

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

W.P. No.24646 of 2015

M.Sulochana

.. Petitioner

Vs.

- 1.The Principal District and Sessions Judge,
Tiruvallur,
Tiruvallur District.
- 2.The Judicial Magistrate-II,
Tiruvallur,
Tiruvallur District.

.. Respondents

The writ petition is filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents to pay the subsistence allowance at the rate of 75% in the revised scale as per VI Pay commission recommendations along with arrears.

For petitioner : Mr.R.Dinesh Kumar

For Respondents : Mr.C.T.Mohan

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

The petitioner while working as Head Clerk in the office of the Judicial Magistrate Court-II, Tiruvallur, was placed under suspension on 19th March, 2009 on the allegation of stealing of properties from the Court of Judicial Magistrate, Tiruvallur. A criminal case, accordingly, has been registered against her. The petitioner still continues under suspension as it appears that there is no progress in the criminal case pending on the file of the Chief Judicial Magistrate, Tiruvallur.

2 Earlier, the petitioner filed a writ petition, being W.P.No.18492 of 2010, seeking for a direction to make payment of subsistence allowance. A Division Bench of this court, by order dated 13th August, 2010, directed the concerned authority to pay subsistence allowance, if not already paid, every month till departmental proceeding is finally concluded.

3 The learned counsel appearing for the petitioner, relying on the provision of Rule 53 of the Tamil Nadu Government Fundamental Rules, submits that the period of suspension of the petitioner has exceeded six months and as such, the petitioner is entitled to 75% of revised pay scale. The learned counsel further submits that on account of continuous suspension, it is difficult for the petitioner to make both ends meet with 50 % subsistence allowance.

4 On the other hand, Mr.C.T.Mohan, learned counsel appearing for the first respondent submits that the petitioner has been placed under suspension on serious charges of theft of court properties. The disciplinary proceedings could not be concluded on account of non cooperation of the petitioner herself.

5 Heard the learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

6 It is indisputable that the disciplinary enquiry has been concluded and also the enquiry report has been submitted on 18th June, 2010. It appears that no consequential order has been passed thereafter for the last about five years.

7 Be that as it may, without going into the merits of the disciplinary proceedings or other proceedings, we are of the considered view that Rule 53 of the Fundamental Rules clearly provides that if the period of suspension exceeds six months on account of one or other reason, the amount of subsistence allowance is required to be reconsidered and delinquent employee is entitled to some increase by suitable amount. It may not be held that the petitioner is entitled to 75%. However, the petitioner is entitled to some increase, not exceeding 50% of the subsistence allowance admissible during the period of first six months, as prescribed under Rule 53(1) (a) (i) of the Fundamental Rules.

8 Accordingly, we deem it fit and proper to direct the first respondent to re-examine the case of the petitioner for enhancement of subsistence allowance in the facts of the case. Such an exercise shall be completed within a period of eight weeks from the date of receipt of copy of this order. The writ petition is, accordingly, disposed of. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

vvk

To

1.The Principal District and Sessions Judge,
Tiruvallur,
Tiruvallur District.

2.The Judicial Magistrate-II,
Tiruvallur,
Tiruvallur District.

3.Thro the Chief Judicial Magistrate,
Tiruvallur.

W.P. No.24646 of 2015

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