



W.P(MD).No.2169

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2023

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THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

W.P(MD).Nos.2169 of 2018

and

W.M.P(MD).No.2422 of 2018

NN 626, Kannanoor Primary
Agricultural Co-operative Credit Society
Represented by P.Maheswaran
S/o.U.Pitchaimuthu,
Secretary-in-Charge,
Peria Kannanoor Post,
Sivagangai District.

... Petitioner

Vs.

1.The Assistant Commissioner of Labour,
(Authority under Payment of
Subsistence Allowance Act),
Bharathi Ula Road, Race Course Colony,
Madurai. 625 002.

2.A.Rajendran

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the first respondent in PSA No.1 of 2015 dated 25.11.2016 and quash the same as illegal.

For Petitioner : Mr.L.George Paul Anto

For Respondents : Mr.A.Baskaran (for R1)
Additional Government Pleader

Mr.J.Jeyakumaran (for R2)



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ORDER

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This writ petition has been filed to call for the records relating to the impugned order passed by the first respondent in PSA No.1 of 2015 dated 25.11.2016 and quash the same as illegal.

2. The case of the petitioner is that the petitioner is the Secretary in the first respondent Society. The second respondent, while working as Secretary of the said society, misappropriated a sum of Rs.34,14,784/-. Thereby, the second respondent was placed under suspension on 05.12.2013 and dismissed from service on 01.10.2014, after following due process of law. Thereafter, the second respondent filed a petition for payment of subsistence allowance under Tamil Nadu Payment of Subsistence Allowance Act, 1981 and the same was taken on file in P.S.A.No.1 of 2015. The second respondent Chief Executive Authority is not an employee under Section 2(a) of Tamil Nadu Payment of Subsistence Allowance Act, 1981. However, the first respondent, without considering the same, allowed the petition filed by the second respondent. Challenging the same, the present writ petition is filed.

3. The learned counsel for the second respondent submitted that as against the order passed by the original authority in terms of Section 7 of Tamil Nadu Payment of Subsistence Allowance Act, 1981 there is an effective appeal remedy



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available before the appellate authority. Without exhausting appeal remedy available before the appellate authority, the filing of the writ petition by the petitioner, is not sustainable. Accordingly, he prayed for dismissal of the writ petition.

4. As rightly submitted by the learned counsel for the second respondent as against the order passed by the original authority, there is an effective appeal remedy available before the appellate authority in terms of Section 7(4) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981. Without exhausting appeal remedy available before the appellate authority, the petitioner has filed the present writ petition which is not a sustainable one. Hence, the prayer sought in this writ petition cannot be granted. However, liberty is granted to the petitioner to file appropriate appeal before the appellate authority within a period of four weeks from the date of receipt of a copy of this order. If such an appeal is filed, the appellate authority, shall pass appropriate orders within a period of twelve weeks thereafter.

5. This Writ Petition is disposed of with the above liberty. No costs. Consequently connected miscellaneous petition is closed.

06.02.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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<https://www.mhc.tn.gov.in/judis>



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M.DHANDAPANI, J.

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