

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 201 OF 2024**

Sunil Chauhan, age 38 years, R/o H. No. 103, Near Kanteshwarnath Temple, Sawarkarnagar, Gandhinagar, Sasmolle, Bainha, Vasco Da Gama, Goa.

... PETITIONER

Versus

1. State of Goa, through the Secretary (Labour), Government of Goa, Labour Department, Secretariat, Porvorim, Goa.
  2. The Presiding Officer, o/o the Industrial Tribunal cum Labour Court and Labour Court-II, Govt. of Goa, Shram Shakti Bhavan, First Floor, Patto-Plaza, Panaji, Goa.
  3. The Commissioner, Labour and Employment, Commission, o/o Labour and Employment, Commission, Govt. of Goa, Shram Shakti Bhavan, Second Floor, Patto-Plaza, Panaji, Goa.
  4. M/s High Street Cruises and Entertainment Pvt. Ltd., Fisheries Jetty, Ground Floor, Fisheries Department Building, D. Bandodkar Road, Panaji, Goa.
- ... RESPONDENTS

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Mr. Ivan J. Santimano, Advocate under the Legal Aid Scheme for the Petitioner.

Mr. Prasanna C. Chawdikar, Advocate for Respondent No. 4.

**CORAM:** **BHARAT P. DESHPANDE, J.**

**RESERVED ON:** **5<sup>th</sup> JULY 2024**

**PRONOUNCED ON:** **11<sup>th</sup> JULY 2024**

**JUDGMENT:**

1. Rule. Rule made returnable forthwith.
  
2. The Petition is taken up for final disposal at the admission stage with consent of the parties.
  
3. Initially, the Petitioner appeared in person, who filed the Petition and even tried to argue the matter. Though the report of the scrutiny committee is placed on record stating that the Petitioner is able to give necessary assistance to the Court for disposal of the matter, the Petitioner was insisting that he should be granted subsistence allowance immediately and before considering the matter for admission. Accordingly, an order was passed on 13.06.2024 which reads thus:

*“P.C.*

*Petitioner who is appearing in person is insisting that he should be granted subsistence allowance immediately before considering the prayers which are found in paragraph 41 of the petition.*

2. On perusal of these prayers, it is clear that the award passed by the Labour Court wherein the petitioner was not considered as a workman and therefore he has been denied with subsistence allowance, is not challenged at first instance.

3. From the submissions of the petitioner, it is clear that he is unable to assist the Court in proper manner so as to decide the dispute.

4. Accordingly, Goa State Legal Services Authority is directed to appoint an advocate from its panel to assist the Court.

5. Copy of the petition be furnished to the concerned Advocate who shall assist the Court.

6. Stand over to 28.6.2024.

4. Mr. Ivan Santimano accordingly appeared on instructions from the Goa State Legal Services Authority to put up the case and to assist this Court in the matter for and on behalf of the Petitioner.

5. The Petitioner was present when Mr. Santimano appeared and argued the matter. Mr. Prasanna Chawdikar appeared for Respondent No. 4.

6. Respondent Nos. 1, 2 and 3 are not at all necessary parties to decide the present Appeal and therefore, notices were not issued to such parties.

7. The Petition is filed with the following prayers:

*“a. To issue a writ of mandamus, or in the nature of mandamus or any other appropriate writ, order or directions calling for the records and Proceedings of labour court-II CASE NO. LC-II/IT/14/2017 (matter of illegality and service condition) AND LC-II/MISC/02/2023 IN REF. OF CASE NO. LC-II/IT/14/2017 (for appearance in matter of correction of error in award dated 10.08.2021) AND LC-II/MISC/03/2023 IN REF. OF CASE NO: LC-II/IT/14/2017 (for appearance in matter of subsistence allowance) being conducted by the Hon'ble Presiding Officer, Labour Court-II, Respondent No.2 At Panaji-Goa, and after perusing the same, for appropriate direction to Respondent No. 2 for the relief and clearance of payment of pending subsistence allowance from the employer and the opportunity for the recovery of losses and damages caused by the employer through the court proceedings in accordance with law, on merits and with regards to the principles of natural justice.*

b. *To issue a writ of mandamus, or in the nature of mandamus or any other appropriate writ, order or directions, to the government of Goa and to the Hon'ble Presiding Officer, Shree Suresh N Narulkar, labour court-II Respondent No. 2 for initiating the strict action against employer respondent No.4 for illegality and for manipulating CASE NO. LC-II/IT/14/2017 (matter of illegality and service condition) AND LC-II/MISC/02/2023 IN REF. OF CASE NO. LC-II/IT/14/2017 (for appearance in matter of correction of error in award dated 10.08.2021) AND LC-II/MISC/03/2023 IN REF. OF CASE NO. LC-II/IT/14/2017 (for appearance in matter of subsistence allowance) being conducted by the Hon'ble Presiding Officer, Labour Court-II Respondent No.2 at Panaji – Goa.*

c. *For costs.*

d. *Any other and further orders this Hon'ble Court deems just in the facts and circumstances of the present case."*

8. From the reading of the above prayers, it is clear that the Petitioner is not challenging the award passed by the Labour Court, however, he only insists that he should be granted subsistence allowance from the Employer/Respondent No. 4 before considering his matter on merits.

**9.** Mr. Santimano would submit that the Petitioner was initially employed as a Senior Dealer with Golden Porch Entertainment Private Limited and then transferred to M/s High Street Cruises and Entertainment Private Limited /Respondent No. 4. Some disputes arose between the Petitioner and his superior Officers in March 2016. Accordingly, the Petitioner was served with a show cause notice and thereafter, placed under suspension. Respondent No. 4 then conducted a domestic inquiry for the acts of misconduct allegedly committed by the Petitioner while on duty. The inquiry officer after conducting the necessary inquiry held that the Petitioner committed misconduct while in service and accordingly, proposed that he should be dismissed from service. Vide letter dated 22.12.2016, the Petitioner was dismissed from service. Along with such a dismissal letter, a cheque for Rs.9,225/- was handed over to the Petitioner towards subsistence allowance till the dismissal order.

**10.** The Petitioner approached the Labour Department against his dismissal. Accordingly, the Under Secretary (Labour) vide his letter dated 12.10.2017 made a Reference to the Labour Court. The proceedings started before the Labour Court and culminated into an award dated 10.08.2021. In the said award, the Labour Court observed that the Petitioner cannot be considered as a workman.

The Labour Court further observed that the action of the Management/Respondent No. 4 in dismissing the services of the Petitioner is found to be legal and just.

**11.** The record clearly goes to show that even though such an award was passed, instead of challenging such an award, the Petitioner was asking for a certified copy of it and thereafter, filed an Application for correction of such an award. Simultaneously, Applications were filed before the Labour Court for the grant of subsistence allowance.

**12.** The Petitioner also preferred a Petition before this Court vide Writ Petition No. 114 of 2024, which was disposed of by the Division Bench vide its order dated 31.01.2024. The observations of the Division Bench from paragraphs 2 to 7 read thus:

*“2. Mr Sunil Chauhan admits that the Labour Court by award dated 10.08.2021 has held against him. However, he points out that he has filed an application for correction of the error that has crept into this award. He submits that had he led full evidence before the Labour Court the award would have been in his favour. Still, the Labour Court has erroneously made this award.*

*3. To the Court’s query as to why he is not challenging that award by instituting proceedings*

*under Article 227 of the Constitution, Mr Chauhan states that until and unless he gets subsistence allowance, he will not challenge the award.*

4. *Mr Sunil Chauhan is informed that he could consider applying to the Legal Services Authority for an Advocate. However, he maintains that until and unless he gets a subsistence allowance from the Management he will not engage any Advocate.*

5. *Since the Labour Court's award has held that the petitioner is not a workman and has dismissed the reference, we are afraid that in this petition we will not be in a position to issue any writ of mandamus to the fourth respondent, which is a private entity to pay any subsistence allowance to the petitioner. This is assuming that any case is made out for payment of any subsistence allowance.*

6. *Accordingly, we dismiss this petition but once again leave it open to the petitioner, to take out appropriate proceedings before the appropriate forum inter alia for questioning the award dated 10.08.2021 or for claiming any other reliefs that he may be entitled to under the law.*

7. *The petition is disposed of with liberty in the above terms. We clarify that we have not gone into any contentious issues and therefore all contentions of all parties are left open.”*

13. It is a matter of record that the Petitioner filed an Application before the Labour Court seeking direction to the Employer to give him pending subsistence allowance with compounding interest. Vide order dated 15.12.2023, the Labour Court rejected such prayers.

14. The subsistence allowance is defined under Section 10-A of the Industrial Dispute Act wherein it is stated that where any workman is suspended by the Employer pending investigation or inquiry into complaints or charges of misconduct against him, the Employer shall pay to such workman subsistence allowance as provided therein. If any dispute arises regarding the subsistence allowance payable to the workman under sub-section (1), the workman or the Employer concerned may refer the dispute to the Labour Court either under the Industrial Dispute Act or within the local limits under whose jurisdiction the industrial establishment is situated.

15. The prayer clauses in the present Petition, as quoted earlier, show that the Petitioner is not challenging the award passed by the Labour Court wherein it has been clearly held that the Petitioner is not a workman and the action of Respondent No. 4 in dismissing his services is just and proper. Unless such findings are challenged

or either altered or set aside by the Appellate Court, the question of grant of subsistence allowance without referring to a particular period cannot be considered at all.

**16.** It is also a matter of record that the Division Bench of this Court in its order dated 31.01.2024, as quoted above, observed that the Petitioner is not ready and willing to challenge the award and he is insisting that he should get subsistence allowance and only then he will challenge the award, which clearly shows that the Petitioner is personally unable to understand the consequence of the award passed by the Labour Court.

**17.** Even an attempt was made by the Division Bench by informing the Petitioner that he should apply to the Goa State Legal Services Authority for an Advocate, who could give him proper legal advise instead of filing such a Petition personally, however, the Petitioner is adamant and insists that until and unless subsistence allowance is received from the Management, he will not engage an Advocate.

**18.** The matter in hand is also similar wherein though a note is placed by the Registrars stating that the Petitioner will be able to assist the Court, however, at the time of taking up the matter, the

Petitioner was insisting that he should be given subsistence allowance from the Employer before considering the matter for admission.

**19.** The present Writ Petition is filed under Article 227 of the Constitution of India. The procedure of the Court is to consider the submissions and the grounds in the Petition, however, the party cannot dictate terms in matters to be admitted or to be considered on merits. Since the documents placed on record clearly go to show that the Petitioner was dismissed from service and even though he approached the Labour Department wherein Reference was made to the Labour Court, the award was passed after a detailed inquiry wherein the Labour Court has opined that the Petitioner is not a workman and the action taken by the Employer cannot be faulted with. Thus, the proper recourse available to the Petitioner is to challenge such an award. However, inspite of informing him by the Division Bench, in the earlier Petition as well as by this Court in the present proceedings, he is not ready to challenge the award and insists that he should be first paid subsistence allowance. When the Petitioner was dismissed from service after conducting a detailed inquiry, which has been considered as fair and just by the Labour Court, insisting that he should be paid subsistence allowance, is of no use. Even the

period for which the Petitioner is claiming subsistence allowance is not disclosed in the prayer clause or in the Petition. The attempt on the part of the Petitioner to claim subsistence allowance from the Labour Court by filing a separate Application also resulted in the rejection of such an Application. Even such orders passed by the Labour Court are not challenged in the present proceedings.

**20.** Thus, the Petition in the present format with its prayer clauses and more specifically, it does not challenge the impugned order as well as the orders rejecting his Application for subsistence allowance and rejection of the Application for correction of the award, cannot be entertained.

**21.** The Petition therefore deserves to be dismissed and accordingly, the same stands dismissed. Parties shall bear their own costs.

**22.** Rule stands discharged accordingly.

**BHARAT P. DESHPANDE, J.**