

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2010

C O R A M

THE HONOURABLE MR.JUSTICE K.CHANDRU

Writ Petition Nos.26569 to 26572 of 2004

The Management,  
Ananthamangalam Primary Agricultural Co-operative Bank,  
Ananthamangalam, Mathuranthagam Taluk,  
Kancheepuram District ... Petitioner in all the W.Ps.

-Vs.-

1. The Assistant Commissioner of Labour,  
Teynampet, Chennai 6 ... 1<sup>st</sup> Respondent in all the W.Ps
2. Mr. R.Nanda Gopal ... 2<sup>nd</sup> respondent in all the W.Ps

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records in pursuant to the order, dated 05.09.2002, in Subsistence Allowance Case Nos.8, 33 of 2002, 43 of 2001 and 24 of 2002, respectively, passed by the first respondent and quash the same.

For Petitioner in all the W.Ps. :Mr. S.M.Subramaniam

For Respondents in all the W.Ps. :Mr. N.Senthil kumar, A.G.P.,  
for R-1

Mr. Sivanandham, for R-2.

C O M M O N O R D E R

The petitioner in the above writ petitions is a Primary Agricultural Co-operative Bank at Ananthamangalam, Mathuranthagam Taluk, Kancheepuram District. Aggrieved by the order, dated 05.09.2002, passed by the authority under the Payment of Subsistence Allowance Act (Tamil Nadu Payment of Subsistence Allowance Act, 1981) (hereinafter referred to as "the Act"), the writ petition has been filed.

2. It is admitted that the contesting second respondent was suspended and he is eligible for payment of subsistence allowance on account of his suspension. However, the petitioner-society did not grant subsistence allowance to the contesting second respondent. His plea was that the prerequisite for getting allowance was production of non-employment certificate. This made the second respondent to move the authority under the Act, namely, the first respondent, with a claim under Section 3 of the Act. Even before the said authority, the petitioner-society made a similar plea, which was rejected by the authority and the authority computed certain amounts in favour of the contesting second respondent. As against the order passed by the

first respondent, Rule 5 (a) of the Tamil Nadu Payment of Subsistence Allowance Rules, 1981, provides for an appeal within sixty days. The petitioner did not avail the said appellate remedy. Perhaps, the proviso to said rule requires the deposit of the entire amount.

3. In any event, the writ petitions are admitted on 06.10.2004 and this Court, as a condition precedent for grant of interim stay, directed the petitioner to deposit 50% of the amount computed by the authority. However, when the matter came up on 26.10.2009, it was informed that the petitioner did not comply with the interim order and therefore, on the strength of the vacate stay petition and on the averments made by the workmen, the stay petitions were dismissed and the vacate stay petition was closed.

4. Even before this Court, the same contention was raised. It must be noted that when there is a dispute regarding the subsistence allowance before the authority under Section 3 of the Act, Section 3 (2) provides a pre-condition that an employee is not entitled to receive any subsistence allowance, if he accepts any other employment during the period of his suspension, in any establishment. Therefore, such an issue should have been raised before the authority and the credible materials should have been produced to deny the subsistence allowance before the authority. On the ground that the workmen did not produce the certificate of non-employment, which is only a self-serving certificate, the petitioner-society cannot deny the subsistence allowance.

5. Even the petitioner did not comply with the interim order and also failed to avail the appeal remedy provided under the Act. Under those circumstances, this Court is not inclined to entertain the above writ petitions. Hence, the above writ petitions stand dismissed. No costs.

Sd/-

Asst. Registrar

//true copy//

Sub Asst.Registrar

srk

To

The Assistant Commissioner of Labour,  
Teynampet, Chennai 6

1 cc to Government Pleader, Sr.No.13758

1 cc to Mr.S.M.Subramaniam, Advocate, Sr.No.13604

W.P.Nos.26569 to 26572 of 2004

RV {CO}

<https://hcservices.ecourts.gov.in/hcservices/>

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