

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2016

CORAM

THE HONOURABLE Mr.JUSTICE R.SUBBIAH

W.P.No.41305 OF 2016

M.Sivakumar

.. Petitioner

-Vs.-

1.The Additional Chief Secretary
& Director of Survey and Settlement,
Survey House,
Chennai – 600 005.

2.The Assistant Director,
Survey and Land Records,
Dharmapuri.

3.The District Collector,
Dharmapuri District,
Dharmapuri.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the 2nd respondent herein to increase the subsistence allowances from 50% to 75% from 21.12.2009 onwards to the petitioner in the light of the order passed in W.P.No.6059 of 2014 dated 06.03.2014 within a time stipulated by this Court.

For Petitioner : Mr.M.Senthilkumar

For Respondents : Mr.K.Dhananjayan,
Special Government Pleader

ORDER

The petitioner is a Firka Surveyor under the respondents. Lastly, he worked as Firka Surveyor at Marandahalli Firka of Palacode Taluk, Dharmapuri District during the month of May, 2009. He was involved in a criminal case in Crime No.10/AC/2009/DP, under Section 7 of the Prevention of Corruption Act, registered by the Deputy Superintendent of Police, Vigilance and Anti Corruption, Dharmapuri on 21.05.2009. In connection with the said case, he was arrested and later on released on bail. Now, on completing investigation, charge sheet has been laid and the petitioner is now facing prosecution before the competent Court.

2. In the mean while, the 2nd respondent herein, the Assistant Director of Survey & Land Records, Dharmapuri, by his proceedings in Roc.NO.G9/3564/2009 dated 25.05.2009, placed the petitioner under suspension. During the suspension period, the petitioner was awarded 50% of his last drawn salary as subsistence allowance.

3. Now, the grievance of the petitioner is that he is entitled to get 75% of the Subsistence Allowance since he is under prolonged suspension beyond 6 months. Further, in similar circumstances, in respect of a Government Servant, on 15.06.2008, the Assistant

Director of Survey and Land Records, Tiruchirappalli has passed an order in Na.Ka.A7/7559/07 by increasing the Subsistence Allowance from 50% to 75% after the period of six months from the date of suspension. In this regard, though the petitioner has given several representations including the last representation dated 03.01.2016, the 2nd respondent has not passed any orders till date. Further, this Court in an identical situation in W.P.No.6059 of 2014 has directed the 2nd respondent to increase the subsistence allowance from 50% to 75%. Hence, the present Writ Petition to give the same treatment to the petitioner also.

4.I have heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondent and I have also perused the records carefully.

5.According to the petitioner, as per Rule 53(1)(a) of the Fundamental Rules, the petitioner is entitled for enhanced subsistence allowance representing 75% of his last drawn salary.

6. But, the learned Special Government Pleader appearing for the respondents would submit that the petitioner is not entitled for such enhanced subsistence allowance because, the criminal case registered against the petitioner for Corruption charges is pending.

7. I have considered the rival submissions.

8. Of course, it is true that the criminal case registered against the petitioner for corruption charges is pending. It is because of the same only, the petitioner has been placed under suspension. Now, the question is whether the petitioner is entitled for enhanced subsistence allowance for the period of suspension beyond six months period from the initial date of suspension. In this regard, it is very useful to refer Rule 53(1)(a) (i) of the Fundamental Rules and which reads as follows:-

“53.(1) A Government servant who is placed or deemed to have been placed or continues to be under suspension shall be entitled to the following payments, namely:-

(a) Subsistence allowance at an amount equal to half of the pay last drawn by the Government servant and in addition dearness allowance, if admissible on the basis of half of

the pay last drawn:

(G.O.Ms.No.180, Personnel and Administrative Reforms Department, dated 4th March 1983.)

Provided that where the period of suspension exceeds six months, the authority which made or is deemed to have made, the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first six months as follows:-

(i)The amount of subsistence allowance may be increased by a suitable amount, not exceeding fifty per cent of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant;”

9.In the case on hand, it is not the case of the respondents at all that the petitioner is responsible for the prolonged delay of the criminal case. Therefore, the petitioner is entitled for 75% of his last drawn salary as subsistence allowance. The petitioner is entitled for enhanced subsistence allowance i.e., 75% of his last drawn salary for

the period of suspension beyond six months period from the initial date of suspension.

10. In view of all the above, the respondents are directed to pay the enhanced subsistence allowance i.e, 75% of his last drawn salary to the petitioner for the period commencing from 21.12.2009 onwards in the light of the orders passed in W.P.No.6059 of 2014 dated 06.03.2014 by this Court. At any rate, the arrears shall be paid by the respondents to the petitioner within a period of six weeks from the date of receipt of a copy of this order. No costs.

24.11.2016

tsi

Index : Yes/No
Internet:Yes/No

To
1.The Additional Chief Secretary
& Director of Survey and Settlement,
Survey House,
Chennai – 600 005.

2.The Assistant Director,
Survey and Land Records,
Dharmapuri.

3.The District Collector,
Dharmapuri District,
Dharmapuri.

R.SUBBIAH, J.
tsi

W.P.No.41305 of 2016

24.11.2016