
(2000) 08 MAD CK 0019

In the Madras High Court

Case No : Writ Petition No. 11887 of 1997 and W.M.P. No. 19150 of 1997

Management, Coimbatore District Co-operative Milk
Producers Union

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 01-08-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Payment of Subsistence Allowance Rules — Rule 5A

Tamil Nadu Payment of Subsistence Allowance Act, 1981 — Section 3, 4, 5

Citation : (2000) 87 FLR 607 : (2000) 2 LLJ 1436

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : M.R. Raghavan, for the Appellant; O. Venkatachalam, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—Aggrieved by the award of the Labour Court, Coimbatore in C.P. Nos. 628 and 868 of 1996 dated December 23,

1996 directing the petitioner to pay subsistence allowance of Rs. 10,050 and Rs. 5,520 respectively, the Management, District Co-operative Milk

Producers" Union has filed the above writ petition.

2. The necessary facts pertaining to the writ petition is stated hereunder: According to the petitioner, the second respondent was employed under

the petitioner Union on casual basis as an attendar. While employed as such, he had indulged in a misconduct, viz., attempting to cause loss to the

petitioner Institution. Hence, through order dated February 17, 1994, he was not continued to be employed. Subsequent to the order dated

February 17, 1994, the second respondent had made claims for subsistence

allowance, on the basis he was suspended from duty. The Assistant Commissioner of Labour, before whom, the claim was made, had also computed the amount payable to the 2nd respondent. Aggrieved by the order of the Assistant Commissioner of Labour, the petitioner filed an appeal before the Appellate Authority under the Subsistence Allowance Act. However, the 2nd respondent was directed to report for duty on August 24, 1996. The 2nd respondent did not report for duty even after their specific letters dated August 24, 1996 and August 30, 1996. By Order dated October 1, 1996 the second respondent was terminated from service of the petitioner on the ground of voluntary abandonment. Thereafter, the 2nd respondent filed two applications, namely, C.P. Nos. 628 and 868 of 1996 u/s 33-C(2) of the Industrial Disputes Act before the Labour Court, Coimbatore. It is stated that even though the said applications were resisted stating that subsistence allowance cannot be claimed u/s 33-C(2) of the Industrial Disputes Act, and a separate Forum is there under the provisions of the Tamil Nadu Subsistence Allowance Act, by the impugned order, the Labour Court directed the petitioner and the management to pay a sum of Rs. 10,050 and Rs. 5,520 to the 2nd respondent-workman.

3. Heard the learned counsel for the petitioner-management and the 2nd respondent-workman.

4. It is clear from the particulars furnished that the second respondent-workman had filed two applications, namely, C.P. Nos. 628 and 868 of

1996 u/s 33-C(2) of the Industrial Disputes Act claiming subsistence allowance for the period from April 1, 1995 to February 29, 1996 and from

March 1, 1996 to August 31, 1996. The said applications were filed before the Labour Court, Coimbatore. According to Mr. M.R. Raghavan,

learned counsel for the management, irrespective of their opposition on merits of the claim made by the workman, the claim petitions, namely C.P.

Nos. 628 and 868 of 1996 u/s 33-C(2) of the Industrial Disputes Act before the Labour Court, Coimbatore are not maintainable. He also stated

that this objection -was raised even in the counter statement filed before the Labour Court.

According to him, without considering the jurisdiction, the Labour Court erroneously passed the impugned order and directed the petitioner-

management, to pay subsistence allowance. Mr. O.Venkatachalam, learned counsel for the 2nd respondent-workman would state that even on earlier occasion the 2nd respondent-workman filed necessary claim petition before the Assistant Commissioner of Labour under the Subsistence Allowance Act and secured an order in his favour. He also contended that the appeal filed by the management was also dismissed. While so, it is not clear why the 2nd respondent-workman has filed the present petitions, namely, C.P. Nos. 628 and 868 of 1996 claiming subsistence allowance before the Labour Court u/s 33-C(2) of the said Act. Mr. O. Venkatachalam, learned counsel for the workman, by pointing out Division Bench decision of this Court in the case of Secretary, Multi-purpose Co-operative Society Vs. Presiding Officer, Labour Court and Others, would consider that the petitions filed u/s 33-C(2) are maintainable before the Labour Court. In that decision, after referring to Section 33-C(2) of the Industrial Disputes Act, the Division Bench has held that when an employee is kept in suspension indefinitely, with no enquiry pending, he is entitled to invoke Section 33-C(2) of the said Act and the application is maintainable. Their Lordships have further held that the Labour Court, in the circumstances, can go into the legality of the suspension itself to determine the amount payable to the employee. Mr. M.R. Raghavan, learned counsel appearing for the petitioner-management, would state that the said judgment is not helpful to our case, since after the enactment of Tamil Nadu Payment of Subsistence Allowance Act, 1981, necessary application has to be made for payment of subsistence allowance before the authority under the Act and not before the Labour Court. In support of his contention, he very much relied on a recent judgment of S.M. ABDUL WAHAB, J. in the case of Natham Co-operative Agricultural Bank Ltd. Vs. The Presiding Officer, Principal Labour Court, Madurai and Another, . After considering the relevant provisions from the Tamil Nadu Payment of Subsistence Allowance Act, 1981 particularly Sections 3 to 5, the learned Judge came to the conclusion that the claim u/s 33-C(2) of Industrial Disputes Act before the Labour Court is not maintainable. There is no dispute with regard to applicability of Tamil Nadu Payment of Subsistence Allowance Act, 1981 and there is a machinery provided under the Act. As a matter of fact, the second respondent himself had approached the Assistant Commissioner of Labour by invoking the provisions of Tamil

Nadu Payment of Subsistence Allowance Act and obtained an order in his favour. For the subsequent period, instead of resorting to the same

provision, the second respondent had approached the Labour Court u/s 33-C(2) of the said Act. In the light of the specific provision, namely,

Sections 3 to 5 of Tamil Nadu Payment of Subsistence Allowance Act read with Rule 5-A of Payment of Subsistence Allowance Rules, the

proper course and remedy for the 2nd respondent-workman is to file appropriate petition before the Authority under the Tamil Nadu Payment of

Subsistence Allowance Act and the application filed u/s 33-C(2) of the Industrial Disputes Act before the Labour Court is not maintainable. The

Division Bench decision referred to by the learned counsel for the second respondent namely, Secretary Cooperative Society v. Presiding Officer,

Labour Court, (supra) was decided before the passing of the Tamil Nadu Payment of Subsistence Allowance Act, 1981; hence the said Division

Bench decision is not helpful to the case of the 2nd respondent. In other words, after the enactment of the Tamil Nadu Act, it is for the aggrieved

person to approach only the authority under that Act and not before the Labour Court u/s 33-C(2) of the Industrial Disputes Act. Hence, I am in

agreement with the view expressed by ABDUL WAHAB, J., in Natham Co-operative Agricultural Bank Ltd., v. Principal Labour Court, (supra).

Further, N.K. JAIN (as he then was) had an occasion to consider similar issue in W.P. No. 2711 of 1992 dated July 14, 1999 Natham Co-

operative Agricultural Bank Ltd., v. The Presiding Officer and Anr., (supra). The said writ petition was filed by Natham Co-operative Agricultural

Bank against the order of Principal Labour Court Madurai, in I.A. No. 153 of 1990 in C.P.No. 214 of 1986 dated March 25, 1991. The learned

Judge, after considering the decision of this Court reported in Natham Co-operative Agricultural Bank Ltd. v. Principal Labour Court, (supra)

allowed the writ petition filed by the Bank and quashed the order passed by the Labour Court u/s 33-C(2) of the Industrial Disputes Act. The said

judgment also supports the case of the petitioner/management.

5. In the light of what is stated above, the impugned order of the first respondent dated December 23, 1996 is quashed and the writ petition is

allowed. However, the second respondent is free to approach the appropriate Forum for his relief. No costs. Consequently, W.M.P. No. 19150

of 1997 is closed.