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(1993) 06 MAD CK 0041

In the Madras High Court

Case No : Writ Petition No. 13678 of 1993

Thiruvalluvar Transport Corpn. Ltd. — APPELLANT

Vs

Asst. Commissioner of Labour and Another — RESPONDENT

Date of Decision : 23-06-1993

Acts Referred:

Citation : (1995) 1 LLJ 648

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Advocate : Aru-Sellambay Iram, for the Appellant; B. Radhakrishnan, G.A. and R. Srinivasan, for the Respondent

Final Decision : Dismissed

Judgement

Bakthavatsalam, J.—The second respondent, who was working as Conductor under the Petitioner Corporation was kept under suspension by an order dt. March 11, 1988 and a charge was also framed against the 2nd respondent, that he had misappropriated Rs. 544-40 as against the actual collection. Thereupon the 2nd respondent filed a petition before the Controlling Authority under the Tamil Nadu Payment of Subsistence Allowance Act 1981 claiming Rs. 7,000 as subsistence allowance for the period from the date of suspension till January 1989. The Controlling Authority found that the enquiry had commenced only after a lapse of four months and there was no evidence to prove that the 2nd respondent was adopting delaying tactics in the conduct of the enquiry. Further the Controlling Authority had no occasion to go through the enquiry proceedings as nothing had been placed before the Controlling Authority. In such circumstances, the Controlling Authority came to the conclusion that the 2nd respondent is entitled to the Subsistence Allowance u/s 3 of the Tamil Nadu Payment of Subsistence Allowance Act 1981 and the action of the petitioner in reducing the subsistence allowance by fifty percent is not justifiable and accordingly directed the petitioner to pay the subsistence allowance to the 2nd respondent from March 12, 1988. Aggrieved thereby the petitioner is before this

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Court.

2. The 2nd respondent has filed a counter and Mr. R. Srinivasan appears for 2nd respondent.

3. The learned counsel for the petitioner-Corporation contends, by relying on third proviso to Section 3 of the Act, that since the enquiry proceedings had been prolonged beyond 90 days for the reasons attributable to the 2nd respondent, the subsistence allowance payable to the 2nd respondent has got to be reduced. I am unable to agree with the contention of the learned counsel for the petitioner. No material was placed before the Controlling Authority to prove that the 2nd respondent was adopting delaying tactics in the conduct of the enquiry proceedings. According to third proviso to Section 3 of the Act, if the enquiry is prolonged not for the reasons attributable to an employee, in this case the 2nd respondent, the employee is entitled to the payment of subsistence allowance and it cannot be reduced. On the facts of this case, no material has been placed before the Controlling Authority to prove that the 2nd respondent employee was adopting delaying tactics in the conduct of the enquiry proceedings, and the order of the Controlling Authority directing payment of subsistence allowance to the 2nd respondent is perfectly made and no interference is called for.

4. It is very unfortunate that the petitioner Transport Corporation, constituted under a Statute, has come upto this Court on such flimsy grounds to deny the payment of subsistence allowance to an employee, which he is entitled to in law. Further I do not know why the Corporation should be allowed to bypass the remedy by way of an appeal, as against the order of the Controlling Authority, if it is so aggrieved, instead seeking to exercise the extraordinary jurisdiction of this Court under Article 226 of the Constitution. On this ground also this Writ Petition has to fail. The payment of subsistence allowance to an employee during the period of suspension/enquiry is a part of service conditions as has been held by the Supreme Court, and in such circumstances, I do not know why the statutory Corporation like the petitioner should come to this Court wasting public money that too. to deny the subsistence allowance to its employee, which he is entitled to in law. It is further seen that the enquiry was held on April 27, 1989 and till February 26, 1990 no order had been passed. In this view, I see no merit in the writ petition and it is accordingly dismissed. The petitioner Corporation will pay a sum of Rs. 1000 to the 2nd respondent towards costs.

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