



W.P.No.25412 of 2014

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2025

CORAM :

THE HONOURABLE MR. JUSTICE **M.DHANDAPANI**

W.P.No.25412 of 2014

and

MP.No.1 of 2014

The Management of
Dharmapuri Co-operative Town Bank Ltd.,
Rep. by its Deputy Registrar/Managing Director,
(Full Additional Charge)
K.Arthanareeswaran,
No.63 A, Duraisami Naidu Street,
Dharmapuri – 636 702.

...Petitioner

Vs.

1. The Deputy Commissioner of Labour,
The Appellate Authority under the Payment of
Subsistence Allowance Act,
O/o. Deputy Commissioner of Labour,
Salem – 7.
2. The Assistant Commissioner of Labour,
The Authority under the Payment of
Subsistence Allowance Act,
O/o. Deputy Commissioner of Labour,
Salem – 7.
3. J.Ravichandran

...Respondents



W.P.No.25412 of 2014

WEB COPY

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 1st respondent in its order in A.P.S.A.No.5/2011 dated 11.02.2013 and a consequential proceeding issued by the 2nd respondent in its proceeding No.AA4/6201/2014 dated 22.07.2014 and quash the same.

For Petitioner : Mr.N.Suresh

For Respondents : Mr.K.Surendran, AGP, for R1 & R2
: No Appearance, for R3

ORDER

This Writ Petition has been filed seeking quashment of the order of the 1st respondent in A.P.S.A.No.5 of 2011 dated 11.02.2013 and the consequential proceeding of the 2nd respondent bearing No.AA4/6201/2014 dated 22.07.2014.

2. It is the case of the petitioner that, the 3rd respondent was employed in the petitioner bank in the cadre of Manager. On 17.07.2003, he was placed under suspension on the ground that he misappropriated the bank's fund. Pending enquiry, the petitioner was paying 25% of the salary as subsistence allowance in favour of the 3rd respondent. Not being satisfied with the same, the 3rd respondent preferred an application before



W.P.No.25412 of 2014

WEB COPY

the 2nd respondent in P.S.A.No.3 of 2010 seeking payment of 100% subsistence allowance for the period from 01.08.2007 to 28.02.2010 and as the same was dismissed by the 2nd respondent, the 3rd respondent preferred an appeal before the 1st respondent which was taken on file as A.P.S.A.No.5 of 2011, in which, the 1st respondent passed the present impugned order dated 11.02.2013 reversing the order of the 2nd respondent by holding that the 3rd respondent would fall within the definition of employee and ordered for payment of 100% subsistence allowance and directed the petitioner to pay a sum of Rs.6,71,982/- in favour of the 3rd respondent. The 2nd respondent passed the consecutive order dated 22.07.2014 directing the petitioner to deposit the above said amount quantified by the 1st respondent within a period of seven days. Challenging the said order of the 1st respondent directing the petitioner to pay subsistence allowance at the rate of 100% and also the consequential order passed by the 2nd respondent directing the petitioner to deposit the said sum quantified by the 1st respondent within seven days, the petitioner has come up with this Writ petition.



W.P.No.25412 of 2014

WEB COPY

3. This Court gave its careful consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record.

4. Though notice was served and the name of the 3rd respondent was printed in the cause list, none appeared on his behalf. Considering the period of pendency of this Writ petition, this Court is inclined to dispose of the same based on the available materials.

5. The short point to be decided in this Writ petition is whether the 3rd respondent would fall within the definition of employee.

6. It is the major contention of the learned counsel for the petitioner that, at the time of suspension, the 3rd respondent was an employee under the managerial capacity and thereby, the subsistence allowance was paid at the rate of 25%. However, the 1st respondent had miserably failed to consider the same and directed the petitioner to pay subsistence allowance at the rate of 100%, which is not sustainable. In



WEB COPY

this regard, to hammer home his point that the 3rd respondent would not fit within the definition of an employee, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Division Bench of this Court in the case of ***K.Avanasiappan Vs. The Management of Thekkalur Primary Agricultural Co-operative Bank, rep. by its President P.Senthil and Ors. [CDJ 2011 MHC 6513]*** wherein, the Division Bench of this Court has clearly stated that *when a person who has held the position in a managerial post, will not fall under the category of Section 2(a) of the Act and as the 3rd respondent was in service as secondary level, the subsistence allowance would be paid only at the rate of 25% as per Section 4(c) and not at the rate of 100% .*

7. For better appreciation, the relevant portion of the said order is extracted as hereunder:-

“The first respondent pointed out that in view of the duties and responsibilities of the appellant, he cannot be considered to be an employee within the definition of Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, as he is the Secretary of the Bank. In fact,



W.P.No.25412 of 2014

WEB COPY

during his examination, the appellant himself had admitted the above contentions of the first respondent Bank. The appellant has been receiving a salary of more than Rs.3,500/- per mensem and he is the administrative head of all the activities of his subordinates right from the Assistant Secretary to Watchman. In terms of sub-clause (ii) of clause (a) of Section 2, he is excluded from the definition of Section 2(a) of the said Act: The learned Judge, after analysing the above provisions, has held that the appellant cannot be brought within the definition of Section 2(a) and consequently held that he is not an employee. That apart, in terms of Section 2(19) of the Tamil Nadu Co-operative Societies Act, 1983, 'Officer' includes a President, Vice President, Managing Director, Secretary, Assistant Secretary, Member of Board and any other person empowered under the rules or bye-laws to give directions in regard to the business of the registered society. That definition of Officer includes the Secretary of the Co-operative Bank as well. Hence, the learned Judge has correctly held that the appellant is not an employee within the meaning of Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act and he is an Officer within the meaning of Section 2(19) of the Tamil Nadu Co-operative Societies Act. Even on facts, the learned Judge has found



W.P.No.25412 of 2014

WEB COPY

that in terms of bye- law 12(c) of the society, the Secretary would be entitled to the payment of subsistence allowance only at the rate of 25% of the basic wages during the period of suspension and he had been paid that amount as well.”

8. In view of the above, the averments raised by the petitioner in this writ petition is justified and the 3rd respondent being an employee under the managerial capacity would be entitled to a subsistence allowance at the rate of 25% alone. Accordingly, the impugned order of the 1st respondent dated 11.02.2013 is modified and the petitioner is directed to pay 25% of the subsistence allowance in favour of the 3rd respondent. In case if there is any arrears to be paid, the same shall be paid by the petitioner in favour of the 3rd respondent within a period of four weeks from the date of receipt of a copy of this order.

9. In view of the above modification made to the order of the 1st respondent, the consequent proceedings of the 2nd respondent dated 22.07.2014 directing the petitioner to deposit the amount quantified by the 1st respondent, is set aside.



W.P.No.25412 of 2014

WEB COPY

10. With the above observations and directions, this Writ Petition stands disposed of. No costs. Consequently, the connected Miscellaneous petition is closed.

28.02.2025

skt

Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

To

1. The Deputy Commissioner of Labour,
The Appellate Authority under the Payment of
Subsistence Allowance Act,
O/o. Deputy Commissioner of Labour,
Salem – 7.
2. The Assistant Commissioner of Labour,
The Authority under the Payment of
Subsistence Allowance Act,
O/o. Deputy Commissioner of Labour,
Salem – 7.



WEB COPY



W.P.No.25412 of 2014

M.DHANDAPANI, J.

skt

W.P.No.25412 of 2014
and
MP.No.1 of 2014

28.02.2025