

wp12174-19

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.12174 OF 2019

Jyoti wd/o Maroti Borgave

.. Petitioner

Versus

The State of Maharashtra
through its Secretary,
Agricultural & Animal Husbandary
Dairy Department and Fisheries
Department, Mantralaya,
Mumbai and ors.

.. Respondents

Mr V.B. Dhage, Advocate for petitioner
Mr V.M. Kagne, A.G.P. for respondents no.1 to 5

**CORAM : S.V. GANGAPURWALA AND
ANIL S. KILOR, JJ.****DATE : 11.10.2019****ORAL ORDER :**

1. The petitioner is claiming directions against respondent no.6 to allow the claim of the petitioner.
2. The claim of the petitioner appears to have been repudiated by the Insurance Company.
3. The petitioner approached the District Consumer Forum. The District Consumer Forum allowed the dispute/complaint of the petitioner. The Insurance Company went in appeal before the State Commission. The appeal filed by the Insurance Company was allowed by the State Commission. The said order is not challenged by the petitioner. The said order has become final. The appeal has been allowed on the merits of the matter and not on the ground of jurisdiction or otherwise.

4. There cannot be contrary orders in force. Keeping the order of the State Commission intact, contrary orders cannot be passed. The same will not be in tune with the judicial discipline.

5. The order of the State Commission is not challenged. The same has become final. In view of that, this Court cannot in a writ petition filed by the petitioner for the same relief that has been negated by the State Commission entertain same.

6. The petitioner has to challenge the order of the State Commission before the National Commission.

7. Mr Dhage, learned Counsel for the petitioner submits that this Court has entertained the petition earlier against the order of the District Consumer Forum and/or of State Commission.

8. The Apex Court in Special Leave to Appeal (Civil) No.(s) 17068-17069/2010 under order dated 9.7.2010, in similar case held that the High Court ought not to have entertained the petition even for a single day because an effective alternate remedy was available to the petitioner under Section 23 of the Act and the order passed by the State Consumer Forum did not suffer from lack of jurisdiction. The said order has been circulated by the Apex Court to the High Courts.

9. In light of the above, we are not inclined to entertain the writ petition for two reasons (1) the order of the State Commission is not assailed and this Court cannot pass contrary order. The same would

not be in consonance with the judicial discipline; and (2) The petitioner has a remedy to challenge the order of the State Commission, if the petitioner so desires. The petitioner may take the plea available to her with regard to the delay and the pendency of the present writ petition.

10. In case the petitioner challenges the order of State Commission before the National Commission, all contentions of the petitioner are kept open.

11. Writ Petition stands disposed of. No costs.

(ANIL S. KILOR, J.)

(S.V. GANGAPURWALA, J.)

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