



WEB COPY



W.P.Nos.33948, 33951 and 33957 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2025

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.33948, 33951 and 33957 of 2019
and W.M.P.Nos.34528, 34538 and 34522 of 2019,
7106, 7107, 7133, 7135, 7155 and 7158 of 2023

Prayer in W.P.No.33948 of 2019

The Management of
K.Sivasubramaniam Spinner (Pvt.) Limited,
Nalligoundanpalayam Pirivu,
Thekkalur-Pudupalayam Post,
Avinashi Taluk,
Tirupur District-641 654,
Rep.by its Whole Time Director.

... Petitioner

Vs.

- 1.The Assistant Commissioner of Labour,
O/o.The Deputy Commissioner of Labour,
Authority under the Payment of Subsistence Allowance Act, 1971,
Coimbatore.
- 2.The Joint Commissioner of Labour,
Appellate Authority under the Payment of Subsistence
Allowance Act, 1971,
Coimbatore.



W.P.Nos.33948, 33951 and 33957 of 2019

WEB COPY 3.V.Pandiaraj

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the second respondent in A.P.S.A.No.2 of 2017 and quash its order dated 25.03.2019 confirming the order of the first respondent in P.S.A.No.3 of 2015 dated 20.07.2017.

For Petitioner : Mr.Anand Gopalan
for M/s.AGAM Legal Advocates

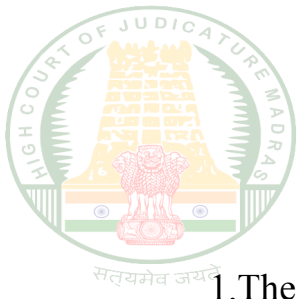
For Respondents : Mr.K.Surendran
Additional Government Pleader
for R1 and R2
Mr.V.Ajoy Khose for R3

Prayer in W.P.No.33951 of 2019

The Management of
K.Sivasubramaniam Spinner (Pvt.) Limited,
Nalligoundanpalayam Pirivu,
Thekkalur-Pudupalayam Post,
Avinashi Taluk,
Tirupur District-641 654,
Rep.by its Whole Time Director.

... Petitioner

Vs.



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

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

3. V. Jayakumar ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the second respondent in A.P.S.A.No.3 of 2017 and quash its order dated 25.03.2019 confirming the order of the first respondent in P.S.A.No.5 of 2015 dated 20.07.2017.

For Petitioner	:	Mr. Anand Gopalan for M/s. AGAM Legal Advocates
For Respondents	:	Mr. K. Surendran Additional Government Pleader for R1 and R2 Mr. V. Ajoy Khose for R3

Prayer in W.P.No.33957 of 2019
The Management of
K. Sivasubramaniam Spinner (Pvt.) Limited,
Nalligoundanpalayam Pirivu,



W.P.Nos.33948, 33951 and 33957 of 2019

Thekkalur-Pudupalayam Post,
Avinashi Taluk,
Tirupur District-641 654,
Rep.by its Whole Time Director.

... Petitioner

Vs.

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

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

3.V.Veemaraj

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the second respondent in A.P.S.A.No.5 of 2017 and quash its order dated 25.03.2019 confirming the order of the first respondent in P.S.A.No.6 of 2015 dated 20.07.2017.

For Petitioner : Mr.Anand Gopalan
for M/s.AGAM Legal Advocates

For Respondents : Mr.K.Surendran
Additional Government Pleader
for R1 and R2
Mr.V.Ajoy Khose for R3



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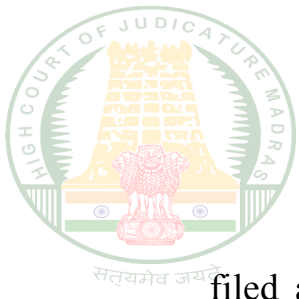
COMMON ORDER

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These Writ Petitions are filed against the orders dated 25.03.2019 passed by the second respondent in A.P.S.A.Nos.2, 3 and 5 of 2017 confirming the order of the first respondent dated 20.07.2017 passed in P.S.A.Nos.3, 5 and 6 of 2015.

2. Since the issue raised in these writ petitions is one and the same, these writ petitions are taken up together and disposed of by way of this common order.

3. The brief facts required for disposal of these writ petitions are that the third respondent/employees in these writ petitions were temporarily suspended from service and they were later reinstated. However, they were not paid subsistence allowance during the period of their suspension. Claiming subsistence allowance for the period of suspension, the employees filed P.S.A.No.3, 5 and 6 of 2015 before the first respondent which was allowed by the said Authority. Thereafter, the petitioner Management has

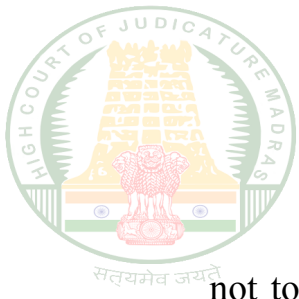


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filed appeals before the second respondent in A.P.S.A.Nos.2, 3 and 5 of 2017 on the strength of the exhibits filed by the Management, namely, the photographs to prove that the employees were gainfully employed during the period of suspension and therefore, allowing of P.S.A.Nos.3, 5 and 6 of 2015 is untenable. The first respondent, after going through the documents as well as the exhibits, came to a conclusion that merely on the basis of the photographs filed by the petitioner Management, an employee cannot be denied the subsistence allowance. The petitioner Management has not substantially proved that the employees were gainfully employed during the period of suspension by filing the supporting documents. Accordingly, the second respondent dismissed the appeal filed by the Management. Aggrieved by the said order, the present writ petitions are filed.

4. The learned counsel appearing for the petitioner Management reiterated the averments made in the affidavit filed in support of the writ petitions and contended that the Original Authority had erred in computation of subsistence allowance and the subsistence allowance ought



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not to have been allowed and that even on appeal, while the exhibits were filed to prove that the employees were gainfully employed during the period of suspension, the same has not been taken into consideration by the Appellate Authority. Therefore, the orders passed by the Appellate Authority as well as the Original Authority have to be set aside.

5. The learned counsel appearing for the third respondent/ employees in these writ petitions would submit that even before the Original Authority, the application for subsistence allowance was filed claiming subsistence allowance for the period from 01.06.2013 to 28.02.2015. Merely marking the photographs is not sufficient to prove that the employees were gainfully employed. Therefore, the Authorities are just and reasonable in awarding the subsistence allowance which cannot be challenged by way of the writ petitions. Therefore, the learned counsel sought for dismissal of these writ petitions.



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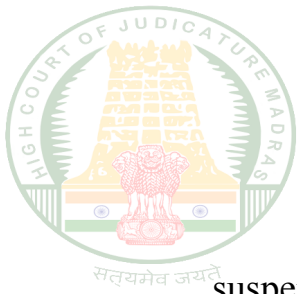
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6. This Court carefully considered the submissions made on both sides and perused the materials available on record.

7. Section 3(2) of the Tamil Nadu Payment of Gratuity Act, 1981, reads as follows:

“An employee shall not be entitled to receive any subsistence allowance if he accepts any other employment during the period of his suspension in any Establishment other than the Establishment where he had been working immediately before his suspension. “

8. As contemplated in the above provision, the burden falls upon the Management to prove that the employee accepts any other employment during the period of suspension in any Establishment other than the Establishment where he had been working immediately before his suspension. In the present case on hand, the Management, even before the Original Authority as well as the Appellate Authority, has filed photographs, in order to substantiate their stand that the suspended employees have gainfully employed in some other Establishment during the period of



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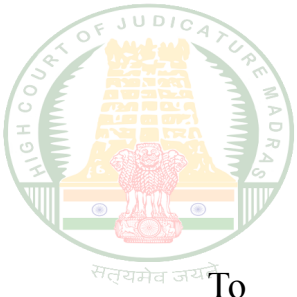
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suspension and on that ground, they are not liable to pay the subsistence allowance. The provision unambiguously states that the petitioner Management has to prove the gainful employment of the employees. It cannot be said that filing of mere photographs cannot be said to be a concrete proof for proving the fact that the employees were gainfully employed during the period of suspension. Accordingly, this Court finds no reason whatsoever to interfere with the orders passed by the Original Authority as well as the Appellate Authority in the present writ petitions.

9. Accordingly, these Writ Petitions are dismissed. There shall be no order as to costs. Connected miscellaneous petitions are closed.

04.04.2025

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No
ssb



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M.DHANDAPANI, J.

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