**, reported in **AIR 1966 SC 808**, has clearly laid down the legal position in this regard. The relevant portion of the judgment reads as follows:



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“It appears that the change which the employer sought to make by the new rule did not involve any appreciable financial burden, and it was not the case of the appellant that the existing rule caused any hardship to him. The appellant, however, wanted to urge before this Court the theoretical ground that in a matter of employment, an industrial employer is entitled to make his own conditions with his employees and that industrial adjudication should not interfere with his freedom of contract in that behalf. Indeed, as the majority judgment shows, the appellant was a good employer and was treating his employees in a very liberal manner. He, however, brought the dispute before this Court in order to assert the general principle which was raised for the decision of this Court. That is the background of the majority decision in Rai Bahadur Diwan Badri Das's case.”

17. Subsequently, in **Rohtak Hissar District Electricity Supply Co. Ltd. v. State of Uttar Pradesh**, reported in **AIR 1966 SC 1471**, the Hon'ble Supreme Court reiterated the same legal principle. The relevant portion of the judgment is as follows:

“Though the scheme of the Act, as modified in 1956, has widened the scope of the enquiry before the appropriate authorities, we do not think that the Act authorises the introduction of Standing Orders which would result in appeals to outside authorities either by the workmen or the employer. The Standing Orders which fall within the contemplation of the Act, are intended to regulate the conditions of service of the employees, and in that behalf they may legitimately make provisions concerning the rights and liabilities of the parties and their enforcement by an internal arrangement which can be regarded as a domestic arrangement between the



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employer and his employees. It is not permissible under the Act to introduce appeals to outside authorities, and thereby extend the scope of the provisions which can legitimately be made by the Standing Orders.”

18. Once the standing orders are duly certified, the only recourse available to either the employer or the workmen is to approach the Certifying Officer for modification of the standing orders, and if aggrieved, to pursue an appeal before the Appellate Authority under the relevant provisions. This position of law was clearly affirmed by the Hon'ble Supreme Court in **Management of Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. v. S.S. Railway Workers' Union**, reported in **AIR 1969 SC 513**, wherein it was held as follows:

“It is also to be noted that the right to apply for modification is not confined to workmen alone, but that right is granted to the employers also.”

19. The petitioner–TANGEDCO is bound to comply with the certified standing orders in respect of the payment of subsistence allowance during the period of suspension. In the alternative, it must act in accordance with Section 10A of the Industrial Employment (Standing Orders) Act or adhere to the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981. In the face of these statutory mandates, reliance on internal service regulations is impermissible. This legal position was clearly affirmed by a Division Bench of this Court in



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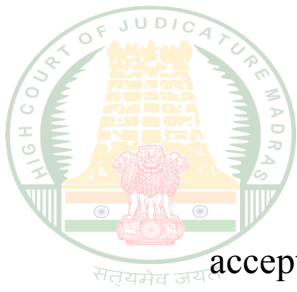
S. Alamelu v. Superintending Engineer, reported in **1990 (2) LLJ 96**

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(Mad), where it was held as follows:

“...It is admitted that the Regulations do not by themselves say that a violation of [Regulation 25\(2\)](#) would amount to misconduct, attracting disciplinary action. Even if such a provision has been made, the Standing Orders under the Act having got formulated and certified and they having not provided for such a misconduct, the Regulations would not prevail and could not be invoked to take disciplinary action. That is the result of sanctity annexed to the Act and the rules, and the Standing Orders under them, and their overriding effect on other service Rules and Regulations. The learned single Judge, with due respect to him, in our view, has not appreciated the implications of the Certified Standing Orders under the Act and their overriding effect from a proper perspective. The learned single Judge took note of the observations in [Shri Rasiklal Vaghjibhai Patel v. Ahmedabad Municipal Corporation and another](#) (1985-I-LLJ-527) as saying that there could be an action either under the Service Regulations or Standing Orders. With due respect to the learned single Judge, we must point out that the said pronouncement has not at all dealt with the question of the overriding effect of the Certified Standing Orders under the Act over a Regulation of the present nature. The Supreme Court [in that case](#), was discountenancing the view of the High Court that even if the allegation of misconduct does not constitute misconduct amongst those enumerated in the relevant service regulations, yet the employer can attribute what would otherwise per se be a misconduct through not enumerated and punish him for the same.”

20. Accordingly, the contention that the husband of the contesting respondent was not entitled to subsistence allowance until his dismissal, merely on the basis of the applicable service regulations, cannot be



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accepted in law. In this context, Mr. S. Ayyadurai, learned counsel for the third respondent, placed reliance on the decision of the Calcutta High Court rendered by Hon'ble Ms. Justice Indira Banerjee (as she then was) in **Chandra Sekhar Prasad Sinha v. State of West Bengal & Others**, reported in **2006 SCC OnLine Cal 341**, wherein the Court observed as follows:

“Indefinite suspension of an employee implicated in criminal proceedings, not connected with the employment of the teacher, would be unjust unwarranted and in effect amount to punishment of a person without trial. A criminal proceeding may take years before it is disposed of. An employee cannot kept under suspension for years.”

21.The argument advanced by the petitioner that the late Muniappa, having been in jail during the period of suspension, was provided with food and other basic necessities and was therefore not entitled to subsistence allowance, is wholly unsavory and ought not to have been raised by the Board before this Court. It is well-settled that, in matters of wage fixation and determination of dearness allowance, the standard adopted is based on the needs of a family unit comprising the worker, his spouse, and two children—collectively treated as three consumption units. The obligation to provide subsistence allowance is not limited to the individual alone but is intended to ensure the sustenance of the family



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as a whole.

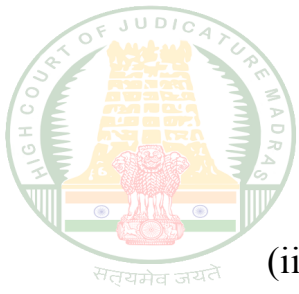
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22. The Fair Wages Committee, in its 1949 report, articulated that a “**living wage**” should enable a worker to provide not only for the basic essentials of food, clothing, and shelter, but also for a measure of comfort, education, health, and social security for himself and his family. The principles laid down in the Fair Wages Committee’s Report have received broad judicial approval. The Hon’ble Supreme Court endorsed these principles in **Express Newspapers (Private) Ltd. v. Union of India, AIR 1959 SC 58**, and again in **Standard Vacuum Refining Co. of India v. Its Workmen, AIR 1960 SC 948**. The Committee’s views on the fixation of “**minimum wage**” based on five norms extracted below was later endorsed by the Supreme Court in **Standard Vacuum Refining Co.’s case (cited supra)**:

"(i) In calculating the minimum wage, the standard working class family should be taken to consist of 3 consumption units for one earner; the earnings of women, children and adolescents should be disregarded.

(ii) Minimum food requirement should be calculated on the basis

of a net intake of calories, as recommended by Dr. Aykroyd for an average Indian adult of moderate activity.



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(iii) Clothing requirements should be estimated at per capita consumption of 18 yards per annum which would give for the average workers' family of four, a total of 72 yards.

(iv) In respect of housing, the rent corresponding to the minimum area provided for under Government's Industrial Housing Scheme should be taken into consideration in fixing the minimum wage.

(v) Fuel, lighting and other 'miscellaneous' items of expenditure should constitute 20% of the total minimum wage."

Further, in **Workmen Represented by Secretary v. Management of Reptakos Brett & Co.**, reported in **1992 (1) SCC 290**, the Court included additional elements like children's education, medical care, and some provision for old age and emergencies. While these wage theories provide the philosophical foundation for fair remuneration, in the context of subsistence allowance, they serve to underline that even a suspended employee must not be pushed to destitution. The statutory guarantee of subsistence allowance reflects this minimal assurance and must be honoured unless otherwise lawfully disqualified.

23. In modern wage fixation practices, the calculation of a worker's wages takes into account the overall expenditure of the entire family, including essential needs such as food, clothing, education, medical care,



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and even recreation. Consequently, when a worker is suspended pending disciplinary or criminal proceedings, the subsistence allowance—typically reduced to half of the wages—forces the family to curtail its basic requirements and live with great hardship. When that is the case, it is deeply troubling and wholly inappropriate for a public sector employer to raise averments that the facilities provided to a prisoner during incarceration are sufficient to meet the subsistence needs of the suspended employee. Such a submission is not only insensitive and callous but also runs counter to the standards expected of a model employer in the public sector.

24. In any event, if the existing certified standing orders do not address such a situation, it is always open to the Board to seek modification of the standing orders by approaching the Certifying Authority, as suggested by the Hon'ble Supreme Court in **S.S. Railway Company's** case (cited supra). It must be borne in mind that subsistence allowance is not intended solely for the sustenance of the suspended employee, but equally for the survival and well-being of his dependent family members during the period of suspension.

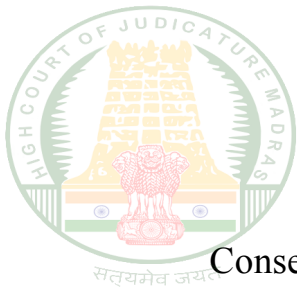


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25. Courts have held that where suspension is prolonged due to the employer's inaction, and no final order of dismissal or revocation is promptly issued, the employer remains liable to pay subsistence allowance for the entire duration of suspension. This ensures that the employer does not take advantage of its own delay to deny subsistence to the employee or, in cases like the present, to his legal heirs. In the present case, although the dismissal order was ultimately passed on 08.03.2013 with retrospective effect from 24.12.2005, the fact remains that no salary, pension, or provisional benefit was extended for the intervening period. The order of dismissal came nearly eight years after the initial suspension, and no evidence was produced to justify the delay. In such a situation, the claim for subsistence allowance for the entire suspension period cannot be faulted. Merely because the employer passes an order retrospective he will not stop the operation of law.

26. In view of the foregoing discussion, the writ petition in W.P. No. 14381 of 2020 is misconceived and is accordingly dismissed.



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Consequently, W.M.P. No. 17846 of 2020 is also dismissed. The petitioner shall pay costs of Rs.5,000/- (Rupees Five Thousand only) to the learned counsel for the 3rd respondent, (widow of the deceased T. Muniappa)

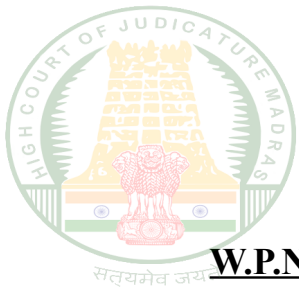
27. In the written arguments, it was stated as follows:-

“The Petitioner has placed on record the amounts the 3rd Respondent’s husband, Late T.Muniappa, would be entitled to, totalling Rs.4,94,499/-.

The Petitioner has also paid a sum of Rs.2,21,806/- for the period between June 2006 and September 2008. Therefore, the 3rd Respondent would, at best, be entitled to a balance payment of Rs.2,72,693/-

The Petitioner had deposited a sum of Rs.7,08,864/- as per the orders of the 1st Respondent. The Petitioner may be granted liberty to withdraw the said amount and may be directed to pay a sum of Rs.2,72,693/- to the 3rd Respondent within the time limit prescribed by this Hon’ble Court.”

28. However, this Court is not inclined to accept the submission made by the learned counsel for the petitioner. In view of the dismissal of the writ petition, the third respondent is permitted to withdraw the amount lying in deposit with the first respondent authority.



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W.P.No.23255 of 2021 (claiming gratuity)

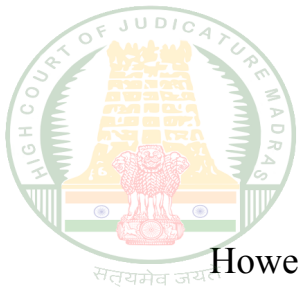
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29. In this writ petition, the petitioner–TANGEDCO has challenged the order dated 02.03.2021 passed by the first respondent, the Controlling Authority under the Payment of Gratuity Act, 1972, Salem, in P.G. Case No. 68 of 2019. By the said order, the Controlling Authority directed the petitioner to pay a sum of Rs. 2,19,240/- towards gratuity to the widow of the deceased employee, T. Muniappa, along with interest at the rate of 10% in terms of Section 7(3A) of the Act. When the writ petition was taken up for admission on 29.10.2021, it was admitted, and an interim stay was granted in W.M.P., with the following order:

“A Division Bench of this Court in W.A.No.75 of 2018 had passed orders on 27.09.2018 holding that the provisions of the Payment of Gratuity Act would not be applicable to the petitioner Corporation and as such, the order of the authority under the Payment of Gratuity Act may require interference. This aspect requires further deliberations. Since the petitioner has made out a prima facie case, there shall be an order of interim stay.

Notice to the second respondent returnable by 02.12.2021. Private Notice is also permitted. Mr.S.Arumugam, learned Government Counsel takes notice for the first respondent.”

30. When the matter was listed on 05.11.2024, it was referred for resolution before the Lok Adalat scheduled to be held on 14.12.2024.



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However, as the parties were unable to arrive at a settlement, the matter has now been restored to the regular board for adjudication by this Court.

31. Notice was served on the second respondent, the widow of the late T. Muniappa, on 26.11.2021. Mr. S. Ayyadurai, learned counsel, appeared and advanced arguments on her behalf, though no formal vakalat was filed. At the outset, the learned counsel raised a preliminary objection regarding the maintainability of the writ petition. He relied on two judgments of this Court in support of his submission. The crux of the objection was that an appeal lies against an order passed by the Controlling Authority under the Payment of Gratuity Act, 1972, before the Appellate Authority under Section 7(7) of the said Act. That provision also mandates a pre-deposit of the amount directed to be paid by the Controlling Authority as a condition precedent for entertaining the appeal. The learned counsel contended that the petitioner appears to have approached this Court under Article 226 in an attempt to bypass the statutory remedy and the obligation to make the pre-deposit, and such a course of action ought not to be permitted.



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32. In support of the preliminary objection, reliance was first placed on the decision of this Court in **The Management, A.2295, Madurai Co-operative Printing Works Ltd. v. The Controlling Authority under the Payment of Gratuity Act**, reported in **2012 (133) FLR 44**. Particular emphasis was placed on paragraph 13 of the judgment, which reads as follows:

“The writ petition filed by the management on the ground that only writ petition will lie and they need not avail the remedy of an appeal under [Section 7\(7\)](#) cannot be countenanced by this Court. When a statutory right was created by an enactment, there is no reason for the petitioner to deviate from moving the appellate authority. Though at this point of time, the learned counsel for the management stated that it requires prior deposit, that cannot be a reason to by pass the remedy of appeal.”

33. Further reliance was placed on the judgment of a learned Single Judge of this Court in **The Management, Metropolitan Transport Corporation Ltd. v. T. Perumal and Others**, reported in **MANU/TN/3998/2015**. Attention was specifically drawn to paragraph 19 of the said judgment, which reads as follows:

“The petitioner Management could not have approached this Court by way of these Writ Petitions without exhausting the appeal remedy and consequently it has to be held that the



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Writ Petitions are not maintainable.”

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34. The learned counsel also placed reliance on another decision of this Court in **Pollachi Sarvodaya Sangh v. The Assistant Commissioner of Labour, Authority under the Payment of Gratuity Act, 1972**, reported in **MANU/TN/6525/2019**, wherein the Court held as follows:

“This Court is of a strong opinion that institutional respects are to be maintained by the constitutional Courts. Whenever there is a provision for an appeal under the statute, without exhausting the remedies available under the statute, no writ petition can be entertained in a routine manner. Only on exceptional circumstances, the remedy of appeal can be waived, if there is a gross injustice or if there is a violation of fundamental rights ensured under the Constitution of India. Otherwise, all the aggrieved persons from and out of the order passed by the original authority is bound to approach the Appellate Authority. The Constitutional Courts cannot make an appeal provision as an empty formality. Every Appellate Authority created under the statute to be trusted in normal circumstances unless there is a specific allegation, which is substantiated in a writ proceedings. Thus, the institutional functions and exhausting the appeal remedies by the aggrieved persons, are to be enforced in all circumstances and writ proceedings can be entertained only on exceptional circumstances. Rule is to prefer an appeal and entertaining a writ is only an exception. This being the legal principles to be followed, this Court cannot entertain the writ petitions in a routine manner by waiving the remedy of appeal provided under the statute.”

35. Undoubtedly, the two decisions cited above, which hold that a writ



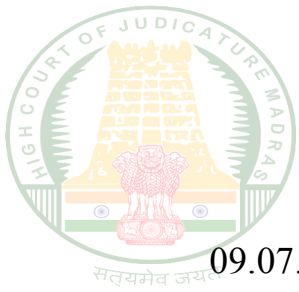
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petition should not be entertained without first exhausting the statutory appellate remedy against an order of the original authority, lay down the correct legal position. However, in the peculiar facts and circumstances of the present case, this Court is not inclined to adopt that course. The record reveals certain distinguishing features that merit consideration in favour of the petitioner—Management. It is evident that the second respondent's husband was dismissed from service by order dated 08.03.2013 following his conviction by a criminal court—a conviction which was subsequently upheld by this Court. Furthermore, he had attained the age of superannuation while in detention and eventually passed away on 05.07.2013.

36. The widow of the deceased employee, T. Muniappa, filed an application before the first respondent—Controlling Authority under the Payment of Gratuity Act, 1972—claiming gratuity in the sum of Rs.2,42,308/-. The application was taken on file as P.G. Case No. 68 of 2019, and notice was issued to the petitioner—Management.

37. In response, the petitioner filed a counter statement dated



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09.07.2019, disputing the entitlement of the deceased employee to receive gratuity. It was contended that the deceased was not eligible for gratuity on the ground that he had been dismissed from service following his conviction in a criminal case. The Management relied on Section 4(6) of the Payment of Gratuity Act, 1972, to argue that the gratuity amount stood forfeited by the Board. Section 4(6) reads as follows:

“Notwithstanding anything contained in sub-section (1),-

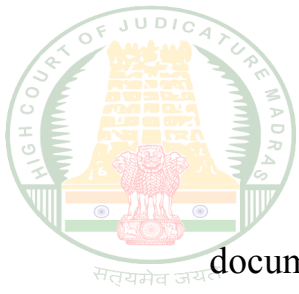
(a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee [may be wholly or partially forfeited]

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.”

38. Before the first respondent—Controlling Authority—only the second respondent, the widow of the deceased employee, was examined and she adduced oral evidence in support of her claim. On her behalf, eight



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documents were filed and marked as Exhibits P1 to P8. On the other hand, the petitioner–Board neither examined any witnesses nor produced any documents in support of its defence. In the impugned order, the authority held that the deceased employee, T. Muniappa, was not disqualified from receiving gratuity under Section 4(6) of the Payment of Gratuity Act. It was observed that although he had been convicted for the offence of murder, the offence was of a private nature and had no nexus with the course of his employment.

39. Instead of availing the statutory remedy of appeal before the Appellate Authority under the Payment of Gratuity Act, the petitioner chose to file the present writ petition. In the affidavit filed in support of the writ petition, the petitioner made the following averment in paragraph

16:

“I state the Petitioner is exempted from the Payment of Gratuity Act. The 1st Respondent has erroneously passed orders that the Petitioner has to pay the Gratuity as per the Act. I state that the order of the 1st Respondent dated 04.06.2019 in PG No.68 of 2019, is vitiated by errors of law and jurisdiction and the same is liable to be quashed”



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40. In support of their contention, the petitioner relied upon G.O. Ms. No. 699, Labour and Employment Department, dated 16.03.1983. In paragraph 4 of the said Government Order, the Government purported to exempt the Tamil Nadu Electricity Board from the purview of the Payment of Gratuity Act, 1972. The relevant portion of the order reads as follows:

“The Government after a careful examination of the proposal have decided that exemption be granted to the Tamil Nadu Electricity Board under Section 5 of the Payment of Gratuity Act, 1972 subject to the condition that the exemption will not be applicable to such of those employees of the Board as do not come within the pension scheme of the Board.”

41. Relying on the above Government Order, the Commissioner of Labour subsequently issued a circular to all subordinate officers functioning as authorities under the Payment of Gratuity Act. This was communicated through his circular letter dated 13.07.2021, wherein he issued the following advisory to his officers:

“TANGEDCO under section 5 of the Payment of Gratuity Act in G.O.Ms.No.699 dated 16.03.1983 of Labour and Employment Department has obtained exemption and



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exemption under section 5 of the gratuity Act giving retrospective effect in G.O.Ms.No.92 Labour and Employment Department dated 11.01.1989 (Go.s enclosed) So all the Authority Under Gratuity Act in their respective jurisdiction are advised not to entertain application against TANGEDCO for claiming gratuity filed by persons under the pension scheme”

42. It is unclear how the first respondent—Controlling Authority under the Payment of Gratuity Act—entertained the claim filed by the second respondent, particularly when the Act itself does not apply to the employees of TANGEDCO, in view of the exemption granted by the State Government with retrospective effect. This anomaly appears to have arisen solely due to the failure of the petitioner—Board, despite being represented by a panel of legal professionals across the State, to raise any objection regarding the maintainability of the claim petition before the authority, specifically on the ground of the exemption granted to the Board under the Act.

43. Although the Commissioner’s circular is dated 13.07.2021 and the impugned order was passed earlier, on 02.03.2021, the exemption granted to the Tamil Nadu Electricity Board was already in force by virtue of G.O. Ms. No. 699 dated 16.03.1983, and further reinforced by



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another Government Order dated 11.01.1989. The petitioner's failure to bring these orders to the attention of the authority amounts to negligence, and it is for this lapse that the petitioner must now bear the consequences in the present proceedings.

44. The learned counsel for the management, after concluding oral arguments, submitted a written representation on 28.03.2025, subsequent to the matter being reserved for orders. It also appears that a copy of the said submission was not furnished to the opposing party. While the Court appreciates the effort to assist with a written note, it is generally desirable that such submissions be made prior to the conclusion of arguments and shared with the other side to ensure fairness and transparency in the process. In any event, as the written representation was received by the Court Officer, it was duly perused and found to contain no additional material beyond what was already submitted during the course of oral arguments.

45. The learned counsel for the petitioner placed reliance on three decisions of this Court—one rendered by a Division Bench and two by learned Single Judges. The details of the said decisions are as follows:



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a.The Tamil Nadu Electricity Board Vs. S.Jagadeesan,

Writ Appeal No. 75 of 2018 dt. 27.9.2018

**b.The Superintending Engineer Vs. Appellate Authority
under the Payment of Gratuity Act, Coimbatore, Writ
Petition No. 45390 of 2006 dt. 16.10.2019**

**c.The Superintending Engineer Vs. The Assistant
Commissioner of Labour, Salem, Writ Petition No.32532
of 2017 dt. 30.3.2021.**

46. In all three cases cited, the respective Benches referred to the exemption notification issued by the Government and uniformly held that employees of TANGEDCO are not entitled to make claims under the Payment of Gratuity Act, 1972. In the first of those cases, the Division Bench, in paragraph 4 of its order, observed as follows:

“It is pertinent to point out that the learned Single Judge while allowing the writ petition directed the respondents to calculate the gratuity of the 1st respondent herein/writ petitioner in accordance with the calculation provided under the Payment of Gratuity Act, 1972 and pay him the difference in Gratuity, with statutory interest as per the said Act, from the date of entitlement. However, the learned Counsel appearing for the appellants submitted that so far as the Tamil Nadu Electricity Board is concerned, as per G.O.(Ms.) No.699, Labour Employment Department, dated 16.3.1983, they are completely exempted from paying the gratuity amount. As such,



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according to the appellants, the question of payment of gratuity or any arrears thereof does not arise. Further, it is stated that instead of paying the Gratuity, DCRG is being paid. Accordingly, the DCRG amount was settled in favour of the 1st respondent.”

47. In view of the fact that the provisions of the Payment of Gratuity Act, 1972 do not apply to the employees of TANGEDCO by virtue of the exemption granted by the State Government, this Court is not inclined to compel the petitioner to exhaust the appellate remedy before approaching this Court, as contended by the learned counsel for the second respondent. At the same time, the failure of the petitioner–TANGEDCO to bring the relevant exemption orders to the notice of the Controlling Authority (first respondent) at the appropriate stage has led to an erroneous order being passed and has resulted in avoidable multiplicity of proceedings.

48. In the result, the writ petition in W.P. No. 23255 of 2021 is allowed, and the impugned order dated 02.03.2021 passed in P.G. No. 68 of 2019 is hereby quashed, albeit on grounds distinct from those urged before the Controlling Authority. Consequently, W.M.P. No. 24542 of 2021 is dismissed. However, taking note of the negligence on the part of the



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petitioner in failing to present the relevant facts before the authority, this

Court directs the petitioner to pay a cost of Rs.5,000/- (Rupees Five Thousand only) to the learned counsel for the second respondent, notwithstanding the fact that the second respondent has not succeeded in the present proceedings.

09.04.2025

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Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

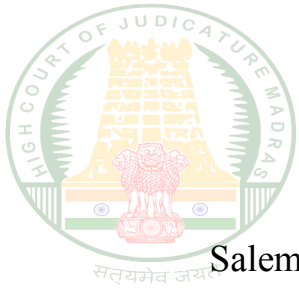
To

1.The Assistant Commissioner of Labour,
O/o. The Deputy Commissioner of Labour,
Authority under the Payment of Subsistence
Allowance Act, 1971
Salem-8

2.The Joint Commissioner of Labour
Authority under the Payment of Subsistence
Allowance Act, 1971,
Salem-8

3.The Controlling Authority under Payment
Of Gratuity Act,
Office of Joint Commissioner of Labour

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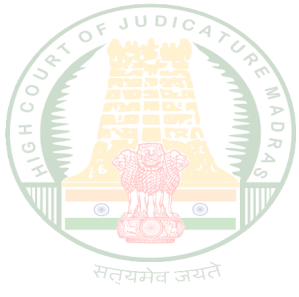


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DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
W.P.Nos.14381 of 2020 &
23255 of 2021 and
W.M.P.Nos. 17846 of 2020
& 24542 of 2021

09.04.2025