
(2003) 04 MAD CK 0215
In the Madras High Court
Case No : C.P. No. 144 of 2003

Sampath M.

APPELLANT

Vs

S. Srinivasan

RESPONDENT

Date of Decision : 08-04-2003

Acts Referred:

Tamil Nadu Payment of Subsistence Allowance Act, 1981 — Section 2

Citation : (2004) 1 LLJ 411

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : S. Doraisamy, for the Appellant; M.S. Palanisamy, AGP, for the Respondent

Judgement

V. Kanagaraj, J.—This contempt petition has been filed by the petitioner who is admittedly the Secretary of the Sungarahalli Primary Agricultural Co-operative Bank Limited, praying to summon the respondent for wilful disobedience of the orders of this Court passed in Writ Petition No. 30189 of 2002 dated July 24, 2002, and punish him under the provisions of the Contempt of Courts Act. Heard learned counsel for the petitioner and the learned Additional Government Pleader (Co-operatives) contra.

2. On facts, what comes to be known is that the petitioner who was serving as the Secretary of the Sungarahalli Primary Agricultural Co-operative Bank Limited, has been placed under suspension with effect from April 16, 2001, on the alleged misappropriation of funds to the tune of Rs. 26,00,000.

3. It is the case of the petitioner that from the date of his suspension till date, the subsistence allowance has not been paid in his favour as it is required under the Payment of Subsistence Allowance Act. The petitioner would further submit that he moved this Court by means of writ petition in W. P. No. 30189 of 2002 praying to issue a writ of mandamus directing the second respondent therein, the special officer, Sungarahalli Primary Agricultural Co-operative Bank Ltd., to pay the subsistence allowance to the petitioner from the date of his suspension and

this Court has also passed an order in consideration of the facts and circumstances of the case to the effect that "the second respondent herein is directed to pay the subsistence allowance to the petitioner from the date of his suspension till date in adherence to the relevant provisions of the Payment of Subsistence Allowance Act", thus ordering the above said writ petition finally.

4. Learned counsel for the petitioner during his argument would submit that in spite of the telling order passed by this Court while disposing of the writ petition as per its order dated July 24, 2002, the respondents herein have not cared to pay the subsistence allowance in favour of the petitioner, as a result of which it has become necessitated on his part to take out the above contempt proceeding since particularly the respondent shown in the contempt petition, the Special Officer of the Sungarahalli Primary Agricultural Co-operative Bank Ltd., is to be punished in accordance with the relevant provisions of the Contempt of Courts Act.

5. On the contrary, the learned Additional Government Pleader (Co- operatives) would be emphatic in his arguments that this Court in its order dated July 24, 2002, passed in Writ Petition No. 30189 of 2002 has only directed the second respondent to pay the subsistence allowance in adherence to the relevant provisions of the Payment of Subsistence Allowance Act and not otherwise and as per the relevant provisions of the Payment of Subsistence Allowance Act, the petitioner being classified as an officer, is not entitled to get the benefit of the Payment of Subsistence Allowance Act and, hence, the respondent has not paid the same and in this respect the respondent has only acted in accordance with the order passed by this Court and not otherwise, much less in violation of the order of this Court in any manner and, hence, would pray to dismiss the above contempt petition as without merit.

6. During arguments, learned counsel appearing on behalf of the petitioner would cite two judgments, the first one is in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , wherein the Apex Court has held at pp. 1101, 1102 of LLJ:

"29. Exercise of right to suspend an employee may be justified on facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension. Suspension notwithstanding, non-payment of subsistence allowance is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilised and the salary is also paid to him at a reduced rate under the nick name of "subsistence allowance", so that the employee may sustain himself.....

30. If therefore, even that amount is not paid, then the very object of paying the reduced salary to the employee during the period of suspension would be

frustrated. The act of non-payment of subsistence allowance can be likened to slow-poisoning as the employee, if not permitted to sustain himself on account of non-payment of subsistence allowance, would gradually starve him to death."

The second judgment cited on the part of learned counsel for the petitioner is the order passed by a learned single judge of this Court in W.P. No. 23264 of 2001 wherein the learned judge has permitted in the said case stating that even the impugned order indicates that he will be paid the subsistence allowance. "I make it clear that the petitioner is entitled to the subsistence allowance and the respondents are directed to complete the enquiry proceedings within a period of 6 months." Whether it is the Supreme Court judgment cited above or that of the learned single judge of this Court, they have generally dealt with the subject of the Payment of Subsistence Allowance Act and not the subject of payment of subsistence allowance in the context of the Payment of Subsistence Allowance Act and, therefore, these judgments are in no manner helpful to decide the case in hand since the point for consideration is whether the subsistence allowance has not been paid in accordance with the provisions of the Payment of Subsistence Allowance Act?

7. On the other hand, the learned Additional Government Pleader (Co-operatives) would cite a judgment of this Court in Management, T. P. Spl., 67, Goundanpalayam Primary Agricultural Co-operative Bank Ltd., by its President, Goundanpalayam v. Assistant Commissioner of Labour, Authority under the Payment of Subsistence Allowance Act 2002 (4) CTC 339 wherein the question of payment of subsistence allowance in accordance with the relevant provisions of the Payment of Subsistence Allowance Act, 1981, has been considered in the context of the case of a Secretary of the co-operative bank, wherein" it is held:

"Prior" to going into the question whether the second respondent is an employee under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 so as to become entitled to file an application of that sort before the first respondent who has jurisdiction over the question of granting the payment of subsistence allowance to the second respondent herein, as per the arguments of the petitioner-co-operative bank herein, basically the second respondent having been employed in the Management of Primary Agricultural Co-operative Bank Limited, is governed by the Tamil Nadu Co-operative Societies Act, 1983, since the bank is a segment falling under the purview of the Tamil Nadu Co-operative Societies Act, and, therefore, it is only the provisions of this Act which are applicable to the case of the petitioner and as per the definition in Section 2(19) of the Tamil Nadu Co-operative Societies Act, "Officer" includes a President, Vice-president, Managing Director, Secretary, Assistant Secretary, member of board and any other person empowered under the rules or the by-laws to give directions in regard to the business of the registered society.

Therefore, since the second respondent being the Secretary, is classified as an "officer" under the Tamil Nadu Co-operative Societies Act, 1983, which is applicable to him and, therefore, there is no question of a second thought

whether he could be again re-classified as an. "employee" much less falling within the purview of the definition Section 2(a), of the Tamil Nadu Payment of Subsistence Allowance Act, 1981, which question will not arise at all. Therefore, basically, it has to be decided whether the second respondent is an "officer" defined under the definition Section 2(19) of the Tamil Nadu Co-operative Societies Act, 1983, or a mere "employee" as defined u/s 2 (a) of the Tamil Nadu Payment -of Subsistence Allowance Act, 1981. Needless to mention that once the definition of "officer" as per the Tamil Nadu Co-operative Societies Act, 1983, is applicable to the second respondent, automatically, the other definition u/s 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981, would not be attracted at all.

The second respondent, admittedly the Secretary of the petitioner-bank, squarely falls under the definition of "officer" as defined under the definition Section 2(19) of the Tamil Nadu Co-operative Societies Act, 1983, and he is bound by the Tamil Nadu Co-operative Societies Act and Rules and would not fall under any other Act, much less the Tamil Nadu Payment of Subsistence Allowance Act, 1981, as an "employee". The one and the same authority cannot be an "officer" and an "employee", nor could he be taken both as an "officer" for the purpose of the Co- operative Societies Act and could be taken as an "employee" for the purpose of the Tamil Nadu Payment of Subsistence Allowance Act, and, therefore, since the second respondent having been the secretary of the petitioner bank and falling under the definition Section 2(19) of the Tamil Nadu Co-operative Societies Act, 1983, as an "officer", he cannot be classified otherwise than this for any purpose much less for the purpose of payment of subsistence allowance.

Moreover, whether the assignment of the petitioner would fall under the definition of Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act having such powers as expressed by the learned single judge of this Court in his judgment in C. Selvaraj v. Deputy Commissioner of Labour 1989 1 LLN 689, has been established which is wanting in this case, especially in view of the fact that the secretary being an "officer" of the particular co-operative wing or bank is the chief executive having all the powers, not only appointing, determining the salary and having the powers to dismiss its employees, but also doing all such executive acts which are necessary in the functioning of the co-operative society or bank. Therefore, he cannot, under any circumstance, be brought under the definition of Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981, as a mere "employee" particularly when no good reasons are assigned as to how he ceases to be an "officer" as defined under the definition Section 2(19) of the Tamil Nadu Co-operative Societies Act, 1983, which is a special legislation having overriding powers on other general Acts."

8. Within the meaning of the above judgment of this Court itself not only on a wide discussion held but also ultimately deciding the point concluding that the secretary of the co-operative bank being an "officer" is not entitled to claim

subsistence allowance within the meaning of the Payment of Subsistence Allowance Act, 1981 and, therefore, the non-payment of subsistence allowance in favour of the petitioner cannot be construed in any manner, either in violation of the Payment of Subsistence Allowance Act, 1981, or to have been committed in contempt of order of this Court and in these circumstances the only conclusion that this Court could arrive at is to close the above contempt petition and the same is ordered accordingly.

9. In the result,

- (i) The above contempt petition is without merit and the same is closed.
- (ii) The respondent is discharged from the contempt proceedings.
- (iii) No costs.