

Vasuthevan Vs. The Managing Director, Office of the Managing Director, Chennai and Others

Vasuthevan Vs. The Managing Director, Office of the Managing Director, Chennai and Others

SooperKanoon Citation : sooperkanoon.com/1187153

Court : Chennai Madurai

Decided On : Nov-15-2016

Judge : The Honourable Dr.(Mrs.) Justice S. Vimala

Appeal No. : Writ Petition (MD) No. 21821 of 2016

Appellant : Vasuthevan

Respondent : The Managing Director, Office of the Managing Director, Chennai and Others

Judgement :

(Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 3rd respondent to pay the subsistence allowance for the period of suspension from 26.10.2013 along with arrears of salary which is due and payable to the petitioner with interest for such delayed payment by considering the petitioners representation dated 23.09.2016 and consequently issue a direction to the respondents to reinstate the petitioner in service in the post of shop salesman.)

1. This is a writ of Mandamus seeking direction to the third respondent to pay Subsistence allowance to the petitioner for the period of suspension from 26.10.2013.

2. The brief facts leading to this writ petition:-

The petitioner was appointed as a salesman by the third respondent and he is working at TASMACH Shop No.7553, Sivagangai Town. The third respondent conducted monthly audit and found out that there was a deficit of Rs.55,49,920/-. Thereafter, the third respondent conducted an enquiry and at that point of time, the Supervisor viz., Kalleswaran admitted that he had misappropriated the entire amount of Rs.55,49,920/-. The Supervisor had given a detailed statement that he is the only person liable for the entire amount. Even after such a statement, the third respondent has issued an order of suspension against the petitioner (who was only a salesman), who was not concerned with the occurrence at all. Thereafter, the petitioner preferred a representation, dated 23.09.2016, which is pending consideration before the respondents.

3. It is the grievance of the petitioner that the payment of subsistence allowance, which is mandatory, is not paid and unless the amount is paid, the petitioner would not be in a position to defend the enquiry proceedings in an effective manner.

4. At this juncture, it will be relevant to quote Section 3 of the The Tamil Nadu Payment of Subsistence Allowance Act, 1981, which reads thus:-

3. (1) An employee who is placed under suspension shall, during the period of such suspension, be entitled to subsistence 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 proceeding 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.

(2) An employee shall not be entitled to receive any subsistence allowance if he accepts any other employment during the period of his suspension in any establishment other than the establishment where he had been working immediately before his suspension.

5. It is not the case of the respondents that the enquiry or criminal proceeding is prolonged beyond the period of ninety days for reasons directly attributable to the petitioner. It is also not the case of the respondents that the petitioner has accepted any other employment during the period of his suspension in any other establishment. Therefore, there is no disqualification for the petitioner either to receive the subsistence allowance or to get the reduced amount of subsistence allowance.

6. Under such circumstances, the third respondent is directed to pay the subsistence allowance to the petitioner from 26.10.2013, within a period of four weeks from the date of receipt of a copy of this order.

7. The writ petition is disposed of accordingly. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com