

(1991) 02 MAD CK 0083
In the Madras High Court

The Special Officer, Morangam Agricultural Service Co-operative Societies Ltd.

APPELLANT

Vs

The Appellate Authority under the Tamil Nadu Payment of Subsistence Allowance Act (Deputy Commissioner of Labour) and Others

RESPONDENT

Date of Decision : 22-02-1991

Acts Referred:

Payment of Subsistence Allowance Act — Section 3

Citation : (1992) 1 MLJ 35

Hon'ble Judges : S. Ramalingam, J

Bench : Single Bench

Judgement

S. Ramalingam, J.—The third respondent was working as Secretary in the petitioner Co-operative Society. He was placed under suspension pending enquiry on 10.3.1987. An enquiry into the charges was held and on a report received that the charges are proved, a second show cause notice was issued to the third respondent proposing punishment by dismissal from service. It was at that stage the third respondent filed O.S.No.42 of 1988, D.M.C Tiruchengode, against the validity of disciplinary proceedings and obtained an order of interim injunction on 18.1.1988 itself. The petitioner filed an application for vacating the interim injunction, but the suit itself was ordered to be posted for disposal to an early date. It is not in dispute that the suit was ultimately dismissed on 28.2.1990.

2. After having instituted the suit and obtained an injunction, the third respondent on 30.11.1988 filed an application before the Authority under the Payment of Subsistence Allowance Act, claiming subsistence allowance in a sum of Rs. 477.40 for the period from 15.12.1987 to 31.12.1987 at 100% and in a sum of Rs. 10,175 for the period from 1.1.1988 to 30.11.1988, representing eleven months salary at 100%. That application was contested by the petitioner inter alia on the ground that the third respondent was holding a managerial position and, therefore, not entitled to the relief under the Act and also on the ground that having obtained an order of injunction in a civil court on 18.1.1988

and prevented the management from passing any final orders in the disciplinary proceedings, the third respondent cannot have the advantage of claiming subsistence allowance. It is the case of the petitioner that had not that injunction been granted by the civil court on 18.1.1988, after obtaining explanation from the third respondent on the second show cause notice, the management would have been in a position to pass final orders and that was effectively prevented by the third respondent by obtaining an injunction. He also pleaded that subsequent to the dismissal of the suit by orders dated 20.3.1990 the third respondent was dismissed from service, which would show that the same effect would have taken place had not an order of injunction been obtained. The Authority under the Payment of Subsistence Allowance Act (the second respondent) quoted Section 3 of the Act, which is extracted below:

3. Payment of subsistence allowances:- (1) 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, an amount equal to fifty per centum of the wages which the employee was drawing immediately before suspension for the first ninety days reckoned from the date of such suspension:

Provided that where the period of suspension exceeds ninety days, but does not exceed one hundred and eighty days, the employee shall be entitled to receive, after the said period of ninety days, a subsistence allowance equal to seventy five per centum of the wages which the employee was drawing immediately before his suspension;

Provided further that where the period of suspension exceeds one hundred and eighty days, the employee shall be entitled to receive wages in full which the employee was drawing immediately before his suspension:

Provided also that where the enquiry or criminal proceedings is prolonged beyond the period of ninety days for reasons directly attributable to the employee, the subsistence allowance shall, for the period exceeding ninety days be reduced to fifty per centum of the wages, which the employee was drawing immediately before his suspension.

Thereafter, he held that the Third Proviso to Section 3 of the Act would apply, wherein it is contemplated that if the enquiry is prolonged beyond a period of ninety days for reasons directly attributable to the employee, then the employee will be entitled to subsistence allowance at 50% of the wages for the period exceeding ninety days. It was in that view he held that the third respondent shall be entitled to subsistence allowance at 50% of the wages earned by him for the period in question i.e., from 16.12.1987 to 30.11.1988. The petitioner filed an appeal before the first respondent and the order of the second respondent was affirmed in P.S.A. Appeal No. 2 of 1990 by order dated 5.6.1990.

3. In challenging the validity of the order, the petitioner would submit that the facts of this case would clearly disclose that the third respondent, by his own action, had prevented the petitioner from passing final orders on the disciplinary

proceedings; and at the same attempted to drive the benefit of collecting subsistence allowance. Learned Counsel for the third respondent on the contrary would submit that respondents 1 and 2 were found by the statutory provisions and the third proviso to Section 3 of the Act clearly contemplates payment of 50% of the salary for a period of ninety days even in cases where the disciplinary enquiry is not completed due to the reasons directly attributable to the employee. It is submitted that the basic right of an employee to go before the civil court to obtain redress cannot be characterised as an improper action. He stated that if the suit had only been decreed then not only the third respondent is entitled to full wages for the period when he was kept out of service, but also to an order of reinstatement in service. Therefore, by the mere fact that the third respondent has chosen to approach the civil court for redress cannot be put against him.

4. Even though the Third Proviso to Section 3 of the Act states that even in cases where the enquiry is prolonged beyond ninety days due to reasons directly attributable to the employee, he would be entitled to 50% of the wages as subsistence allowance, yet the third proviso has to be understood in the context in which it appears in that section, when the section contemplates the conduct of disciplinary enquiry placing an employee under suspension pending completion of enquiry. There may be cases where the domestic enquiry is not expeditiously completed due to the fault of the management and in that case the employee would be entitled to higher rate of subsistence allowance. But if due to the fault of the employee the enquiry is not completed expeditiously, then he is entitled to 50% of the wages for the period beyond ninety days. This provision would apply only in a case where the domestic enquiry is completed or not completed expeditiously warranting payment of subsistence allowance at the rates mentioned. They would not apply to a circumstance or situation where the employee resorts to a civil suit and the civil suit is kept pending for an inordinate time (normally it happens) and obtained the benefit of payment of subsistence allowance during the pendency of the disciplinary proceedings.

5. It is not in dispute that the charges framed against the petitioner were, according to the management, serious, which would warrant an order of dismissal from service. When the second show cause notice was issued to the third respondent, in order to thwart any orders to be made in the disciplinary proceedings, he had chosen to file a civil suit and obtained an order of injunction. That injunction was vacated and the suit was dismissed by orders dated 28.2.1990. The third respondent has not chosen to file any appeal against the dismissal of the suit. It would show that the suit has no merits. Consequently, it was due to the action of the third respondent in effectively preventing the management from passing the order of dismissal against him by obtaining an order of injunction, the petitioner was disabled to pass orders to culminate the disciplinary action. After the dismissal of the suit on 28.2.1990. The order of dismissal had been passed on 20.3.1990. This is clear case where in equity and fairness, the third respondent cannot be given the benefit of subsistence

allowance for the period beyond 18.1.1988. It would be unfair to mulct the management with the liability to pay subsistence allowance even at the rate of 50% to the third respondent for the period beyond 18.1.1988.

6. In this view, the order of the respondents 1 and 2 shall stand modified and it is ordered that the third respondent would be entitled to subsistence allowance at the admissible rate for the period from 15.12.1987 to 18.1.1988. The second respondent would restore the application filed by the petitioner on its file and calculate the amount of subsistence allowance payable to the third respondent for the said period. Ordered accordingly. No costs.

7. Learned Counsel for the petitioner states that after the orders of the second respondent when the appeal was filed before the first respondent the entire amount awarded in favour of the third respondent was deposited by the petitioner before the first respondent and that the said amount still lies with the first respondent. Any amount awarded by the second respondent towards subsistence allowance shall be paid out of the said sum of Rs. 5,366.20 deposited by the petitioner and the balance would be returned to the petitioner.