



WEB COPY



W.P.No.17868 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.07.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.17868 of 2025

Bitherkadu Industrial Co-operative Tea
Factory Limited
Bitherkadu & Post, Panthalur Taluk
The Nilgiris District
Represented by its Managing Director
Thiru.D.Vishnu

... Petitioner

Vs.

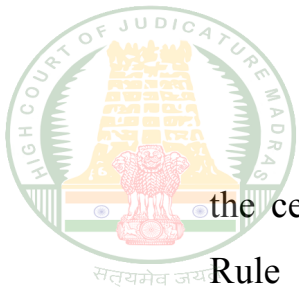
1.The Joint Commissioner of Labour
The Appellate Authority under the
Subsistence Allowance Act, 1981
Erode.

2.The Deputy Commissioner of Labour
O/o. The Joint Commissioner of Labour
Erode - 638 009.

3.K.Anandha Vijayan

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing the first respondent to receive and consider the appeal preferred by the petitioner against the award of the second respondent made in P.S.A.No.05 of 2022 dated 19.09.2024 without insisting for



W.P.No.17868 of 2022

WEB COPY

the certificate from the second respondent as mandated under the proviso to Rule 5(A)(1) of the Tamil Nadu Payment of Subsistence Allowance Rules, 1981.

For Petitioner : Mr.M.R.Thangavel
For Respondents : Ms.M.Jayanthi
Additional Government Pleader
for R1 & R2
Mr.S.Saravanan for R3

ORDER

The only relief claimed in the above writ petition is to issue a mandamus to the first respondent to receive and consider the appeal preferred by the petitioner, against the award of the second respondent in P.S.A.No.05 of 2022, without insisting on the certificate as mandated under the proviso to Rule 5(A)(1) of the Tamil Nadu Payment of Subsistence Allowance Rules, 1981.

2. The case of the petitioner is that the third respondent herein is an employee under the petitioner-tea manufacturing company. The third respondent herein along with other delinquents have been suspended from service for a period of ten days for certain alleged misconduct. The suspension of the third respondent was extended further. However, after conducting due



WEB COPY

enquiry by the Enquiry Officer as well as Administrative Committee, the petitioner-Management had granted opportunity to the third respondent herein and other delinquents to join duty on obtaining an undertaking from them that they would not involve in such activities. Except the third respondent and his wife Sumathi, the other delinquents had submitted their undertaking and joined their services.

3. The third respondent, thereafter, had approached the Assistant Commissioner of Labour, Erode, in P.S.A.No.5 of 2022 seeking payment of subsistence allowance for the period 14.06.2019 to 31.03.2020. The second respondent herein by an award dated 19.09.2024 had directed the petitioner to pay a sum of Rs.71,743.50p within a period of 30 days from the date of said award. Aggrieved by the same, the petitioner had preferred an appeal before the first respondent herein under Rule 5-A of the Tamil Nadu Payment Subsistence Allowance Rules, 1981, along with an sub-application seeking exemption from pre-depositing the award amount as per proviso to Rule 5-A(1) Rules.

4. The first respondent by his communication dated 11.11.2024 had



W.P.No.17868 of 2023

returned the appeal memorandum requiring the petitioner to represent the same by depositing the said award amount before the second respondent. On 26.02.2025, the petitioner was stated to have received a notice from the second respondent requiring him to deposit the award amount, failing which, he was informed that recovery proceedings would be initiated against the petitioner-company. Hence, the petitioner is before this Court seeking a mandamus for the aforesaid relief.

5. The petitioner would contend that they are going through a severe financial crisis and they are unable to deposit the award amount. This is evident from the Audit report of the Joint Director of Co-operative Audit, dated 25.05.2023, wherein it is stated that the factory had sustained a nett cumulative loss of Rs.10,24,26,299.24. The petitioner would further contend that the third respondent is not entitled for the subsistence allowance for the period, beyond the dates mentioned in the order of suspension.

6. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent.



W.P.No.17868 of 2023

WEB COPY

7. It is an admitted fact that Rule 5(A)(1) of the Tamil Nadu Payment of Subsistence Allowance Rules, 1981 mandates that an appellant shall prefer and maintain an appeal, provided the entire amount has been deposited before the authority concerned. It is relevant to extract Rule 5A(1) of the Act, which reads as below :

"5A. Appeal - (1) Any person aggrieved by the orders passed by an authority authorised under sub-section (1) of Section 7 of the said Act, may, within 60 days from the date of receipt of such orders, appeal to the Deputy Commissioner of Labour within the local limits assigned to him under sub-section (1) of section 15 of the Payment of Wages Act, 1936 (Central Act IV of 1936) in the form of memorandum of appeal.

Provided that no appeal shall be admitted, unless at the time of preferring the appeal, the appellant produced a certificate from the authority against whose orders the appeal has been made to the effect that the appellant had deposited with him the amount determined by him as payable to the employee under rule 5:

Therefore, this Court is of the view that exercising the jurisdiction under Article 226 of the Constitution of India, a waiver of 50% of pre-deposit of the award amount shall be granted to the petitioner.



WEB COPY



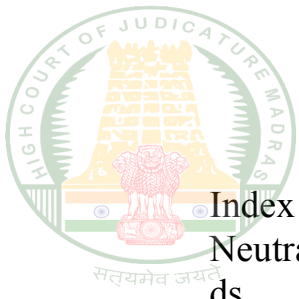
W.P.No.17868 of 2023

8. According the above writ petition is allowed with the following directions :

- (a) The petitioner shall deposit 50% of the award amount before the second respondent within a period of eight weeks from the date of receipt of a copy of this order.
- (b) On such deposit, the petitioner-company shall represent his appeal papers before the first respondent, who on verification, shall number the appeal. The said authority shall consider and pass orders on the said appeal within a period of two months from the date of the parties entering appearance.
- (c) Based on the outcome of the appeal, the petitioner shall file an application before the second respondent for withdrawing the amount which is deposited by it as a pre-deposit.
- (d) Till the disposal of the appeal, the first respondent shall not proceed with the revenue recovery proceedings as against the petitioner-company.

No costs.

09.07.2025



W.P.No.17868 of 2023

Index : Yes/No
Neutral Citation : Yes / No
ds

WEB COPY

To:

- 1.The Joint Commissioner of Labour
The Appellate Authority under the
Subsistence Allowance Act, 1981
Erode.
- 2.The Deputy Commissioner of Labour
O/o. The Joint Commissioner of Labour
Erode - 638 009.



WEB COPY



W.P.No.17868 of 2025

P.T. ASHA, J.

ds

W.P.No.17868 of 2025

09.07.2025
(1/4)