



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2016

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

W.A.[MD].No.1596 of 2016
and
C.M.P.(MD)No.11974 of 2016

1. The Government of Tamil Nadu,
Through its Secretary,
Fort St. George,
Chennai-9.
 2. The Chief Engineer (General),
Cum Engineer in Chief (WRD),
Public Works Department,
Chepauk, Chennai.
 3. The Assistant Executive Engineer,
WRD, Chitthar Basin Sub Division,
Tenkasi-627 811,
Tirunelveli District.
- : Appellants

Vs.

S.S.Porchezian : Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order of a learned Single Judge dated 27.09.2016, made in W.P.(MD).No.18484 of 2016.

Prayer in WP(MD).18484/2016 :

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to pay petitioner's subsistence allowance from February 2016 to August 2016 for a Period of 7 months within a stipulated time and continue to pay thereafter till the revocation of his suspension order.

For Appellants : Mr.S.Chandrasekar,
Government Advocate

For Respondent : Mr.T.S.R.Venkatramana

**JUDGMENT****[Judgment of the Court was delivered by R.SUBBIAH, J.]**

The present Writ Appeal has been filed as against the order of the learned Single Judge dated 27.09.2016, made in W.P.(MD). No.18484 of 2016, whereby and whereunder, a direction was issued to the appellants to pay subsistence allowance to the respondent from February, 2016 and the appellants would continue to pay the subsistence allowance till the enquiry is completed.

2. The case of the respondent is that he was working as Junior Engineer under the third appellant in Kadayanallur. He was placed under suspension from 14.05.2015, pursuant to a complaint lodged against him with the Vigilance and Anti-Corruption Department, in which case, he was arrested on 11.05.2015 at Tenkasi. Thereafter, he was paid subsistence allowance of 50% of his salary as per Rules and subsequently, the same was enhanced to 75%. Till January, 2016, subsistence allowance has been paid. However, from February 2016 onwards, payment of subsistence allowance was unilaterally stopped without hearing the respondent and giving him an opportunity of being heard. Therefore, the respondent, left with no other alternative, has approached this Court by filing the Writ Petition, seeking a direction to the appellants to pay subsistence allowance from February, 2016 to August, 2016 i.e., for a period of seven months. This Court disposed of the Writ Petition at the admission stage itself, directing the appellants to pay subsistence allowance to the respondent from February, 2016 and the appellants would continue to pay the subsistence allowance till the enquiry is completed. Aggrieved over the same, the Government has filed the present Writ Appeal.

3. The submission of the learned Government Advocate is that as per Rule 53(3) of the Fundamental Rules, no payment under sub-rule (1) shall be made unless the Government servant continues to reside in the place fixed from time to time, by the authority which made or which is deemed to have made the order of suspension.

4. In the case on hand, since the respondent was not residing in the place fixed from time to time, viz., Krishnapuram, Kadayanallur, payment of subsistence allowance was stopped. In order to demonstrate that the respondent was not residing in the place fixed by the appellants, the learned Government Advocate has also relied upon the First Information Report registered in Crime No.57 of 2016, on 01.02.2016, under Section 3 of TNPPDL Act on the file of Pavoorchathiram Police Station and pursuant to the case registered against the respondent and others, the respondent was demanded to judicial custody on 01.02.2016 and thereafter, he was released on bail on 05.02.2016 and he appeared before the Pavoorchathiram Police Station from 06.02.2016 to

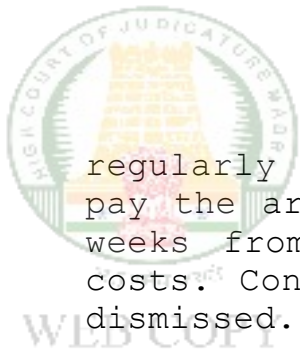


06.03.2016 as per the bail condition. Thus, by relying upon the First Information Report, the learned Government Advocate submitted that the registration of the First Information Report and the consequential arrest would show that the respondent was not in the place fixed by the appellants and therefore, he is not entitled for subsistence allowance.

5. To counter the said statement, the learned counsel for the respondent submitted that it is absolutely incorrect to state that the respondent was not residing in the place fixed by the appellants. In fact, pursuant to the case registered in Crime No.57 of 2016, the respondent was arrested and he was in prison only for four days and all along, he was residing in the place fixed by the appellants. In order to support his contention, the learned counsel for the respondent has also produced number of letters addressed to the Assistant Executive Engineer and Executive Engineer, Tenkasi. In the said letters, place of residence of the respondent was mentioned only as 'Krishnapuram, Kadayanallur'. Thus, the learned counsel for the respondent submitted that the reason assigned by the appellants for non-payment of subsistence allowance is not legally sustainable and hence, he sought for dismissal of the Writ Appeal.

6. Keeping in mind the above said submissions made by the learned counsel on either side, we have carefully gone through the entire materials available on record.

7. No doubt, as per Rule 53(3) of the Fundamental Rules, no payment under sub-rule (1) shall be made unless the Government servant continues to reside in the place fixed from time to time, by the authority which made or which is deemed to have made the order of suspension. But, according to the appellants, since the respondent was not residing in the place fixed by them, payment of subsistence allowance was stopped. In order to establish this, they only relied upon the First Information Report registered against the respondent. However, in our considered opinion, normally, the residence of a person is referable to the place where he regularly resides and since the respondent was arrested and remanded to judicial custody for four days and for the reasons beyond his control, he was not in the place of residence fixed by the appellants, it does not amount that the respondent has violated Rule 53(3) of the Fundamental Rules. In this case, except the First Information Report, no other tangible proof was produced on the side of the appellants to show that the respondent has purportedly violated the Rules and permanently absented himself from the place fixed by the appellants. Therefore, we do not find any infirmity in the order of the learned Single Judge warranting ~~interim order~~ the hands of this Court. The Writ Appeal is liable to be dismissed and accordingly, dismissed. The appellants are directed to pay the subsistence allowance to the respondent



regularly from February, 2016 till the enquiry is completed and to pay the arrears of subsistence allowance, within a period of two weeks from the date of receipt of a copy of this judgment. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/
Assistant Registrar(C.O,)

/TRUE COPY/

Sub Assistant Registrar

TO

1. The Secretary, Government of Tamil Nadu,
Fort St. George, Chennai-9.
2. The Chief Engineer (General)Cum Engineer in Chief (WRD),
Public Works Department, Chepauk, Chennai.
3. The Assistant Executive Engineer,
WRD, Chitthar Basin Sub Division,
Tenkasi-627 811, Tirunelveli District.

+1cc to M/s.T.S.R.Venkatramana, Advocate, in SR No.82121.

+1cc to Special Government Pleader in SR.No.82320 & 82977.

JUDGMENT MADE IN
W.A. (MD) No.1596 of 2016
Dated: 20.12.2016

sml
msm-em-mpa-sar2/27.12.16/p4/6c