(2009) 12 MAD CK 0003

In the Madras High Court

Case No : Writ Petition No. 38185 of 2003

Karambakkudi Co-operative Primary Agricultural and Rural Development Bank Ltd. APPELLANT

Vs

The Assistant Commissioner of Labour and R. Ramadass RESPONDENT

Date of Decision : 16-12-2009

Acts Referred:
Tamil Nadu Payment of Subsistence Allowance Act, 1981 — Section 2, 3, 4, 5, 87
Tamil Nadu Payment of Subsistence Allowance Rules, 1981 — Rule 5A

Citation : (2009) 12 MAD CK 0003

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Parthiban, for the Appellant; R. Neelakandan, G.A. for R1 and S. Vijayan, for R2, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner is a Cooperative Society. They have come forward to challenge the order passed by the 1st respondent,

Controlling Authority made in P.S.A. No. 32/2002 dated 16.7.2003. By the impugned order, the 1st respondent controlling authority constituted

under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 (Act No. 43 of 1981) computed the subsistence allowance payable to the

2nd respondent for the period from 31.10.2000 to 6.12.2001, totalling a sum of Rs. 1,35,528.25. After adjusting the amount of Rs. 15,900/-

already paid, the authority came to the conclusion that the petitioner society is liable to pay Rs. 1,19,628.25. The order came to be passed on an

application taken out by the 2nd respondent under Sections 3 and 4 of the Tamil Nadu Act 43 of 1981.

2. Under Rule 5A of the Tamil Nadu Payment of Subsistence Allowance Rules,

1981, if any person is aggrieved by an order of the preliminary

authority, an appeal lies to the appellate authority i.e., to the Deputy Commissioner of Labour. There is a pre-condition to deposit the amount for

filing the appeal. The petitioner society has not filed any appeal in order to avoid the condition of pre-deposit.

3. In any event, the contention raised by Mr. R. Parthiban, learned Counsel for the petitioner was that the 2nd respondent had reached the age of

superannuation on 30.10.2000. Therefore, there is no question of suspending the 2nd respondent on reaching the age of superannuation.

4. But, however, it is seen from the records produced by the 2nd respondent that the 2nd respondent was suspended by an order dated

30.10.2000 by the Vice President of the Society. It was stated in the order that the 2nd respondent being a Supervisor was guilty of serious

misconduct. Therefore, in the interest of the bank, he was suspended. It was also stated that a separate charge memo also will have to be given to

the 2nd respondent. It is also seen that subsequently, an enquiry officer was appointed to enquire into the charges. The said enquiry officer gave a

report on 21.9.2001. Subsequently, the Special Officer, who has taken up the petitioner society, has issued a show cause notice on 22.10.2001.

After getting an explanation from the 2nd respondent, final order dated 30.11.2001 was passed. In the said order, it was stated that the 2nd

respondent was guilty of the misconduct including causing loss to the bank. Therefore, a sum of Rs. 5,05,042/- was liable to be adjusted from the

terminal benefits payable to the 2nd respondent. It was thereafter the 2nd respondent filed an application in PSA No. 32 of 2002 before the 1st

respondent.

5. On notice from the 1st respondent, the petitioner society filed a counter statement dated ''nil''. The only contention raised by the petitioner

before the authority was that as per the service conditions of the Society, the 2nd respondent was to have retired from service on 31.10.2000. No

order was passed by the petitioner society to retain him in service beyond the superannuation. Therefore, the service of the 2nd respondent came

to an end automatically. It is also stated that the effect of the term ''suspension'' as found in Section 2(g) of the Tamil Nadu Payment of Subsistence

Allowance Act is to prevent a person from attending office. The question of 2nd respondent attending the office beyond 31.10.2000 may not arise,

as he has already reached the age of superannuation.

6. The further contention raised was that since the 2nd respondent was a Supervisor drawing more than Rs. 500/-, he is not an employee within

the meaning of Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act. Taking the preliminary objection, first this contention must

be rejected because the Act had undergone a change by the Tamil Nadu Act 35 of 1999 with effect from 9.8.1999, wherein a person being

employed in a supervisory capacity and drawing wages not exceeding Rs. 3,500/- is also covered by the Act. Therefore, this contention cannot be

raised. Even otherwise, this point was not argued before the 1st respondent.

7. Coming to the question of 2nd respondent''s entitlement of the subsistence allowance, the term suspension is defined under the Act. Section 2(g)

states as follows:

(g) ""suspension"" means in interim decision of an employer as a result of which an employee is debarred temporarily from attending to his office and

performing his functions in the establishment on the ground that-

(1) an enquiry into grave charges against him is contemplated or is pending or no final order after the completion of the enquiry has been passed: or

(2) a complaint against him of any criminal offence is under investigation or trial or the complaint has not been finally disposed of.

8. In the present case, as per Ex.P.1, the suspension order has been filed before the authority. Pursuant to the said suspension, the enquiry was

conducted. The 2nd respondent had participated in the enquiry. It also led to a final order of recovering the substantial portion of the terminal

benefits. These facts are not disputed. Therefore, when the petitioner society wanted further disciplinary action, rightly they have passed an order

not allowing the 2nd respondent to get retired from service. But, on the other hand, they wanted to retain the service of the 2nd respondent to

complete the enquiry. It also resulted in a penalty against the 2nd respondent. When there is an order of suspension, then the right under which an

employee is to be paid subsistence allowance is covered by Section 3 of the Payment of Subsistence Allowance Act. The mode of recovery is

provided u/s 4 of the Act. By virtue of Section 5, only the beneficial payment is saved. Therefore, if there is no such payment, the provisions of

Tamil Nadu Act 43 of 1981 will come into operation. Under the circumstances, the Writ Petition filed by the society challenging the order of the

1st respondent is misconceived.

9. Mr. R. Parthiban, learned Counsel for the petitioner contended that there is no concept of suspension beyond superannuation. Even that issue

has been determined by a Division Bench of this Court in The Registrar of Cooperative Societies, Kilpauk, Chennai 10 v. G. Manoharan in Writ

Appeal Nos. 256 and 257 of 2008 dated 21.10.2009. In paragraph 33 of the said order of the Division Bench, presided by Prabaha Sridevan, J,

the following propositions have been noted:

33. From the records produced in this case, the following facts are obvious:

a) The activities of the 1st respondent had caused a great deal of consternation among the authorities and they were forced to transfer him from the

place where, according to them, he was causing a lot of damage.

b) The disciplinary proceedings had been actually initiated before his age of superannuation, since the first charge memo is dated 6.6.2003,

whereas his age of superannuation is 31.6.2003.

c) He had also given a reply to the charge memo dated 6.6.2003, but had not chosen to reveal the fact of the issuance of this earlier charge memo

in his writ affidavit.

d) No orders had been passed permitting him to retire; on the contrary, he was suspended on the eve of his attaining the age of superannuation.

e) The Supreme Court has held that even if a person had retired, if it is proved that he had caused loss to the establishment, then proceedings can

be initiated to recover the amount of loss from him.

f) Even if a person has attained the age of superannuation, it is possible to dismiss him, in which event, he will not be entitled to his terminal dues

vide Ramesh Chandra Sharma Vs. Punjab National Bank and Another, .

g) In any event, Section 87 of the Act gives the power to proceed against even a past employee for recovery and restoration of the financial loss

caused to the Society.

10. In the light of the above, there is no illegality or impropriety on the 2nd respondent claiming the said amount. The Writ Petition stands

dismissed. However, there will be no order as to costs. The petitioner society is directed to make payment to the 2nd respondent within four weeks from the date of receipt of a copy of this order.

