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**(2011) 12 MAD CK 0334**

**In the Madras High Court**

**Case No :** Writ Petition (MD) No. 2716 of 2009 and M.P. (MD) No.1 of 2009

Mekkamandapam Primary Agricultural Cooperative Bank Ltd. **APPELLANT**

**Vs**

T.Chellam and Assistant Commissioner of Labour, (Authority under Tamil Nadu Payment of Subsistence Allowance Act), **RESPONDENT**  
Trivandrum Road, Palayamkottai, Tirunelveli District

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**Date of Decision :** 09-12-2011

**Acts Referred:**

Tamil Nadu Co-operative Societies Act, 1961 — Section 137

Tamil Nadu Payment of Subsistence Allowance Act, 1981 — Section 2, 3(1)

Tamil Nadu Payment of Subsistence Allowance Rules, 1981 — Rule 5A

**Citation :** (2011) 12 MAD CK 0334

**Hon'ble Judges :** K. Chandru, J

**Bench :** Single Bench

**Advocate :** G. Manivannan, for the Appellant; F. Deepak for R-1 Mr. K. Mahesh Raja, GA for R-2, for the Respondent

**Final Decision :** Allowed

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**Judgement**

Honourable Mr. Justice K. Chandru

1. The petitioner is the Primary Agricultural Cooperative Bank Ltd., represented by its Special Officer. In this writ petition, the challenge is to the order passed by the second respondent Assistant Commissioner of Labour-cumthe authority constituted under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 (for short PSA Act) made in PSA No.14 of 2003, dated 8.2.2008. By the impugned order, the second respondent had computed a sum of Rs.2,97,867/- as due and payable towards subsistence allowance for the first respondent for the period from 12.6.2001 to 31.8.2004 on graded basis. When the writ petition came up on 3.4.2009, notice was issued to the respondents. Pending notice, this court directed the petitioner society to deposit Rs.1 lakh as a condition precedent for grant of stay. On notice, the respondents appeared through counsel.

2. The facts leading to filing of the case are as follows:

A criminal case was registered against the first respondent by the Commercial Crime Investigation Wing in Crime No.3/2001. The first respondent was arraigned as the second accused. Subsequent to the registration of the case, a suspension order was issued to the first respondent, who was working as a Manager of PACB. She was informed that her charge memo will be given separately and the suspension will come into effect from 12.6.2001. This was followed by the charge memo, dated 20.12.2001. The first respondent had filed a suit before the District Munsif Court, Padmanabhapuram being O.S.No.158 of 2002 contending that appointment of enquiry officer was biased and he is prejudiced. Therefore, in I.A.No.273 of 2002, an interim injunction was granted on 22.10.2002 against the enquiry officer conducting enquiry.

3. In the meanwhile, the Enquiry Officer who is an outside Advocate, had completed the enquiry ex parte and gave his report, dated 27.2.2002. The first respondent also filed a writ petition before the Principal Bench being W.P.No.31500 of 2002 challenging the charge memo, dated 20.12.2001. The said writ petition was dismissed on 31.7.2002 holding that there was no infirmity in the charge memo. However instead of conducting the suit, on 29.4.2004, she withdrew the suit before the District Munsif Court and the same was dismissed as withdrawn. The first respondent had attained her age of superannuation on 31.8.2004. The surcharge proceedings initiated against the first respondent was also challenged by the first respondent before the Cooperative Tribunal-cum-Principal District Judge, Kanyakumari in C.M.A.(CS)No.24 of 1999. That CMA was also dismissed by judgment and decree dated 12.8.2003. The society was also sought to be wound up u/s 137 of the Tamil Nadu Cooperative Societies Act. It is at this stage, the petitioner continue to maintain her application for subsistence allowance from the date of suspension till the date of her dismissal. Her application was taken on file as P.S.A.No.14 of 2003. Notice was ordered to the petitioner society. The petitioner society had filed an objection stating that the first respondent was also paid 50% of subsistence allowance as per the bylaws of the society. Since she herself stalled the enquiry proceedings by moving the civil court and obtained an injunction from passing the final order and subsequently withdrew the suit just four months before her age of superannuation and also challenged the charge memo before the Principal Bench, which was also dismissed, she was not eligible for any further amount as per Section 3 of the PSA Act. It is also stated that she was the manager of the Bank drawing more than Rs.5000/- and that she was not the workman within the meaning of Section 2(a) of the PSA Act.

4. Before the authority, on the side of the first respondent, four documents were filed and she had examined herself as P.W.1. On the side of the petitioner Bank, one document was filed as Ex.R.1 and one S.Reinis was examined as R.W.1. The authority found that she was not having substantial managerial supervisory power. Therefore, she was an employee under the Act and the delay in filing an application can be condoned. On the question of increased allowance, the authority relied on Section 3(1) of the PSA Act stating that the delay in

proceedings is not due to her fault and that she was entitled to file the suit challenging the appointment of the enquiry officer, who is the biased person as he himself was the society lawyer. Therefore, the delay in conducting enquiry or criminal proceedings was not due to her fault. Hence she was eligible for subsistence allowance for first 90 days at the rate of 50%, from 90 days to 180 days at the rate of 75% and beyond 180 days at the rate of 100% of wages. Though the petitioner bank could have filed an appeal under Rule 5A of the Tamil Nadu Payment of Subsistence Allowance Rules, they had chosen to approach the court directly.

5. Mr.G.Manivannan, learned counsel for the petitioner strenuously contended that the first respondent was not an employee and that she was the manager. He also relied on a judgment of this court in Management, Tamil Nadu Industrial Coop. Rubberised Coir Products Ltd. v. Assistant Commissioner of Labour (Authority Under T.N.Payment of Subsistence Allowance Act 1981), Trichy and others reported in 2007 (III) LLJ 541 for contending that she was not an employee.

6. This court is inclined to go into the larger issue as to whether the first respondent was the workmen or not. Therefore, this court directed to produce the copy of the special bylaws framed for the employees to see whether she was a workman and whether the service conditions of the society provided for subsistence allowance. Accordingly, the special bylaws were produced. Special Bylaw No.12(c) reads as follows:

c) Notwithstanding anything contained in these special bylaws the President shall be competent to place any member of the establishment under suspension from service, pending enquiry into grave charges where such suspension is necessary in the interests of the society. He may at his discretion, sanction to the employee suspended a subsistence allowance at a rate not exceeding one fourth of his substantive pay during the period of his suspension for a period exceeding three months a time.

7. Therefore, this court directed the petitioner to calculate the payment of subsistence allowance as per the special bylaws and file the calculation memo. Accordingly, a calculation memo, dated 22.11.2011 was filed and it reads as follows:

Date of Suspension : 12.06.2001

Date of end of Suspension

due to Superannuation : 31.08.2004

Total period of Suspension : 38 months 18 days

Substantive pay : Rs.8,117

25% of Substantive Pay : Rs.77,111 (38 months)

Rs.1,404 (18 days)

Rs.78,515

Amount Paid already : Rs.44,897

Net Subsistence allowance

to be paid : Rs.33,618

8. Nodoubt, the contention of the bank that the first respondent was responsible for the delay is merit acceptance. Further, merely because the lawyer appeared for the employer cannot be an enquiry officer was not found merit acceptance as held by the Supreme Court in *Saran Motors (P) Ltd., New Delhi v. Vishwanath* reported in (1964) II LLJ 139. The following passages found in paragraphs 5 and 6 may be usefully extracted below:

5. The first question which we have to decide is whether the Tribunal was justified in holding that Mr Chadha had a bias in favour of the appellant, and so, was incompetent to hold the enquiry. It appears that Mr Chadha is sometimes engaged by the appellant as a lawyer in industrial matters and the respondents' case was that he had been entrusted with the work of holding such enquiries on four five occasions. It is on these grounds that the Tribunal has held that Mr Chadha was not competent to held the present enquiry.

6. In our opinion, this view is completely erroneous and cannot be sustained. We have repeatedly pointed out that domestic enquiries in industrial relations must be fairly conducted and whenever we are satisfied that any enquiry was not fairly conducted or its conclusions were not supported by evidence, we have unhesitatingly ignored the findings recorded at such an enquiry and held that the Tribunals must deal with the merits of the dispute for themselves; but it is impossible to accept the argument that because a person is sometimes employed by the employer as a lawyer, he becomes incompetent to hold a domestic enquiry. It is wellknown that enquiries of this type are generally conducted by the officers of the employer and in the absence of any special individual as attributable to a particular officer, it has never been held that the enquiry is bad just because it is conducted by an officer of the employer. If that be so, it is obviously unsound to take the view that a lawyer who is not a paid officer of the employer, is incompetent to hold the enquiry, because he is the employer's lawyer and is paid remuneration for holding the enquiry. Therefore, the first reason given by the Tribunal for ignoring the findings of the domestic enquiry must be reversed.

9. *Saran Motors (P) Ltd.* Case (cited supra) came to be quoted with approval by the Supreme Court in an another case in *Dalmia Dadri Cement, Ltd. Vs. Shri Murari Lal Bikaneria*, . In paragraph 22, the Supreme Court had observed as follows:

22. In *Saran Motors v. Vishwanath*<sup>1</sup> this Court rejected the objection as to bias of

the Enquiry Officer upheld by the Tribunal on the ground that the Enquiry Officer had at times been engaged by the appellant as a lawyer in industrial matters and had been entrusted with the work of holding enquiries on some previous occasions observing that the mere fact of a person's occasional employment as a lawyer by the employer did not render him incompetent to hold a domestic enquiry.

10. Even otherwise, the delay is directly attributable to the employee. For that purpose, the employer cannot be mulct with liability to pay extra allowance. Therefore, the subsistence allowance paid already by the petitioner bank at the rate of 50% cannot be disturbed and that the findings of the second respondent in this regard is erroneous and contrary to the embargo imposed u/s 3 of the Act. But at the same time, the PSA Act does not disturb any better benefit to be paid to an employee in case of suspension. Therefore, if the employee is entitled to get higher amount of subsistence allowance as per the bylaws, then certainly the employee notwithstanding the PSA Act is entitled to get that amount. Instead of driving the first respondent to some other forum for claiming balance, since the employer himself has filed a memo of calculation as per their own bylaws, the first respondent is entitled for Rs.33,618/- as noted above.

11. Accordingly, a direction is issued to the petitioner bank to pay a sum of Rs.33,618/- (Rupees thirty three thousand six hundred and eighteen only) to the first respondent within a period of eight weeks from the date of receipt of copy of this order, after withdrawing Rs.1 lakh which is in deposit with the second respondent authority pursuant to the interim order. The balance amount can be retained by the petitioner bank. The writ petition will stand partly allowed to the extent indicated above. However, there will be no order as to costs. Consequently connected miscellaneous petition stands closed.