

(2011) 04 MAD CK 0360

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 1839 of 2006 and W.P. M.P. No. 2033 of 2006

The Management, Viswanatham

Primary Agricultural

Co-operative Bank

APPELLANT

Vs

The Authority under the Tamil

Nadu Payment of Subsistence

Allowance Act (The Assistant

Commissioner of Labour) and

thiru S. Raju

RESPONDENT

Date of Decision: April 8, 2011

Acts Referred:

- Payment of Bonus Act, 1965 - Section 27(1)
- Tamil Nadu Payment of Subsistence Allowance Act, 1981 - Section 4, 7, 7(1)
- Tamil Nadu Payment of Subsistence Allowance Rules, 1981 - Rule 5A

Hon'ble Judges: D. Hariparanthaman, J

Bench: Single Bench

Advocate: S. Seenivasagam, for the Appellant; V.O.S. Kalaiselvam, for R-2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D. Hariparanthaman, J.

The second Respondent was placed under suspension by the writ Petitioner and he was subsequently dismissed. I am not going into details of the facts, as the same is not required for the order that is going to be passed.

2. According to the second Respondent, he was not paid subsistence allowance as per the Tamil Nadu Payment of Subsistence Allowance Act, 1981 (herein after referred to as "the act"), till he was dismissed from service. He claimed the balance

of subsistence allowance before the first Respondent under the Act. The first Respondent had allowed the application, by an order dated 13.10.05, in P.S.A. No. 87/04, and a direction was issued to the Petitioner to pay the balance amount towards the subsistence allowance of Rs. 48,780/-.

3. The Petitioner has filed the writ petition against the order of the first Respondent dated 13.10.2005, in P.S.A. No. 87/04. There are many issues were raised. However, the issue relating to jurisdiction is that the first Respondent has No. jurisdiction to hear the subsistence allowance application as he was not a regular Assistant Labour Commissioner and he was only a person holding in-charge. It is stated that the first Respondent is a regular Labour Officer and the Labour Officer is the lower post than the post of Assistant Labour Commissioner.

4. On the other hand, the second Respondent has filed a counter affidavit on merits and also jurisdiction. It is stated that the first Respondent was the Assistant Commissioner of Labour in-charge and therefore, he has power to decide the subsistence allowance application.

5. Heard Mr. S. Seenivasagam, learned Counsel appearing for the Petitioner and Mr. V.O.S. Kalaiselvam, learned Counsel appearing for the second Respondent.

6. It is admitted that an appeal is provided to the Deputy Commissioner of Labour, as per Rule 5A of the Tamil Nadu Payment of Subsistence Allowance Rules, 1981. The Petitioner has chosen to challenge the order of the first Respondent, since the first Respondent has No. jurisdiction, otherwise he could have preferred an appeal before the Deputy Commissioner.

7. According to the Petitioner, when the second Respondent filed an application for subsistence allowance, the regular Assistant Labour Commissioner, Madurai was there. Thereafter, he was transferred to some other place and the post was lying vacant. It is also admitted that the Labour Officer was acting an Assistant Labour Commissioner in-charge. But according to him, since he was the Labour Officer, he could not discharge the function of Assistant Labour Commissioner.

8. On the other hand, the learned Counsel for the second Respondent submits that since the order was passed by the Assistant Labour Commissioner, there is No. infirmity in the order.

9. I have considered the submissions made on either side.

10. It is admitted that No. plea was raised before the authority that he has No. jurisdiction. However, it is submitted by the learned Counsel for the Petitioner that when the counter was filed, the regular Assistant Commissioner was there. Even when the Assistant Commissioner in charge heard the matter, No. objection was raised. However, it is submitted that the authority was only Labour Officer and he was acting as Assistant Commissioner in-charge. First, No. evidence is placed before this Court by the writ Petitioner that he was only the Labour Officer. Even according

to him, he was discharging the duty of Assistant Labour Commissioner incharge.

11. As per Section 7 of the Act, the Government is the authority to decide the application relating to subsistence allowance and the Government could delegate the power. The Government issued G.O.Ms. No. 2104, Labour Department, dated 01.10.1985 delegating their powers relating to hear application for recovery of subsistence allowance u/s 4 of the said Act to the Assistant Commissioner of Labour in the office of the Deputy Commissioner of Labour. The aforesaid G.O.Ms. No. 2104, Labour Department, dated 01.10.1985, is extracted hereunder:

No.II(2)/LAB/5711/85-In exercise of the powers conferred by Sub-section (i) of Section 7 of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 (Tamil Nadu Act 43 of 1981), and in supersession of the Labour Department Notification No. II(2)/LAB/2869/84, dated the 30th April 1984, published at page 448 of Part II-Section 2 of the Tamil Nadu Government Gazette, dated the 23rd May, 1984, the Governor of Tamil Nadu hereby authorises the Assistant Commissioners of Labour in the offices of the Deputy Commissioners of Labour to exercise the powers vested in the Government u/s 4 of the said Act in respect of establishments within the local limits assigned to them under Sub-sections (1) of Section 27 of the payment of Bonus Act, 1965 (Central Act 21 of 1965).

12. In the said circumstances, I am of the view that the Assistant Labour Commissioner in-charge, who is exercising the power of the Assistant Commissioner of Labour, of that area concerned is entitled to hear the application and to decide the issue. It is not the case of the Petitioner that the order delegating the power to the authority was by name and on the other hand, the delegation is made to the office. Since, the first Respondent was an in-charge officer, he could exercise his power vested as per G.O.Ms. No. 2104, Labour Department, dated 01.10.1985. Hence, I am not agreeable to the submission made by the learned Counsel for the Petitioner that the first Respondent lacks his jurisdiction. As far as the other issues are concerned, I am not going to deal with them and those issues could be decided in the appeal that is provided under Rule 5A of the Tamil Nadu Payment of Subsistence Allowance Rules, 1981. Hence, the writ petition fails and the same is dismissed. Consequently, connected miscellaneous petition is closed. No. costs.

Registry is directed to return the original impugned order to the writ Petitioner as the learned Counsel for the Petitioner prays for the return of the same to prefer appeal.