

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Appeal No.168 of 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the interlocutory order passed by the Learned Single Judge in W.P.M.P.No.1872 of 2017 in W.P.No.1634 of 2017 dated 18.01.2017.

The appellant-writ petitioner, an employee of the respondents herein, filed the writ petition claiming payment of subsistence allowance for the period 06.04.2011 to 03.06.2012. The relief sought for in the writ petition is for payment of the said amount with interest at the rate of 18% per annum. The W.P.M.P was filed to direct the respondents to pay subsistence allowance for the said period.

The Learned Single Judge has, in the order under appeal, noted that this was the main relief, and no interim relief as sought for could be granted as it would amount to allowing the writ petition itself; and, unless an opportunity was afforded to the respondents to justify their action of non-payment of subsistence allowance for the concerned period, no relief as sought for could be granted.

Sri S.Satyam Reddy, learned Senior Counsel appearing on behalf of the appellant-writ petitioner, would submit that the interim prayer and the main prayer is not the same; while the interim prayer is for payment of subsistence allowance, the main prayer is for payment of interest at the rate of 18% per annum in addition thereto; and the Learned Single Judge has erred in holding that the interim prayer sought was the main prayer in the writ petition.

The appellant-writ petitioner filed the writ petition in the year 2017 claiming payment of subsistence allowance for the period 06.04.2011 to 03.06.2012 more than four and half years earlier. It is in such circumstances that the Learned Single Judge has observed that such a

relief could not be granted at the interlocutory stage; and the writ petition could be adjudicated only after giving the respondents an opportunity of being heard.

The claim in the writ petition is for payment of subsistence allowance with interest. It is only if the appellant-writ petitioner is held to be entitled to the subsistence allowance claimed by him, would the question of payment of interest thereupon arise. His claim for payment of subsistence allowance, that too for a period four and half years earlier, could only have been adjudicated after the respondents filed their counter affidavit. The Learned Single Judge has, in his discretion, refused to grant the interim relief sought for.

In an intra-court appeal, under Clause 15 of the Letters Patent, interference is justified only if the order under appeal suffers from a patent illegality. Exercise of discretion by the Learned Single Judge, not to grant interim relief, in the facts and circumstances of the present case, does not suffer from any such infirmity. We see no reason, therefore, to interfere, with the order under appeal, in proceedings under Clause 15 of the Letters Patent.

The Writ Appeal fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

09th February, 2017
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Date: 09.02.2017

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