

(2013) 01 MAD CK 0144
In the Madras High Court
Case No : Writ Petition No. 379 of 2013

P.M. Manikandan and Others

APPELLANT

Vs

State of Tamilnadu and Others

RESPONDENT

Date of Decision : 23-01-2013

Acts Referred:

Industrial Employment (Standing Orders) Act, 1946 — Section 10A, 12A

Citation : (2013) 2 LLJ 286

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Lesi Saravanan, for the Appellant; S. Muthuraj, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The petitioners have filed the present writ petition seeking for a direction to pay subsistence allowance in pursuant to the

order of suspension made against them on 14.7.2012. The petitioners were suspended with effect from 14.7.2012 on certain irregularities and

pending enquiry, the suspension was made. It is the stand of the petitioners that subsequent to the suspension, the respondents are not paying any

subsistence allowance and therefore the writ petition is filed seeking for a direction to the respondents to pay subsistence allowance in accordance

with law.

2. When this writ petition came up 7.1.2013, this Court directed Mr. S. Muthuraj, learned Standing counsel for TASMACH to take notice and get

instructions from the respondents. Subsequently, on 22.1.2013, time was taken to get instructions and hence the matter was directed to be posted

under the caption for orders. Even today, there is no response forthcoming.

3. Ms. Lesi Saravanan, learned counsel for the petitioners states that the issue relating to payment of Subsistence Allowance in respect of

employees of TASMAC is no longer res integra. Already, this Court by judgment in N. Renganathan v. District Manager, TASMAC in W.P.

Nos. 24146 and 24394 of 2009 has gone into the entire issue and directed that employees who are placed under suspension by the TASMAC

pending enquiry are entitled to be paid subsistence allowance. In paragraphs 6 to 13, it was held as follows:

6. While the respondent may be justified in not restoring the petitioners to service pending disposal of the criminal case, with reference to non

payment of subsistence allowance, already this Court has directed payment of subsistence allowance in accordance with law. Therefore, the

respondent/TASMAC is attempting to take a stand that there are no rules in the Corporation which provide for subsistence allowance to workmen

like the petitioners. The stand taken by the respondent only shows the utter ignorance of the various legal provisions made in law.

7. The Tamil Nadu Legislature has passed the Tamil Nadu Payment of Subsistence Allowance Act, 1981 (Act 43 of 1981) providing for

subsistence allowance in case of any workman who is suspended. u/s 3 of Act 43 of 1981, it is stated that an employee who is placed under

suspension shall, during the period of such suspension, be entitled to receive payment from the employer as subsistence allowance. The said

Section has delineated the rate of subsistence allowance payable to an employee.

8. The term ""suspension"" is defined u/s 2(g) of Act 43 of 1981, which is as follows:

Section 2(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.

9. Therefore, a comprehensive definition of the term ""suspension"" and when subsistence allowance has to be paid prescribes that subsistence

allowance has to be paid when an enquiry is contemplated or pending, or in the

event a complaint against an employee of any criminal case is

pending investigation or trial. Therefore, the stand of the respondent that only for suspension pending enquiry subsistence allowance should be paid

and not in cases where the employee is debarred from entering the work spot on account of the pending criminal case is contrary to Section 2(g)

(2) of Act 43 of 1981.

10. The other contention that the petitioners are temporarily appointed also cannot be accepted since the term ""employee"" has been defined u/s

2(a) of Act 43 of 1981, which is a comprehensive definition and it is necessary to refer to the said definition which is as follows:

Section 2(a): ""employee"" means any person employed in, or in connection with the work or activities of, any establishment to do any skilled, semi-

skilled or unskilled, manual, supervisory, technical, clerical or any other kind of work or activities for hire or reward, whether the terms of

employment be expressed or implied, but does not include any such person -

(i) who is employed mainly in a managerial or administrative capacity; or

(ii) who, being employed in a supervisory capacity draws wages exceeding three thousand and five hundred rupees per mensem or exercises,

either by the nature of the duties attached to the office or by reason of the powers vested to him, functions mainly of a managerial nature;

Therefore, in the light of a statutory provision like the Tamil Nadu Act 43 of 1981, there is no escape for the respondent/TASMAC from paying

subsistence allowance even pending criminal investigation or trial.

11. This Court has already held in respect of TASMAC that the provisions of the Industrial Employment (Standing Orders) Act, 1946 (Act 20 of

1946) will apply to the employees engaged by the TASMAC and by virtue of Section 12A of Act 20 of 1946, the Model Standing Orders will

also apply to the said employees. Under the said Act, it is immaterial whether an employee is engaged temporary, casual or permanent. But in all

those cases the provisions of the Model Standing Orders will have to be applied. Under Model Standing Order 17(4)(b), an employer is bound to

pay subsistence allowance. Here also the Model Standing Order contemplates payment of subsistence allowance both on the ground of

disciplinary proceedings pending or criminal proceedings pending against the employee and the rate of payment of subsistence allowance is also

mentioned therein.

12. Apart from these legal provisions, the Parliament has introduced Section 10A under Act 20 of 1946, which reads as follows:

Section 10A. Payment of subsistence allowance.--

(1) Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the

employer shall pay to such workman subsistence allowance--

(a) at the rate of fifty per cent, of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first

ninety days of suspension; and

(b) at the rate of seventy-five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary

proceedings against such workman is not directly attributable to the conduct of such workman.

(2) If any dispute arises regarding the subsistence allowance payable to a workman under sub-section (1), the workman or the employer

concerned may refer the dispute to the Labour Court, constituted under the Industrial Disputes Act, 1947 (14 of 1947), within the local limits of

whose jurisdiction the industrial establishment wherein such workman is employed is situated and the Labour Court to which the dispute is so

referred shall, after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and binding on the parties.

(3) Notwithstanding anything contained in the foregoing provisions of this Section, where provisions relating to payment of subsistence allowance

under any other law for the time being in force in any State are more beneficial than the provisions of this Section, the provisions of such other law

shall be applicable to the payment of subsistence allowance in that State.

13. Therefore, every employer who is covered by Act 20 of 1946 is now statutorily bound to pay subsistence allowance whether or not there is

any Certified Standing Orders available in the establishment. Though in the respondent/TASMAC there are no Certified Standing Orders, the

Industrial Employment (Standing Orders) Act, 1946 will apply to them and by virtue of Section 10A of Act 20 of 1946, they are bound to pay

subsistence allowance.

In the light of the same, the writ petition stands allowed and the respondents are directed to pay the Subsistence Allowance to the petitioners in accordance with law, pending finalization of the enquiry against the petitioners. No costs.