

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2018

CORAM :

THE HONOURABLE DR. JUSTICE S.VIMALA

W.P.No.17757 of 2013

The District Programme Officer,
Integrated Child Development Scheme,
Vellore. Petitioner

Vs.

1. C.Fathima Mary
2. The Authority for Payment of
Subsistence Allowance/
Assistant Commissioner of Labour,
Chennai. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of certiorari, calling for the records in connection with the order dated 18.02.2013 made in P.S.A.No.3 of 2012 on the file of the Tamil Nadu Subsistence Allowance Authority / Assistant Commissioner of Labour, Chennai, the 2nd respondent herein and quash the same.

For Petitioner :	Mr.N.Srinivasan, Additional Govt. Pleader
For R1 :	No appearance
For R2 :	Court

ORDER

The writ petitioner, District Programme Officer, Integrated Child Development Scheme, Vellore, has filed this writ petition, aggrieved over the grant of subsistence allowance to the first respondent, by order dated 18.02.2013, in P.S.A.No.3 of 2012.

2. The first respondent herein, an employee C.Fathima Mary under the petitioner, was suspended from service on 28.02.2011, by the writ petitioner, on account of charges of locking the children inside the Anganwadi Centre on 25.02.2011. Charges were framed against the suspended Anganwadi worker by order dated 10.06.2011 by the District Programme Officer, Vellore. After the receipt of reply, enquiry was held by the District Collector on 25.07.2011, who submitted his report. Based on the enquiry report, the first respondent herein was removed from service on 03.11.2011.

3. The first respondent herein had filed a petition before the Assistant Commissioner of Labour, Chennai, seeking subsistence allowance during the suspension period. The Assistant Commissioner of Labour, Chennai, ordered payment of substance of Rs.30,156/- to the first respondent. Challenging the same, the writ petitioner has filed this writ petition.

4. The learned counsel appearing for the writ petitioner submitted that the establishment of Integrated Child Development Scheme would not fall under the definition under Section 2(C) of the Tamil Nadu Payment of Subsistence Allowance Act. Therefore, the second respondent is not authorized to grant payment of subsistence allowance to the first respondent.

5. Though such a contention is raised, the said issue need not be gone into at this stage, as the remedy open to the writ petitioner is to file an appeal under Rule 5A of the Tamil Nadu Payment of Subsistence Allowance Rules 1981. For better clarity, the relevant Rule reads as under:

5A. Appeal - (1) Any person aggrieved by the orders passed by an authority authorised under sub-section (1) of section 7 of the said Act may, within 60 days from the date of receipt of such orders, appeal to the Deputy Commissioner of Labour within the local limits assigned to him under sub-section (1) of section 15 of the Payment of Wages Act, 1936 (Central Act IV of 1936) in the form of memorandum of appeal.

[Provided that no appeal shall be admitted unless at the time of preferring the appeal, the appellant produced a certificate from the authority against whose orders the appeal has been made to the effect that the appellant had deposited with him the amount determined by him as payable to the employee under rule 5:

Provided further that where an employer makes an appeal under rule 5-A, the authority may and if so directed by the Deputy Commissioner of Labour, pending decision of the appeal, withhold payment of any sum in deposit with him.

(2) The memorandum of appeal under sub-rule (1) shall be submitted to the Deputy Commissioner of Labour with a copy thereof to the opposite party and the authority authorised under sub-section (1) of section 7 of the Act either through delivery in person or under registered post with acknowledgment due.

(3) The memorandum of appeal shall contain the facts of the case, the decision of the authority concerned, the grounds of appeal and the relief sought.

(4) There shall be appended to memorandum of appeal, a certified copy of the finding of the authority concerned and his direction pertaining to the payment of subsistence allowance.

(5) On receipt of the copy of the memorandum of appeal, the authority concerned who passed the order appealed against shall forward the records of the case to the Deputy Commissioner of Labour concerned.

(6) Within 14 days of the receipt of the copy of the memorandum of appeal, the opposite party shall submit his comments on each paragraph of the memorandum with additional pleas, if any to the Deputy Commissioner of Labour with a copy to the appellant.

(7) The Deputy Commissioner of Labour shall record his decision after giving the parties to the appeal a reasonable opportunity of being heard. A copy of the decision shall be given to the parties to the appeal and the authority who passed the order appealed against returning his records of the case.

(8) On receipt of the decision of the Deputy Commissioner of Labour, the authority who passed the order appealed against, shall take further action in accordance with the decision of the Deputy Commissioner of Labour, as if it were an order passed under sub-rule (6) of rule 5.

Provided that the Commissioner of Labour may, by order in writing, on the representation made by either of the parties in this behalf or on his own accord, withdraw any case under this Act, pending before an authority and transfer the same to another authority for disposal. Such authority to whom the case is so transferred may, subject to the special direction in the order of transfer proceed either de novo or from the stage at which it was so transferred]."

6. When an alternative remedy of appeal is available to the writ petitioner, that too under a statute, without availing the alternative remedy, it is not open to the petitioner to come before this Court by filing the writ petition. In the present circumstances, the writ petition is not maintainable before this

Court. Accordingly, the writ petition is dismissed, however, with liberty to the petitioner to pursue the alternative remedy, if so advised. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

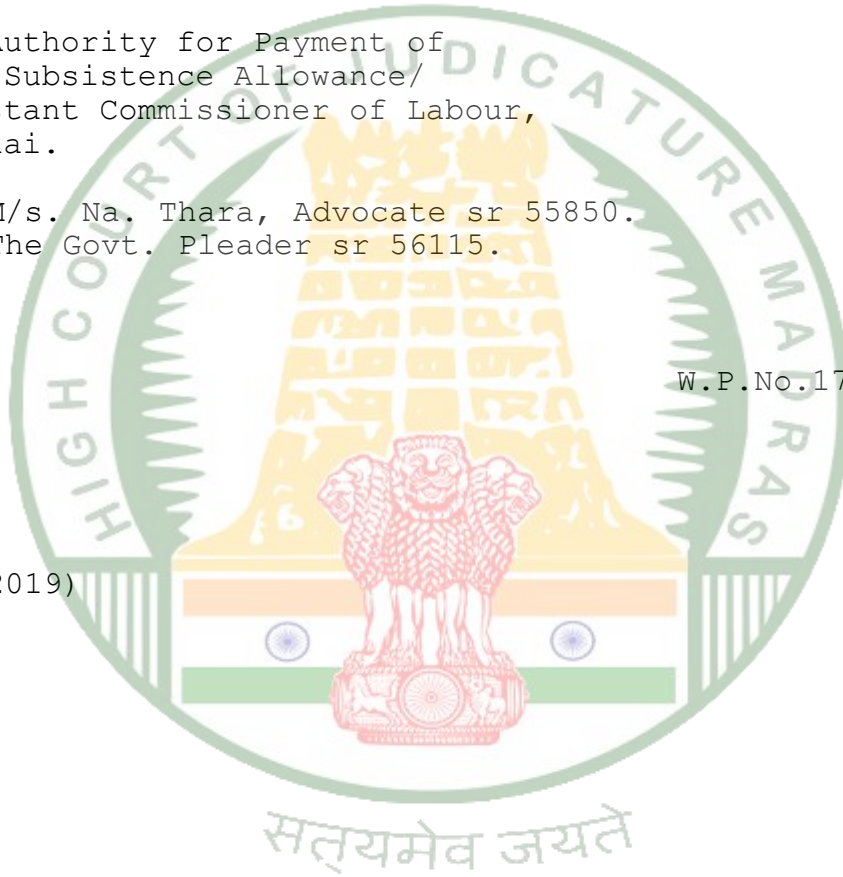
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To

The Authority for Payment of
Subsistence Allowance/
Assistant Commissioner of Labour,
Chennai.

+1 CC to M/s. Na. Thara, Advocate sr 55850.
+1 CC to The Govt. Pleader sr 56115.

W.P.No.17757 of 2013

MP (CO)
SP (09/01/2019)



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