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**(2000) 02 MAD CK 0057**

**In the Madras High Court**

**Case No :** Writ Petition No. 12393 of 1999 and W.M.P. No. 17684 of 1999

Paramasivam V.

APPELLANT

Vs

Management of Madras Rubber Factory and Another

RESPONDENT

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**Date of Decision :** 04-02-2000

**Acts Referred:**

**Citation :** (2001) 90 FLR 4 : (2001) 3 LLJ 1021

**Hon'ble Judges :** E. Padmanabhan, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## **Judgement**

E. Padmanabhan, J.—In this writ petition, the petitioner prays for the issue of writ of certiorarified mandamus calling for the records of the

second respondent Labour Court in connection with the impugned order dated November 17, 1998, made in I.A. No. 562 of 1998 in I.D. No.

616 of 1997 and quash the same and consequently direct the first respondent to pay the petitioner Rs. 3,500 per month as interim relief pending

disposal of the I.D. No. 616 of 1997, on the part of the second respondent Labour Court and issue such further or other directions as this Court

deems it fit.

2. Heard Mr. V. Prakash, for the writ petitioner and Mr. Sanjay Mohan, for Ramasubramaniam Associates, appearing for the first respondent.

3. With the consent of counsel for either side, the writ petition itself was taken up for final disposal. The writ petitioner, an employee of the first

respondent, Madras Rubber Factory, and a trade union activist was dismissed from service with effect from January 15, 1997. The petitioner

raised an industrial dispute as conciliation proceedings failed and I.D. No. 616 of

1997 is pending on the file of the second respondent. According to the petitioner, the entire proceedings-commencing from framing of charges to the ultimate order of dismissal are vitiated as it was without notice and behind his back and also there was no second show-cause notice and non-communication of enquiry proceedings.

4. Pending the industrial dispute, the petitioner filed I. A. No. 562 of 1998, seeking for a direction to pay subsistence allowance. The said application was resisted by the first respondent. The said application has been dismissed by the second respondent on the view that the petitioner should have approached the authority constituted under the Tamil Nadu Payment of Subsistence Allowance Act, 1981, for direction to pay the subsistence allowance. Being aggrieved, the present writ petition has been filed by the writ petitioner-workman, challenging the order of the second respondent-Labour Court dated November 17, 1998.

5. Mr. Prakash, learned counsel for the writ petitioner, while placing reliance on the decision of the Apex Court, in *The Management of Hotel*

*Imperial, New Delhi and Others Vs. Hotel Workers' Union*, as well as *E. I. D. Parry (India) Ltd. v. Presiding Officer* 1992 2 LLN 617 and *V.*

*Ramakrishnan v. Principal Labour Court* 1994 2 LLN 617 and *V. Ramakrishnan v. Principal Labour Court* 1994 2 LLN 1293 contended that

there could be an interim award or direction in a particular case even after dismissal of a workman to make interim payment pending disposal of

the industrial dispute, and the Labour Court has got the requisite powers in this respect.

6. Thereafter, this Court ordered notice to the respondent and the first respondent had entered appearance. During the hearing the following

binding pronouncements were referred to with respect to the powers of the Labour Court to grant interim relief:.

1. *The Mgt. of Ashok Leyland Ltd. Vs. Presiding Officer, III Additional Labour Court and Another*, .

2. *N.G.E.F. Ltd. Vs. Presiding Officer, Additional Labour Court and Another*, .

3. *Bihar State Electricity Board v. Workmen of Bihar State Electricity Board* 1971 1 LLJ 389 .

4. *National Textile Corporation v. State of Rajasthan* 1989 (1) LLN 778 .

According to Mr. V. Prakash, learned counsel for the petitioner there could be a

direction directing the management to pay interim relief on the facts of the present case as there is a prima facie case also in favour of the petitioner in the dispute, as the entire domestic enquiry proceedings proceeded ex parte when the petitioner was compelled to be away and/or in judicial custody.

7. KANAGARAJ, J., as he then was in *V. Ramakrishnan v. Principal Labour Court (supra)*, held that the Labour Court has got adequate powers

to grant such relief in the light of the judgment of the Supreme Court in *Desh Raj Gupta Vs. Industrial Tribunal IV, U.P., Lucknow and another*, ,

as well as, *Management of Hotel Imperial v. Its Workmen (supra)*, and *E.I.D. Parry (India) Ltd. v. Presiding Officer (supra)*,

BAKTHAVATSALAM, J., as he then was, also had occasion to consider the criteria, on the basis of which interim relief should be awarded to

the workman, pending the industrial dispute.

8. Mr. Sanjay Mohan, appearing for the respondent, in view of the above referred binding catena of pronouncements fairly stated that the Labour

Court has the authority and power to grant interim relief, but such interim relief cannot be ordered as a matter of course and relevant aspect should

be taken into consideration before issuing such direction as seen from the various pronouncements. Mr. Sanjay Mohan referred to the application

taken out by the writ petitioner in LA. No. 562 of 1998, and pointed out that the writ petitioner had prayed for an interim direction directing the

respondent-management to pay 50 per cent. of the revised wages, i.e., Rs. 3,500 per month as subsistence allowance payable on or before the

fifth day of each month pending disposal of the above industrial dispute.

9. Even in the affidavit filed in support of the said interlocutory application, it is pointed out that the writ petitioner had prayed for payment of

subsistence allowance at the rate of Rs. 3,500 per month. It was further pointed out that admittedly the petitioner was drawing Rs. 4,000 per

month, on the date of dismissal of the writ petition.

10. According to Mr. Sanjay Mohan, what has been prayed for by the writ petitioner is payment of subsistence allowance and not for interim

relief. Per contra, Mr. Prakash pointed out that though the terminology used in the application is for direction to pay subsistence allowance, it is in

effect a direction to pay interim relief to the petitioner who has got a prima facie

case.

11. The second respondent-Labour Court also had proceeded as if the direction is to pay the subsistence allowance and not for direction to pay

interim relief and for such allowance, the writ petitioner has to move the authority constituted under the Tamil Nadu Payment of Subsistence

Allowance Act and that the present application is not maintainable. Though the arguments advanced by Mr. Sanjay Mohan is attractive, but, on the

facts of the case, there is no justification at all to deny interim relief as the petitioner has made out a prima facie case in the industrial dispute case

for grant of interim relief. It is true that the petitioner has got a prima facie case and the second respondent has to decide the claims of the writ

petitioner in the pending industrial dispute. It would be sufficient to emphasise that the writ petitioner has got a prima facie case and various

contentions raised by the writ petitioner in the pending industrial dispute and the factual matrix with respect to the framing of charges, conduct of

disciplinary enquiry, non-communication of the enquiry report and the ultimate orders of penalty and the points raised by counsel for the petitioner

in the industrial dispute without expressing any opinion, much less a final opinion on merits, this Court holds that the petitioner satisfies the tests laid

down by this Court in the earlier pronouncements with respect to the grant of interim relief.

12. In this respect, there is every justification to grant interim relief on the facts of the present case as the petitioner has been thrown out of

employment without affording necessary opportunity. This Court also finds that there is prima facie case, and hastens to add that there is a

substantial question to be tried and the petitioner has a prima facie case and there is every possibility of the Tribunal interfering in the industrial

dispute.

13. The balance of convenience is also in favour of the writ petitioner-workman and if an interim direction is not issued, the petitioner who had

been thrown out of employment will not be in a position to prosecute the industrial dispute raised by him, which would result in irreparable loss. If

interim relief is not granted, the petitioner who is already on the streets will be deprived of valuable right and he will be disabled from contesting the

proceeding as well and it may not be possible for him to appear before the

Labour Court to continue the industrial dispute.

14. Concedingly, every proceedings against the petitioner proceeded ex parte and such proceedings were initiated when he was in judicial custody

or when he was on conditional bail with respect to which, the first respondent was very much aware as it was resisting the bail application. All this

conduct on the part of the first respondent without expressing any final opinion has to be taken note of. This Court is of the considered view that

the writ petitioner has got a prima facie case and he deserves the interim relief being granted in his favour so that he can appear before the Labour

Court, could conduct the proceedings and also defend himself, if the management comes forward with a request to let in evidence. Any other view

would result in undue hardship to the writ petitioner-workman and he may not be, in a position to defend himself, which would lead to violation of

Article 21. The petitioner would be deprived of valuable opportunity to prove his innocence even before the second respondent Labour Court, if

he is not provided with necessary interim relief. Not only a prima facie case but also balance of convenience is in favour of the writ petitioner.

15. Mr. Sanjay Mohan, while conceding the authority of the Labour Court, persuaded this Court to remand the matter to the second respondent-

Labour Court for de novo proceedings. This Court is not inclined to adopt such a course. It is true that the application is for payment of

subsistence allowance but the object is for interim payment. The subsistence allowance is payable pending suspension and when the relationship

between the employer and subsists and not for any period subsequent to the termination of the relationship of the employer and employee by an

order of dismissal or removal. This legal position is well known to both parties. Even the writ petitioner cannot maintain an application under the

Tamil Nadu Payment of Subsistence Allowance Act as he had already been dismissed from service. The question of payment of subsistence

allowance will not arise at this stage and it is only a misnomer and it is in effect for a direction for interim relief, which the writ petitioner had sought

for.

16. In fact, what the petitioner wanted is an interim relief, which would enable him to survive and conduct the proceedings before the Labour

Court. If the matter is to get remanded back, the petitioner will be prejudiced

further and such a delay will also cause further loss and much prejudice to the writ petitioner who is already thrown out of employment. It is already a number of years since the writ petitioner is without employment and he has no income to sustain himself and his family.

17. In fact, it was represented by Mr. Sanjay Mohan that the first respondent-management proposes to lead evidence to substantiate the charges before the Labour Court. This would mean that the enquiry is defective and the workman has to defend himself, let in evidence to prove his innocence and also to defend himself, which would definitely cost substantial amount to the workman who is already on street. Therefore, this Court is not persuaded to remand the matter but instead, on the facts of this case and in the interest of justice, this Court is of the considered view that the interim relief should be given forthwith, lest any other course will defeat the very purpose and the petitioner will not be in a position to save himself or conduct the proceedings without the minimum finds.

18. Even according to the first respondent, the last drawn wages was Rs. 4,000, and the order of dismissal was passed on January 15, 1997. The industrial dispute is pending since 1997. The petitioner is obviously without any income since the date of dismissal. At the risk of repetition, it is to be pointed out that the petitioner has got a prima facie case, that is the reason why the first respondent-management also proposes to let in evidence before the second respondent-Labour Court to substantiate the charges. This would indicate that there is no enquiry, much less no valid enquiry. This stand taken by the first respondent-management would show that the writ petitioner workman has got a prima facie case, which justifies issuance of interim relief.

19. The petitioner also requires some amount for his sustenance and also a reasonable amount to conduct the proceedings before the second respondent-Labour Court. Taking into consideration the fact that the petitioner's last drawn monthly wage was Rs. 4,000 and there has been subsequent increase in wages, this Court while quashing the order passed by the second respondent-Labour Court in LA. No. 562 of 1998, in

I.D. No. 616 of 1997, issues the following directions:

(i) The first respondent-management shall pay Rs. 2,000, being the 50 per cent of the last drawn wages every month with effect from November

17, 1998, on which date the second respondent- Labour Court dismissed the application. The first respondent is granted four weeks time to pay

the arrears of the said amount. With this amount of arrears, the petitioner will be in a position to engage a counsel and conduct the proceedings

before the second respondent-Labour Court.

(ii) The first respondent-management shall continue to pay Rs. 2,750 every month commencing from January, 2000, and such payment shall be

made on or before 7th day of succeeding English calendar month directly to the writ petitioner till disposal of I.D. No. 616 of 1997. These

payments could always be adjusted or set off by the respondent if the claim of the petitioner-workman is ultimately sustained by the Labour Court.

20. The writ petition is allowed in the above terms. Consequently, the connected W.M.P. is closed.