
(2011) 01 MAD CK 0370

In the Madras High Court

Case No : Writ Petition (MD) No. 7512 of 2010 and M.P. (MD) No. 1 of 2010

The Management, S.P.(Spl) 30. Srivilliputhur Primary
Agricultural Co-operative Credit Society Ltd.

APPELLANT

Vs

The Appellate Authority, under the Tamil Nadu Payment of
Subsistence Allowance Act, The Authority under the Tamil
Nadu Payment of Subsistence Allowance Act, (The Assistant
Commissioner of Labour) and R. Perumal

RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

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

Citation : (2011) 01 MAD CK 0370

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Seenivasagam, for the Appellant; S.C. Herold Singh, G.A. for R1
and R2 and T. Ravichandran, for R3, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner is the Management of Srivilliputhur Primary Agricultural Co-operative Credit Society Limited. They have filed the present writ petition, challenging the order passed by the first Respondent Appellate Authority under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 made in P.S.A.A. No. 11/2009 and seeks to set aside the order dated 11.01.2010.

2. When the matter came up on 25.06.2010, this Court admitted the writ petition. Pending the writ petition, this Court granted an interim stay of the impugned order. It was noted that the amount awarded has already been deposited by the Petitioner, which is a precondition for filing an appeal.

3. On notice from the Tribunal, the third Respondent has entered appearance and also filed a counter affidavit dated 23.09.2010.

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

The third Respondent was a clerk working in the Petitioner Society from 16.05.1977 and he was promoted as a Junior Assistant on 01.12.1997. He was suspended from service on 31.12.1999. He filed a writ petition being W.P. No. 8313 of 200t before this Court. This Court on 22.09.2005 allowed the writ petition and set aside the order of suspension. Thereafter, the third Respondent was reinstated into service with effect from 10.10.2005. Subsequently, he was again suspended on 27.10.2005, against which he filed W.P. No. 9991 of 2005. This Court on 09.11.2005 granted an interim stay. Pursuant to the same, the third Respondent was restored to service on 29.11.2005. On 10.04.2006, this Court allowed the writ petition and set aside the order of suspension dated 27.10.2005.

5. Against the said order, the Petitioner Society filed a writ appeal and obtained an order of interim stay. In view of the same, the suspension order came into effect. After an enquiry, the third Respondent was dismissed from service on 16.08.2007. For the period from 15.07.2006 to 16.08.2007, the third Respondent was placed under suspension and since the Petitioner did not pay subsistence allowance as per the provisions of Tamil Nadu Payment of Subsistence Allowance Act, 1981, he filed a petition before the second Respondent authority. The same was taken on file as P.S.A. No. 5 of 2008. Since technically there was a delay, a petition was also filed in I.A. No. 1 of 2008 to condone the delay.

6. The Petitioner Society filed an application stating that the maintainability of the petition filed by the third Respondent cannot be decided as there was no cause of action since he was already dismissed from service. The second Respondent authority by an order dated 05.05.2009 rejected the case of the Petitioner Society and held that the delay in filing the application shall be condoned. It was also held that for the period of suspension from 15.07.2006 to 16.08.2007 as per the provisions of the Act, the Petitioner was bound to pay subsistence allowance at the rate of Rs. 1,09,383/-. Since already the third Respondent had received a sum of Rs.81,890/- the balance of 27,473/- should be given to him. He held that after adjusting the amount already paid, the third Respondent was entitled to receive Rs.20,027/- .

7. Before the second Respondent, the third Respondent examined himself as P.W.1 and filed four documents. They were marked as Exs.P1 to P4. On the side of the Management, the Secretary of the Society, A .Pandarinathan was examined as R.W.1 and on their side, 6 documents were filed and marked as Exs.R1 to R6. On the basis of these materials, the second Respondent ordered payment in favour of R3.

8. Aggrieved by the said order, the Petitioner Society filed an appeal under Rule 5A of the Tamil Nadu Payment of Subsistence Allowance Rules. As a condition precedent, the amounts awarded were also deposited by the Petitioner Society. The Petitioner's appeal was taken on file as P.S.A.A. No. 11 of 2009. In the appeal memo, once again the Petitioner raised the issue that there was no cause of action for the third Respondent to move the authorities. The suspension order made on 15.07.2006 was a revival order of the earlier suspension

dated 27.10.2005 and after the disciplinary action was completed, he was dismissed from service on 16.08.2007. Therefore, there was no cause of action for the third Respondent for making a claim of subsistence allowance before the authorities. The authority rejected such contention. It is stated that merely because the third Respondent was not under suspension at the time when he filed the application, it does not mean that he is not entitled to move the authorities.

9. If the amount specified u/s (3) was not paid, the employee can approach the authority at anytime. A reference was also made to the judgment of this court in *Special Officer, Salem Central Co-operative Bank Ltd., Salem v. Deputy Commissioner of Labour and Ors.* reported in 1999 (1) LLN 1101. It was also pointed out that there was no ground to interfere with the condonation of delay made by the second Respondent and that the delay was only 172 days and the third Respondent was under suspension since 15.07.2006. There was no evidence to show that the third Respondent was responsible for the delayed conduct of the enquiry.

10. In the counter affidavit, it was stated there can not be an estoppel against the statute and the suspension from 27.10.2005 cannot be said to be warranted because of the Court staying earlier proceedings. It is also not necessary that a preliminary issue will have to be decided before dealing with the merits of the case. A Division Bench of this Court vide its judgment in *S. Pattaraiswamy v. The Management of Sundaram Industries Limited and Anr.* reported in 2000 WLR 284 has held that no direction can be given to the authorities to frame an issue as a preliminary issue and it is for the authorities to decide such matters.

11. The Petitioner had not made out any case to entertain the writ petition. It is rather regrettable that the Petitioner society should contest even against an order of payment of subsistence allowance to which the third Respondent is legally entitled to get. This Court is not inclined to interfere with the order passed by the first and second Respondents.

12. Hence, the writ petition stands dismissed. No costs. In view of the dismissal of the writ petition, the third Respondent is entitled to receive the amount lying in deposit with the second Respondent. Consequently, connected miscellaneous petition is closed.