

(2010) 10 MAD CK 0004

In the Madras High Court

Case No : Writ Petition (MD) No. 13187 of 2009 and M.P. (MD) No. 1 of 2009

Management, T.N. Co-Op. Marketing Federation Ltd.

APPELLANT

Vs

Appellate Authority and Another

RESPONDENT

Date of Decision : 05-10-2010

Acts Referred:

Citation : (2011) 128 FLR 434

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Veera Kathiravan, for the Appellant; R. Janakiramulu, S.G.P. and S. Arunachalam, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner is a Management of Tamil Nadu Co-operative Marketing Federation Limited [TANCOFED]. Aggrieved by

the order passed by the first respondent appellate authority under the Tamil Nadu Payment of Subsistence Allowance Act, 1981, dated

30.9.2009, confirming the order passed by the second respondent, Assistant Commissioner of Labour, Madurai, dated 23.5.2008, the present

Writ Petition came to be filed.

The third respondent was working as a Junior Assistant in the Sivagangai Region. He was posted to work at Pammanendhal Primary Agricultural

Co-operative Bank. Due to the irregularities in the purchase of Copra, a criminal case was registered by the Director of Vigilance and Anti-

Corruption, Ramanathapuram in No. 2/AC/2003, based on which, the third respondent was placed under suspension on the day when he was

about to retire from service. Since no subsistence allowance was paid, the third

respondent moved the authority constituted under the Tamil Nadu

Payment of Subsistence Allowance Act claiming subsistence allowance. He also stated that after suspending him, no enquiry was conducted and

criminal case was also not in progress. Therefore, as per the provisions of the Act, he is entitled for 75% of wages as subsistence allowance from

90 days to 180 days and, thereafter, 100% of wages as subsistence allowance. The subsistence allowance was claimed for different periods in

three different applications, viz., P.S.A. Nos. 13/2007, 15/2007 and 19/2007.

The stand of the petitioner Corporation was that under the bye-law 31(5), if there is any suspension on the day of retirement, the wages will get

frozen and the society had already paid 50% for the 23 months at the rate of Rs. 5,015/- p.m.. Since the third respondent had misappropriated Rs.

7,26,300/-, there is no further payment and that too, not at the rate of 100%. The authority rejected the stand of the petitioner TANCOFED and

computed the amount and allowed the three applications. Aggrieved by the order passed by the authority, the petitioner preferred an appeal under

Rule 5-A of the Tamil Nadu Payment of Subsistence Allowance Rule, 1981, to the first respondent and the petitioner's appeal was numbered as

PSAA. No. 2 of 2009. The appellate authority concurred with the findings rendered by the second respondent and rejected the appeal filed by the

petitioner. It is as against the said order, the present Writ Petition came to be filed.

2. The learned Counsel for the petitioner contended that the order passed by the authorities are erroneous. Since the third respondent reached the

age of superannuation, he is only entitled to be paid 50% as paid by the society and he is claiming to seek 100%, which is not maintainable. It is

also submitted that criminal case get prolonged and further, the Society should not be made to pay 100% of the wages as subsistence allowance.

3. Mr. S. Arunachalam, learned Counsel for the third respondent submitted that even the criminal case has ended in acquittal on 7.2.2010 in C.C.

No. 2 of 2006, which was tried before the learned Chief Judicial Magistrate, Ramanathapuram. Therefore, the third respondent cannot be

indefinitely kept under suspension.

4. The said issues need not be gone into at this stage, as this Court is only confining its review only on the orders passed by the authorities below.

The argument placed upon the bye-law 31(5) is unsustainable, as the said bye-law only enables the society to place a person under suspension,

even after reaching the age of superannuation, with a view to continue the disciplinary proceedings. Therefore, having availed the said provision to

retain the third respondent in service, it has to be seen whether the third respondent is entitled to invoke the provisions of the Act.

5. The term ""suspension"" is defined u/s 2(g) of the Tamil Nadu

(g) ""Suspension"" means an 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.

Therefore, if a person is kept under suspension, whether before reaching the age of superannuation or after, that is immaterial for the purpose of

this Act.

6. The ingredients found in section 2(g) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 [hereinafter referred to as ""the Act""], is

squarely applicable to the case of the third respondent. It is also admitted that the petitioner society did not proceed with any disciplinary action

against the third respondent, though there is no legal bar for conducting a departmental enquiry simultaneously even when the criminal trial is on.

Therefore, no blame can be made on the third respondent. The authority, who is constituted u/s 4 of the Act is empowered to go into the question

as to whether an employee is entitled to get enhanced subsistence allowance initially at the rate of 75% and, thereafter, 100%.

7. As per section 3(1) of the Act, if any delay is attributable to such employee either on account of delay tactics adopted during departmental

enquiry or where a criminal proceeding is prolonged beyond the period of 90 days for reasons directly attributable to the employee as found in the

third proviso to section 3(1) of the Act, certainly it is open to the employer to plead before the authority that he was not eligible to get enhanced

compensation. Though delay is attributed on the third respondent, no such defence was taken before the authorities, viz., the second respondent

and the appellate authority, viz., the first respondent. When the authorities are empowered to calculate subsistence allowance as per the provisions

of the Act, when there is a valuable defence open to the petitioner society and that defence was not pleaded, it is not open to the said society to

plead before this Court that their bye-laws only provides for 50% and no more. When a special enactment has been made by the State, exclusively

dealing with the issue of subsistence allowance, no reliance can be placed upon the bye-laws. In fact, section 5 of the Act protects better terms

provided by the employer and if the terms are less favourable, then the provisions of the Act override such contract, bye-laws, or any term of

settlement.

In the light of the above, this Court does not find any legal ground to impeach the orders passed by the authorities below, which are impugned in

the preset Writ Petition. Hence, this Writ Petition is dismissed. In view of the dismissal of the Writ Petition, it is open to the third respondent to

withdraw the amounts lying in deposit with the second respondent. Consequently, the connected miscellaneous petition is closed. However, there

will be no order as to costs.