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W.P.No.17600 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10/7/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.17600 of 2020

a n d

W.M.P.Nos.21818 of 2020 & 6752 of 2020

The Management
K 797 Kongalnagaram Primary Agricultural
Co-operative Credit Society Ltd
rep. By its Administrator
Kongalnagaram Village & Post
Udumalpettai Taluk
Tiruppur District. ... Petitioner

Vs

1. The Authority
under the Tamil Nadu Payment of
Subsistence Allowance Act/
Assistant Commissioner (Labour)
Coimbatore.
2. G. Gunasekaran ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records of the order passed by the first respondent in PSA No.5 of 2017 dated 11/12/2019 and quash the same.



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For petitioner

...

Mr.M.S.Palaniswamy

For respondents

...

Mr.R.U.Dinesh Raj Kumar
Additional Government Pleader
for R.1

Mr.Balan Haridas
for R.2.

ORDER

This writ petition is filed seeking to issue a writ of certiorari to call for the order passed by the first respondent in PSA No.5 of 2017 dated 11/12/2019 and to quash the same.

2. The facts as per the affidavit enclosed to the writ petition are as under:-

The second respondent was working as Secretary of the petitioner/Primary Agricultural Cooperative Credit Society Limited. He has worked in the Society from 1/5/2009 to 5/1/2015. The second respondent and the elected Board of Management colluded and has committed serious irregularities in the affairs of the petitioner Society. An enquiry was conducted, on 12/2/2005, under Section 81 of the Tamil Nadu Cooperative Societies Act.



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3. A report has been submitted on 20th August 2015 giving a finding that the second respondent and others have committed irregularities and misappropriated a sum of Rs.11,87,98,833/-. Disciplinary action has been initiated against the second respondent and others. Surcharge proceedings and criminal proceedings have also been initiated. The Deputy Registrar of Cooperative Societies, Dharapuram Circle has passed the surcharge order on 12/5/2017 under Section 87 (1) of the Tamil Nadu Cooperative Societies Act, for a sum of Rs.9,14,45,603/- against second respondent and others. Some amounts were also recovered from the second respondent. A case in Crime No.4 of 2015 has been registered under Section 408 of the Indian Penal Code against the second respondent on the file of learned Judicial Magistrate No.IV, Coimbatore.

4. The second respondent was suspended from service on 6/1/2015 and charge memo was issued on 13/7/2016. Enquiry Officer has submitted a report on 22/2/2017 finding that charges framed against the second respondent were proved, thereby after completing the formalities, the petitioner Society has passed final order on 6/3/2017 dismissing the second respondent from service.

5. The second respondent has approached the first respondent



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authority under the Payment of Subsistence Allowance Act, 1981, claiming subsistence allowance for the period during which he was under suspension. The said application was entertained by the first respondent authority/Assistant Commissioner of Labour in PSA No.5 of 2017 and impugned order was passed on 11/12/2019, directing the petitioner Society to pay subsistence allowance of Rs.5,65,483/-. Aggrieved by the said order, the present writ petition is filed.

6. The second respondent has filed a counter affidavit, wherein it is stated that the petitioner Society did not pay a single pie towards the subsistence allowance, after placing the petitioner under suspension, and that enquiry pursuant to the charge memo was conducted without paying subsistence allowance, which is in violation of principles of natural justice. It is further stated that the petitioner Society did not choose to let in evidence to prove the allegation as if the petitioner was having managerial/supervisory nature of work.

7. Heard Mr.M.S.Palaniswamy, learned counsel for the petitioner, Mr.R.U.Dinesh Raj Kumar, learned Additional Government Pleader for the first respondent and Mr.Balan Haridas, learned counsel for the second



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submitted that the writ petition is not maintainable at the first place as the petitioner who has been challenging the impugned order of the first respondent authority dated 11/12/2019 should have approached the Appellate Authority under the Payment of Subsistence Allowance Act where he can raise the issue of jurisdiction as well and submitted that since an alternative remedy is available for the petitioner, filing of writ petition cannot be permitted.

10. Learned counsel appearing for the petitioner has cited a judgment of Hon'ble Supreme Court of India reported in **2023 LiveLaw (SC) 70 M/s.GODREJ SARA LEE LTD Vs. THE EXCISE AND TAXATION OFFICER-CUM-ASSESSING AUTHORITY & ORS**, the relevant paragraph reads as follows:-

“8. That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 (State of Uttar Pradesh & ors. vs. Indian Hume Pipe Co. Ltd.) and (2000) 10 SCC 482 (Union of India vs. State of Haryana). What appears on a plain reading of the former decision is that whether



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a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the high court could entertain a writ petition in its discretion even though the alternative remedy was not availed of; and, unless exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this Court found the issue raised by the appellant to be pristinely legal requiring determination by the high court without putting the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decisions is that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available.”

11. The learned counsel appearing for the second respondent has



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cited a decision reported in **2005 (1) TN MAC 1 (DB), TAMIL NADU**

STATE TRANSPORT CORPORATION (VILLUPURAM DIVISION II)

LIMITED Vs. 1. C. DURAI AND ANOTHER, wherein at paragraph

Nos.3 and 4, it has been held thus:-

“3. Although it is true that an alternative remedy is not an absolute bar to a writ petition, yet in our opinion, the ordinary rule should ordinarily be followed that when there is an alternative remedy, a writ petition should not ordinarily be entertained.

4. Learned counsel for the first respondent submits that when there is violation of natural justice or when the order is without jurisdiction, then a writ petition can be entertained, vide Baburam v. Zila Parishad, AIR 1969 SC 556. We have already observed that it is true that an alternative remedy is not an absolute bar to a writ petition, particularly, when there is violation of natural justice or when the order is without jurisdiction. However, we are of the opinion that even if there is violation of natural justice or even if the order is without jurisdiction, the writ petition can yet be dismissed, and



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ordinarily it should be dismissed, if there is equal efficacious alternative remedy. The decision of the Supreme Court in the case of Baburam v. Zila Parishad (supra), which states that if there is violation of natural justice or when the order is without jurisdiction, alternative remedy is not a bar, in our opinion, cannot amount to mean that a writ petition cannot be dismissed, if violation of natural justice or lack of jurisdiction is shown. In our opinion, even if there is violation of natural justice or the order is without jurisdiction, the writ petition can still be dismissed if there is an alternative remedy.”

12. Considering the above, though alternate remedy is available under Payment of Subsistence Allowance Act filing of writ petition is not a bar since the petitioner is questioning very jurisdiction of the first respondent authority in entertaining the application and passing of impugned orders.

13. In respect of other question that the second respondent being the Secretary cannot be an 'employee' under the Subsistence Allowance Act, is concerned, it is submitted by the learned counsel for the second



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respondent that merely because the second respondent is designated as Secretary, it does not mean that the jurisdiction of the competent authority under the Subsistence Allowance Act, is automatically ousted and it all depends on the facts and circumstances of each and every case. It is submitted that though the second respondent is designated as the 'Secretary' it is required to be considered the nature of duties being discharged by the second respondent. However, there is no record as to the nature of duties of second respondent so as to consider him not as a Secretary.

14. Section 2 (a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 gives the definition of an employee which runs as under:-

(a). “employee” means any person employed in, or in connection with the work or activities of, any establishment to do any skilled, semi-skilled or unskilled, manual, supervisory, technical, clerical or any other kind of work or activities for hire or reward, whether the terms of employment be



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expressed or implied, but does not include any such person -

(i). who is employed mainly in a managerial or administrative capacity; or

(ii). Who, being employed in a supervisory capacity or exercise, either by the nature of the duties attached to the office or by reason of the powers vested to him, functions mainly of a managerial nature;”

15. On a perusal of the above, it is clear that in order to attract the definition of an 'employee', person so employed should belong to any one of the categories defined under sub-Section (a) of Section 2, thereby, considering the definition of an employee under 2 (a) of the Act, the second respondent who has designated as Secretary by default cannot be considered as an employee under the Payment of Subsistence Act.

16. Added to it, Rule 2 (a) (ii) further speaks that if the salary of a person of an employee exceeds Rs.15,000/- p.m. he is not included in the definition of an employee. The second respondent who has worked as



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'Secretary' and who has drawn salary of more than Rs.15,000/- p.m., cannot be said to be an employee under the Payment of Subsistence Act.

17. In addition to that Section 19 of the Tamil Nadu Cooperative Societies Act, 1983, defines the definition of an 'Officer' which go to show that the 'Officer' includes President, Vice President, Managing Director, Secretary, Assistant Secretary or of Board, etc., of the Society, that means, the second respondent being an Officer as per sub-Section 2 of 19 of the Tamil Nadu Cooperative Societies Act is only an 'Officer' and not an 'employee' of the Cooperative Society, thereby, he cannot be termed as an ,employee, under the Tamil Nadu Cooperative Societies Act.

18. The learned counsel appearing for the petitioner, has cited a decision rendered by this Court in ***W.P.No.2548 of 2006 dated 17/3/2017 (THE MANAGEMENT, ELAVADI PRIMARY AGRICULTURAL COOPERATIVE BANK Vs. THE ASSISTANT COMMISSIONER OF LABOUR (Authority under payment of Subsistence Allowance Act) & ANOTHER***, wherein at para Nos.11 to 15, it is observed as under :-



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“11.The order impugned has been assailed, as set out above, on the main ground that the first respondent since is acting under the provisions of the Act does not have the jurisdiction to give an award or direction to the petitioner to pay subsistence allowance to the second respondent. The reason being that the second respondent was working only as a Secretary of the petitioner Bank and therefore, he was working in the Managerial/ Official capacity or Officer in rank and therefore, the beneficial legislation namely, Subsistence Allowance Act is only meant for employees and labour segment and therefore, the same cannot be invoked for Officials like the second respondent.

12.In support of the said contention put forth on behalf of the petitioner, the learned counsel has relied upon the said judgment of this Court reported in 2006(1) CTC 784 (The Management of Thekkalur Primary Co-operative Bank (K.2019), represented by President, Mr.P.Senthilvel Vs. The Assistant Commissioner of Labour, Coimbatore and others), cited supra.



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13. On a perusal of the same, this Court finds that the learned Judge has held in the said judgment that person employed as Secretary in the Co-operative Bank claiming Subsistence Allowance under the [Payment of Subsistence Allowance Act, 1981](#), could not be construed as an employee within the meaning of [Section 2 \(a\)](#) of the said Act since he being an Officer within the meaning of [Section 2\(19\)](#) of the Tamil Nadu Co-operative Societies Act, 1983. Therefore, the claim made by the said Officer/ Secretary of the Primary Co-operative Bank registered under the [Co-operative Societies Act](#) was negatived and the law has been held in this regard, as cited supra.

14. The learned counsel appearing for the second respondent has not cited any contra decision to the said decision cited by the learned counsel appearing for the petitioner and in view of the same, applying the said ratio, as has been applied in the said judgment cited supra, this Court is of the considered view, that the first respondent does not have the jurisdiction to pass the present impugned order and in view of the same,



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the same is liable to be interfered with. Accordingly, it is quashed.

15. However, it is open to the second respondent to approach the appropriate Authorities in the manner known to law to get the subsistence allowance to the second respondent for the period when he was placed under suspension by the petitioner Bank, if he is advised to do so.”

19. The learned counsel appearing for the second respondent has submitted the decision of a Division Bench of this Court reported in **2007 (5) CTC – 392 M.KANAGASABAPATHY Vs. 1. THE SPECIAL OFFICER, 2-390, POTHANOUR PRIMARY AGRICULTURAL COOPERATIVE BANK LIMITED, POTHANOUR, PARAMATHIVELUR TALUK, NAMAKKAL DISTRICT 638 181 AND 2 OTHERS**, wherein at paragraph Nos.63 to 65, it is observed thus:-

“63. Therefore, applying the various guidelines set out in the decisions of the Hon'ble Supreme Court referred to above, we are convinced that on a construction of the principal



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subject matter as well as particular perspective of both the enactments, we have no hesitation in holding that the Act 30 of 1983 is a general enactment while Act 43 of 1981 is a special enactment. In the light of our conclusion as above, the writ appeal deserves to be allowed and the orders of the learned Single Judge impugned in this appeal has to be set aside. However, the mere applicability of the Act 43 of 1981 by itself would not straightaway entitle the appellant to claim that his application as allowed by the respondents 2 and 3 are to be sustained.

64. Though as held by us, the appellant is entitled to invoke the provisions of the Act 43 of 1981 to claim subsistence allowance for the period of suspension pending enquiry, the same would be subject to the appellant satisfying the position that he would fall within the definition of an 'employee' as defined under [Section 2\(a\)](#) of the Act 43 of 1981. The first respondent herein, in his



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counter statement before the second and third respondents has specifically raised a plea that being a Secretary-in-charge, the appellant would not fall within the definition of an employee in stricto sensu.

65. Unfortunately, neither the third respondent nor the second respondent have ventured to deal with the said issue in the proper manner. Therefore, even while holding that the appellant is entitled to invoke the provisions of the Act 43 of 1981 and while setting aside the order of the learned single Judge, we have no hesitation in setting aside the orders of the second and third respondents impugned in the writ petition and remit the matter back to the third respondent to take up the application of the appellant in PSA No.2 and 3 of 2002 and decide the same after giving a specific finding as to the question whether the appellant falls within the definition of an 'employee' as defined under



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the [Section 2\(a\)](#) of Act 43 of 1981 and in the event of the third respondent reaching a conclusion that the appellant satisfies the definition of an 'employee' he would be free to pass orders as to the question of subsistence allowance, if any, payable to the appellant.”

20. There is no record before this Court that though the second respondent has designated as 'Secretary', still he has not discharging the duties as 'Secretary' and that he was discharging the duties only as an 'employee'. Thereby, second respondent falls under the definition of an 'employee' as per Rule 2 A of the Subsistence Allowance Act, cannot be accepted.

21. In view of the discussion made above, it is clear that the second respondent being 'Secretary', will not fit in the definition under Section 2 (a) of the Subsistence Allowance Act and that he falls in the definition of an 'Officer' as per Section 2 (19) of the Tamil Nadu Cooperative Societies Act. Therefore, Subsistence Allowance Act does not apply to the facts of the case and therefore, entertaining the application by the first respondent



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authority and giving directions by way of impugned order dated 11/12/2019 in PSA No.5 of 2017 is erroneous and perverse and hence, the same are liable to be set aside.

22. In the result, this writ petition is allowed and the impugned order dated 11/12/2019 passed in PSA No.5 of 2017 is set aside. No costs. Consequently, the connected Miscellaneous Petitions are closed.

10/7/2024

mvs.

Index: Yes/No

Neutral Citation: Yes/No

Dr.D.NAGARJUN,J

mvs.

To

1. The Authority
under the Tamil Nadu Payment of
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