



W.P.No.31688 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.31688 of 2017
and
W.M.P.No.34859 of 2017
and
W.M.P.No.1170 of 2018

The Management,
P.E.65, Modakkurichi Circle Teachers and
Public Servants Cooperative Thrift
and Credit Society Ltd.,
Rep.by its Administrator,
Modakkurichi – 638 104,
Erode District.

...Petitioner

Vs.

- 1.The District Collector,
Erode District, Erode.
- 2.The Assistant Commissioner of Labour,
Controlling Authority Appointed under the
Payment of Subsistence Allowance Act,
O/o.Deputy Commissioner of Labour,
Yercaud Road, Salem, Salem District.

3.C.Periyasamy

..Respondents



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Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the 2nd respondent in his proceedings PSA No.8/2016 dated 22.5.2017 consequential order passed by the 1st respondent in his proceedings Na.Ka.30392/2017/ E2 dated 21.11.2017 and quash the same.

For Petitioner	: Mr.C.Prakasam
For R1	: Mr.D.Gopal Government Advocate
For R2	: Mr.R.P.Murugan Raja Government Advocate
For R3	: Mr.Balan Haridas

ORDER

The order passed by the 2nd respondent under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 in proceedings dated 22.05.2017 is under challenge in the present writ petition.

2. The petitioner is the Management, P.E.65, Modakkurichi Circle Teachers and Public Servants Cooperative Thrift and Credit Society Limited, which is a Society registered under the provisions of the Tamil Nadu Co-



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operative Societies Act. The 2nd respondent was an employee of the Society and was placed under suspension on initiation of departmental disciplinary proceedings. The order of suspension was issued on the eve of his retirement and the disciplinary proceedings ended with an order of punishment. Thus, the petitioner claimed Subsistence Allowance for the period of suspension.

3. The authorities competent under the payment of Subsistence Allowance Act, passed an order granting the benefit of Subsistence Allowance and the said order is under challenge in the present writ petition.

4. The learned counsel for the petitioner made a submission that the Subsistence Allowance Act is inapplicable as the second respondent is governed under the Special By-laws of the petitioner society, which was approved by the competent authority under the provisions of the Tamil Nadu Cooperative Societies Act, which is a Special Act and will prevail over.



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5. The learned counsel for the 2nd respondent made a submission that the application of the Subsistence Allowance Act has been incorporated in the Special By-laws and therefore, there is no infirmity in respect of the order impugned.

6. However, this Court is of an opinion that an appeal is contemplated under Rule 5-A of the Tamil Nadu Payment of Subsistence Allowance Rules, 1981 and the petitioner has to exhaust the Appellate remedy by adjudicating the disputed issues between the parties.

7. The learned counsel for the 2nd respondent relied on the judgment of the Hon'ble Supreme Court of India in the case of ***State of Maharashtra and others Vs. Greatship (India) Limited, reported in (2022) SCC OnLine SC 1262*** and the following observations are made:

“14.

“49.....

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53. In *Raj Kumar Shivhare v. Directorate of*



Enforcement [(2010) 4 SCC 772] the Court was dealing with the issue whether the alternative statutory remedy available under the Foreign Exchange Management Act, 1999 can be bypassed and jurisdiction under Article 226 of the Constitution could be invoked. After examining the scheme of the Act, the Court observed : (SCC p. 781, paras 31-32)

“31. When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case the High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go-by by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction. The High Court, with great respect, fell into a manifest error by not appreciating this aspect of the matter. It has however dismissed the writ petition on the ground of lack of territorial jurisdiction.

32. No reason could be assigned by the appellant's counsel to demonstrate why the appellate jurisdiction of the High Court under Section 35 of FEMA does not provide an efficacious remedy. In fact there could hardly be any reason since the High Court itself is the appellate forum.”

8. In view of the facts and circumstances, the petitioner-Management is



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at liberty to file an appeal before the competent authorities. In the event of filing any appeal, the competent authorities shall condone the delay and entertain the appeal and accordingly, decide the issues on merits and in accordance with law as expeditiously as possible.

9. With this liberty, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

17.10.2022

Index : Yes
Speaking order: Yes
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Note: *The Registry, High Court of Madras is directed to send back the original case papers to the authority concerned.*

To

1. The District Collector,
Erode District, Erode.

2. The Assistant Commissioner of Labour,
Controlling Authority Appointed under the

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Payment of Subsistence Allowance Act,
O/o.Deputy Commissioner of Labour,
Yercaud Road, Salem, Salem District.

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S.M.SUBRAMANIAM, J.

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