

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2016

CORAM

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M.VENUGOPAL

W.P. No.7961 of 2016

M.Sulochana

.. Petitioner

Vs.

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

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

.. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the respondents in connection with the impugned order issued by the first respondent in A.No.5917/2015 dated 05.12.2015 and quash the same and further direct the respondents to enhance 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.Dhinesh Kumar

For Respondents: Mr.R.Vijayakumar, Standing Counsel

ORDER

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

Questioning the legality and validity of the order dated 5th December, 2015 passed by the Principal District Judge, Tiruvallur, whereunder the subsistence allowance of the petitioner has been enhanced to 60% payable from the date of the order passed in W.P.No.24646 of 2015, dated 9th September 2015, the instant writ petition is filed.

2 The petitioner has come up earlier in W.P.No.24646 of 2015, seeking a direction to the respondents to pay subsistence allowance at 75% in the revised scale as per VI Pay Commission recommendation along with arrears. A Division Bench of this court, by order dated 9th September 2015 held as under :

"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."

3 The instant petition is filed contending that the petitioner is entitled to enhancement to 75% in the revised scale. The relevant rules for increase in the subsistence allowance is the Rule 53(1)(a)(i) of the Fundamental Rules, which 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 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. There is no fixed subsistence allowance which has to be increased from 50%. The first respondent, considering all the facts, has enhanced the subsistence allowance from 50% to 60%. Thus, the contention of the petitioner that he is entitled to enhancement from 50% to 75% is without any basis.

4 The rule contemplates increase not in terms of fixed percentage. Thus, we do not find any infirmity or error in the impugned order. However, if the petitioner is intending to make one more representation, the petitioner is at liberty to do so,

pointing out the change of facts and circumstances for further increase in accordance with law and on merits. The writ petition has no merit and is, accordingly, dismissed. No costs.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

vvk

To

- 1.The Principal District & Sessions Judge,
Tiruvallur,
Tiruvallur District.
- 2.The Judicial Magistrate-II,
Tiruvallur,
Tiruvallur District.
3. The Chief Judicial Magistrate,
Tiruvallur District.

+1cc to Mr.R. Dhinesh Kumar, Advocate, S.R.No.17955

SR(CO)
EU(6/04/2016)

W.P.No.7961 of 2016

सत्यमेव जयते

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