



WEB COPY

W.A.No.1947 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	06.08.2024
<i>Pronounced on</i>	09.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.No.1947 of 2024
and
C.M.P.No.14013 of 2024

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

...Appellant

Vs.

1.C.Periyasamy

2.The District Collector,
Erode District,
Erode – 638 011.

3.The Thasildar,
Modakkurichi Taluk,
Erode District – 638 104.

4.The Assistant Commissioner of Labour,
Office of the Deputy Commissioner of Labour,
Salem.

...Respondents



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Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, to set aside the order dated 21.07.2023 in W.P.No.21574 of 2023.

For Appellant : Mr.C.Prakasam
For R1 : Mr.Balan Haridas
For R2 to R4 : Mr.S.John J.Raja Singh,
Additional Government Pleader

JUDGMENT

M.S.RAMESH, J.

The order of the learned Single Judge made in W.P.No.21574 of 2023, dated 21.07.2023, directing the District Collector, Erode, to conclude the revenue recovery proceedings initiated by the Assistant Commissioner of Labour, Salem, within a limited period, is put under challenge in the present Writ Appeal.

2. The revenue recovery proceedings was initiated for recovery of the arrears of the subsistence allowance payable to the 1st respondent herein, as ordered by the Authority under the Payment of Subsistence Allowance Act (hereinafter referred to as 'PSA Act') in P.S.A.No.8 of 2016 dated 22.05.2017.



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3.1. The brief facts leading to the claim of the 1st respondent for payment of subsistence allowance are that, while he was serving as a Secretary under the appellant Society and due to retire on 31.01.2015, he was placed under suspension, through an order dated 30.01.2015, in contemplation of a departmental action. After about three years, charges were levelled against him on 13.11.2018 and the departmental action proceeded therefrom.

3.2. While under suspension, since the appellant had not paid the 1st respondent the mandatory subsistence allowance, he had filed an application in P.S.A.No.8 of 2016 under the provisions of the PSA Act for the period between 30.01.2015 and 31.10.2016 under Rule 5 of the Tamil Nadu Payment of Subsistence Allowance Rules (hereinafter referred to as 'PSA Rules'), on the basis of his last drawn wages of Rs.59,287/- and claimed a total sum of Rs.11,11,635/-.

3.3. Through an order dated 22.05.2017, the concerned Authority had allowed the application filed by him and directed for payment of the subsistence allowance, within a period of 30 days. The appellant had not challenged the said order by way of an appeal, as provided under Rule 5A



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of the PSA Rules and thus, the order passed in P.S.A.No.8 of 2016 dated 22.05.2017 had become final.

4. In view of the non-compliance, the 1st respondent had approached the Assistant Commissioner of Labour, Salem for recovery of the subsistence allowance dues. However, when his representations in this regard were not considered within a reasonable time, he had filed W.P.No.21754 of 2023 before the learned Single Judge of this Court and through an order dated 21.07.2023, the following direction was issued:-

“6. Considering the limited request made by the learned counsel for the petitioner, this Court, without going into the merits of the matter, directed the first respondent to conclude the Revenue Recovery Proceedings initiated by the third respondent dated 06.11.2017 and pass appropriate orders, on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order, after affording an opportunity of hearing to the petitioner as well as fourth respondent.”

5. As against the aforesaid order of the learned Single Judge, the



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present Writ Appeal had been filed by the appellant.

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6. The learned counsel for the appellant submitted that in case the 1st respondent was aggrieved against the non-payment of the subsistence allowance, the appropriate remedy available to him would be to file a revision under Section 153 of the Tamil Nadu Co-operative Societies Act and therefore, invoking the provisions of the PSA Act, without availing the alternate remedy, is not maintainable. He further submitted that certain surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act were also pending against the 1st respondent, whereby the loss incurred by the Society requires to be recovered from the arrears of subsistence allowance payable to him and thereby attempted to justify the inaction of the appellant.

7. On the other hand, the learned counsel appearing for the 1st respondent submitted that the order of the Authority under the PSA Act, computing the amount payable to him, has become final. According to him, the 1st respondent herein had only sought for conclusion of the revenue recovery proceedings for recovery of the arrears, as ordered in P.S.A.No.8 of 2016 and the direction made by the learned Single Judge



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was only for the conclusion of the revenue recovery proceedings within a stipulated time. When the order in P.S.A.No.8 of 2016 has become final, any interference to the order of the learned Single Judge will not absolve the liability of the appellant to pay the subsistence allowance.

8. The grievance of the 1st respondent before the learned Single Judge was for non-payment of subsistence allowance, for which purpose, he sought for a direction to the Authorities to complete the proceedings under the Revenue Recovery Act, within a time frame. The revenue recovery proceedings, as such, is a consequential proceedings, pursuant to the order of the Statutory Authority, computing the subsistence allowance payable to the 1st respondent. The appellant herein had not preferred an appeal, as provided under Rule 5A of the PSA Rules, against this order passed by the Statutory Authority and thus, computation of the subsistence allowance payable to the 1st respondent has become final.

9. Even if any orders are passed touching upon the order of the learned Single Judge, it would only be a futile exercise, since the liability of the appellant herein to pay the 1st respondent the arrears of the subsistence allowance computed by the Authority, in their order passed in



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P.S.A.No.8 of 2016, will still be in force. However, we do not find any infirmity in the order of the learned Single Judge. When the appellant had defaulted to pay the amount ordered by the Statutory Authority, Section 4 of the PSA Act empowers the Government to issue a certificate for the arrears amount and authorize the Collector to recover the same in the manner as an arrear of land revenue. The learned Single Judge had directed the appellant to comply with the requirement under Section 4 of the PSA Act, which powers are well vested with the District Collector. Thus, we do not find any infirmity in the directions of the learned Single Judge.

10. The learned counsel for the appellant made a faint attempt to submit that the remedy available for claim of subsistence allowance would be under Section 153 of the Tamil Nadu Co-operative Societies Act and therefore, the 1st respondent ought not to have approached the Authorities under the PSA Act. We are not in agreement with such a submission. If at all the appellant is of the view that the application made before the Authorities under the PSA Act is not maintainable, in view of the alternate remedy available under Tamil Nadu Co-operative Societies Act, such objection requires to be made before the Authority under the



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PSA Act. Though the appellant was represented by a Counsel before the Authority, no such objection was raised therein. This apart, the appellant has also not challenged the order passed in P.S.A.No.8 of 2016. In these circumstances, it is not now open to raise such an objection before this Division Bench in an appeal filed against the order of recovery proceedings, which is only consequential to the final orders of the Authority under the PSA Act.

11. For all the foregoing reasons, there are no merits in the present appeal and hence, the Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[M.S.R., J] [C.K., J]
09.08.2024

Index:Yes
Neutral Citation:Yes
Speaking order
hvk



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To

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Pre-delivery judgment made in
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