The General Manager Vs. the Assistant Commissioner of Labour

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Court : Chennai

Decided On : Nov-11-2011

Judge : K.Chandru, J.

Acts : Tamil Nadu Payment of Subsistence Allowance Act, 1981; Tamil Nadu Payment of Subsistence Allowance Rules, 1981 - Rule 5(A)

Appeal No. : W.P.(MD)No.1731 of 2009 And M.P.(MD).No.1 of 2010

Appellant : The General Manager

Respondent : The Assistant Commissioner of Labour

Judgement :

1. The petitioner is the management of the Sivagangai District Cooperative Milk Producers Union represented by the General Manager. In this writ petition, they have challenged an order of the first respondent authority constituted under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 (Act 43 of 1981) made in P.U.No.4 of 2007 dated 13.11.2007.

2. By the impugned order, the first respondent computed a sum of Rs.1,01,962/- due and payable to the second respondent. The amount comprised of the subsistence allowance payable to the second respondent for the period from 27.07.2001 to 24.10.2001 at the rate of 50% and the last draw wages being Rs.5,900/-. The second period is from 25.10.2001 to 22.01.2002 at the rate of 75% and thereafter, the third period is from from 23.01.2002 to 27.09.2004 at the rate of

100% till the date of filing of the application. The authority took into account the amount of allowance paid already to the workman to the tune of Rs.1,12,700/- and computed only the balance of Rs.1,01,962/-.

3. The petitioner society did not file any appeal against the said order before the appellate authority constituted under Rule 5(A) of the the Tamil Nadu Payment of Subsistence Allowance Rules, 1981, but came to this Court directly by contending that there was no other alternative remedy available to them. Such a contention is ex-facie erroneous and did not take note of the legal provisions.

4. The second contention raised by the management was that the Society is governed by by-laws and they provide for reduction of subsistence allowance. The workman cannot claim something different than what was provided under the by-laws. Since the petitioner society is a Public service oriented co-operative society, it would be economically ruined if the orders of the Assistant Commissioner of Labour (wrongly stated as the Labour Court in the affidavit), allowed to exist and the order would amount to unjust enrichment by the employee and drain on public exchequer.

5. According to the petitioner, that it had adopted the service rules of the Tamil Nadu Cooperative Milk Producers Federation Limited (TNCMPF). Rule 4 provides for subsistence allowance only to a maximum of 75%. There was no occasion for the authorities to compute different rates of subsistence allowance including at the rate of 100% as claimed by R-2.

6. When the writ petition came up for admission on 06.03.2009, notice regarding admission was issued and an interim stay was also granted. It was subsequently admitted on 28.01.2011. Aggrieved by the interim order, the workman filed a vacate stay application in M.P.(MD).No.1 of 2010. For reasons best known, the matter was not taken up so far.

7. Though the workman earlier filed W.P.(MD).No.1817 of 2009 seeking for a direction to implement the order, the same was dismissed. Of course, the very order for which the execution was sought is the subject matter of challenge in this writ petition.

8. The contention raised by the management was thoroughly misconceived. It is regrettable that the petitioner society is not aware of the legal implications of the Tamil Nadu Payment of Subsistence Allowance Act and the Rules, 1981. Section 5 of the Act 43 of 1981, the Act specifies if any better privileges are conferred by an employer by way of any contract, custom or usage, which are more favourable to an employee, then those terms will prevail regarding subsistence allowance. It only means that if the terms or rate offered by the employer are less favourable, they did not be given effect to.

9. As per 3rd proviso to Section 3(1) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981, if the enquiry is prolonged for the reasons directly attributable to the employee, then the subsistence allowance payable can be reduced to 50%. Under Section 3(2) of the Act, if an employee accepts any other employment during the period of his suspension in any establishment other than the establishment in which he is working, then the employer was not under obligation to pay any subsistence allowance.

10. In the present case, though the management made a feeble attempt to the authority to state that the delay was not attributable to the management, the authority recorded a finding that the enquiry was completed on 13.05.2002 and the workman had sent a reply on 28.05.2002. The proceedings culminated into a second show cause notice had been issued as per Ex.P11 only on 28.03.2005 which was after a period of three years. Finally the dismissal was made as Ex.P12 on 21.06.2005. Therefore, the authority found if the management takes their own sweet will and pleasure to issue a second show cause notice, after 3 years and after the enquiry, then the workman cannot be blamed for the delay. Hence the third proviso to Section 3(1) will not operate so as to enable them to reduce the rate of subsistence allowance.

11. Though the management contended that they were not able to get proper records before issuing a second show cause notice, that cannot be a ground for attributing the cause for delay to the workman.

12. In the light of the above, this Court do not find any infirmities in the order passed by the authority. Hence, the writ petition will stand dismissed. The

petitioner management is directed to pay the subsistence allowance as ordered by the authorities to the second respondent, within a period of 8 weeks without driving the workman to further execution proceedings. Consequently, the connected miscellaneous petition is closed. No costs.