



W.A.No.2683 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.12.2022

Coram:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURBLE MR.JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.2683 of 2022
and
C.M.P.No.21706 of 2022

--

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.

.. Appellant

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



W.A.No.2683 of 2022

Writ Appeal No.2683 of 2022 filed under Clause 15 of the Letters

Patent against the order passed by the learned Single Judge, in
W.P.No.31688 of 2017, dated 17.10.2022.

Writ Petition No.31688 of 2017 filed under Article 226 of the
Constitution of India, praying for issuance of a Writ of Certiorari to call for
the entire records relating to the impugned order passed by the second
respondent in his proceedings PSA No.8/2016, dated 22.05.2017
consequential order passed by the first respondent in his proceedings
Na.Ka.30392/2017/E2, dated 21.11.2017 and quash the same.

For appellant : Mr.C.Prakasam

For respondents: Mr.Nanmaran, Spl.G.P. For RR-1 and 2

JUDGMENT

The present appeal has been preferred against the order dated
17.10.2022 passed by the learned Single Judge, dismissing the Writ Petition
on the ground that when the appellant/petitioner (Management) has got an

Page No.2/8



W.A.No.2683 of 2022

alternative remedy of appeal before the concerned appellate authority under the Payment of Subsistence Allowance Act, he cannot by-pass the same and approach this Court seeking remedy by filing Writ Petition under Article 226 of the Constitution of India.

2. Learned counsel for the appellant/Management submitted that the the third respondent was a Secretary and he may not be a 'workman' in terms of the provisions of the Tamil Nadu Payment of Subsistence Allowance Act and his remedy lies only under the Tamil Nadu Co-operative Societies Act and that the third respondent/Secretary will have to approach the concerned authority under the provisions of the Tamil Nadu Co-operative Societies Act and not under the Tamil Nadu Payment of Subsistence Allowance Act, 1981.

3. We are not inclined to render any finding as to whether the person who claim the relief under the Tamil Nadu Payment of Subsistence Allowance Act before the authority under the Tamil Nadu Payment of Subsistence Allowance Act, is entitled to the amount or not, or as to



W.A.No.2683 of 2022

whether the 1981 Act is applicable. It is for the appellant/Management to let in evidence before the authority concerned and prove their case. Of course, the initial burden is on the person who approaches the Authority to establish that the Authority has jurisdiction.

4. The appellant/Management has got an alternative remedy of appeal under the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 and the appellant/Management will have to prefer appeal before the authority concerned under the 1981 Act, who can accept the additional evidence about the status of the person and then to decide the issue. Merely because the Management will have to deposit the amount as ordered by the original authority, cannot be a ground to by-pass the statutory appeal remedy and approach this Court under Article 226 of the Constitution of India.

5. In similar circumstances, in the decision reported in 1989 (2) LLN 672 (Onward Trading Company Vs. Dy. Commr. of Labour), which was confirmed in the decision reported in 1989 (2) LLN 673 = 1988 SCC



W.A.No.2683 of 2022

Online Madras 382 (Onward Trading Company, Madras Vs. Deputy Commissioner of Labour and others), it was observed by this Court that the Management therein cannot by-pass the appeal remedy and prefer the Writ Petition, pertaining to the issue relating to the gratuity, without depositing the amount ordered by the Controlling Authority.

6. Further, the contention of the learned counsel for the appellant/Management that they will have to deposit the amount before filing such statutory appeal, and instead of filing the statutory appeal, they have come forward to file the Writ Petition, cannot be accepted by this Court, as under the provisions of the Payment of Gratuity Act (in the decision supra), this Court held that when there is a specific provision for deposit of the amount before preferring an appeal, it is mandatory on the part of the person who is aggrieved by the order of the original authority to deposit the amount and thereafter prefer an appeal. Though it has been rendered in the context of Payment of Gratuity Act, the same principle applies to the case under the provisions of the Tamil Nadu Payment of Subsistence Allowance Act also, as there is a condition precedent to deposit



W.A.No.2683 of 2022

the amount before preferring an appeal.

WEB COPY

7. In view of the above decision of this Court, we are of the view that the impugned order passed by the learned Single Judge, does not call for any interference. The Writ Appeal filed by the Management is accordingly dismissed. It is open for the appellant to prefer appeal in terms of the provisions of the Tami Nadu Payment of Subsistence Allowance Act, within 30 days from the date of receipt of a copy of this judgment, if the appeal time has already expired. The appeal can be entertained if the amount determined by the Assistant Commissioner of Labour is deposited.

8. There shall be no order as to costs. Consequently, the miscellaneous petition is closed.

(S.V.N.,J) (M.S.Q.,J)
15.12.2022

Index: Yes/no
Speaking Order: Yes/no
Neutral Citation: Yes/no
cs

Page No.6/8



WEB COPY



W.A.No.2683 of 2022

To

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.



WEB COPY



W.A.No.2683 of 2022

S.VAIDYANATHAN, J

and

MOHAMMED SHAFFIQ, J

CS

W.A.No.2683 of 2022

15.12.2022