

(2002) 01 MAD CK 0079

In the Madras High Court

Case No : Writ Petition No. 18403 and W.M.P. No. 27965 of 1994

Tiruchirapalli District Amaravathi Consumer Co-operative
Societies Wholesale Stores Ltd.

APPELLANT

Vs

The Deputy Commissioner of Labour (Appellate Authority
under the Tamil Nadu Subsistence Allowance Act),
Tiruchirapalli, The Assistant Commissioner of Labour
(Competent Authority under the Tamil Nadu Payment of
Subsistence Allowance Act), Tiruchirapalli and M. Vijayanath

RESPONDENT

Date of Decision : 24-01-2002

Acts Referred:

Tamil Nadu Payment of Subsistence Allowance Act, 1981 — Section 3

Citation : (2002) 94 FLR 185 : (2002) 3 LLJ 230

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : R. Parthiban, for Vijaya Narayan, for the Appellant; M. Liyagat Ali
and A.V. Bharathi, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Rajan, J.—This Writ Petition has been filed against the order of the appellate authority under the Tamil Nadu Subsistence Allowance

Act (Deputy Commissioner of Labour), Tiruchirapalli.

2. The brief facts are the workman was an employee under this writ petitioner. He was kept under suspension on 6.6.1988 till 2/12/1991 and in

the meanwhile, disciplinary proceedings were initiated and enquiry was conducted and ultimately, he was dismissed from service on 6.6.1988 with

retrospective effect. After this, the workman filed an application before the 2nd respondent herein on 1.2.1993 for payment of subsistence

allowance in accordance with the Tamil Nadu Payment of Subsistence Allowance Act (hereinafter referred to as "the Act"). Since as per the

provisions of the Act, such an application has to be filed within one year from the date of accrual of the payment, an application was also filed to condone the delay of 2 years, 7 months and 26 days. The reason given for the delay was that due to the poverty and since he was expecting final orders from the authorities, he did not file the petition earlier. The original authority, viz., Assistant Commissioner of Labour, Tiruchirapalli has passed an order, stating that though the reasons stated by the petitioner to condone the delay was not acceptable, yet the petitioner is entitled to the subsistence allowance, which he is entitled to and therefore, he condoned the delay of 2 years ,7 months and 26 days and took up the petition for disposal on merits. Against that, the present writ petitioner has filed the appeal before the appellate authority, viz., the Deputy Commissioner of Labour, Tiruchirapalli. The Deputy Commissioner of Labour passed an order, stating that the very purpose of social enactment is that ""the delinquent employee should not suffer during the period of suspension and should be paid as per Section 3. Mere delay in filing the claim does not exclude him from getting subsistence allowance nor provides a ground to the employer to escape from payment"". In the light of the above discussion, the appellate authority upheld the order of the lower authority. Aggrieved by the order of the appellate authority, the present Writ Petition has been filed.

3.The counsel for the writ petitioner argued that the subsistence allowance is payable only if the petitioner approaches the authorities within the period prescribed under the statute. Once there is a delay, the condonation of delay should be for valid reasons. The appellate authority has not given any reasons to condone the delay of 2 years 7 months and 26 days. Counsel for the petitioner heavily relied upon the observations made in the original authority's order that the reasons stated by the workman was not acceptable. The counsel argues that since there were no valid and acceptable reasons, the delay ought not to have been condoned and the petition should have been rejected. It is pertinent to note that against this order, the petitioner herein already preferred appeal and the appellate authority approved the order of the original authority. The order of the original authority gets merged with the order of the appellate authority. Therefore, the delay has been condoned by the authority, which has got the

power to condone the delay.

4.The condonation of delay is within the quasi-judicial authority's discretion on the matter. When the authorities have taken the facts of the case into consideration and have exercised its discretion and decided to condone the delay, there cannot be any grievance against that. Only if no application was filed to condone the delay, there can be any ground to challenge the order. Since the original authority as well as the appellate authority has condoned the delay, there is no question of setting aside the discretion exercised validly and in accordance with law by the authorities, which had the power under the Act to condone the delay. Therefore, there is no reason to set aside the discretionary order passed by the appellate authority in this case.

5.The counsel for the petitioner referred to the judgment of this Court in "" Binny Limited .vs. Assistant Commissioner of Labour"" 2000 II LLJ 169.

This decision lays down the proposition that the claim of the workman under the Tamil Nadu Payment of Subsistence Allowance Act is not a continuing cause of action, and therefore, if the worker did not apply claiming the amount within one year from the date it fell due and payable, it cannot be claimed unless the delay is condoned. Therefore, this decision is not applicable to the facts of the present case in view of the fact that the 3rd respondent herein has applied for condonation of delay and it has been condoned.

6.The counsel for the petitioner also relied upon another decision of this court in ""Tamil Nadu Mercantile Bank Ltd.,(represented by its Chairman),Tuticorin .vs. Appellate Authority under the Tamil Nadu Shops and Establishments Act, Madurai and another"" 1990 I L.L.N.457. But it is only a case, where the delay which was condoned was not justified on facts and evidence of that case. Therefore, this decision also is not applicable to the facts of this case. In the head note, it is also referred that rules of limitation are based on principles of sound public policy and principles of equity. This decision is the authority to say that the limitation is based on principles of sound public policy and when the statute itself provides for condonation of delay, which also is based on public policy and when the delay has been condoned by the authority in exercising the powers specified under the Act, it cannot be said that it is illegal.

Therefore ,when the authority which has been conferred with power to condone the delay has exercised its discretion, it cannot be said to be in violation of public policy or policy of equity.

7.Before concluding, it is pertinent to point out that the Supreme Court in number of cases has held that delay has to be explained does not mean

that each and every day's delay and each and every hour's delay must be explained. A valid cause cannot be thrown out of the court merely

relying upon technicalities .There is no reason to interfere with the order of the appellate authority in condoning the delay. Before concluding, this

court cannot but state that a poor worker, who was a Junior Assistant in the Co-operative Society has not only paid his subsistence allowance

when he was kept under suspension from 6.6 .1988 to 2.12.2001. But even when he applied for the same and even after the authorities had

condoned the delay in making his application and allowed his prayer, yet he was dragged to this court to get the amount, which he is legally entitled

under the law. This attitude of the writ petitioner is unacceptable.

7.Therefore, this Writ Petition is dismissed with exemplary cost of Rs.2,000/-. Consequently, W.M.P.is closed.