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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2016

CORAM :

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P(MD)No.19405 of 2016

T.Shanthi

... Petitioner

vs.

The Commissioner,
Colachel Municipality,
Colachel,
Kanyakumari District.

... Respondent

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondent to disburse the petitioner's subsistence allowance in pursuance of the order of suspension dated 26.03.2009.

For Petitioner : Mr.C.K.M.Appaji

For Respondent : Mr.K.P.Krishnadass, Government Advocate

ORDER

The petitioner is a physically challenged person working as Revenue Assistant under the respondent; her appointment was made by the sponsorship of the District Employment Exchange; alleging that the petitioner failed to credit the property tax, water tax and rental charges to the Banker and made corrections, alterations in the Office Accounts and manipulated duplicate challans for a sum of Rs.9,92,556/-, she has been placed under suspension; a case has also been registered by the Inspector of Police, Colachel, against the petitioner in Crime No.122 of 2009 under Sections 409, 467 and 471 IPC, based upon the complaint of the respondent; a charge memo has been issued to the petitioner by the respondent; the petitioner gave a detailed explanation to the respondent; thereafter, an enquiry officer has been appointed; departmental enquiry is still in progress, but the petitioner was not paid with subsistence allowance; therefore, she filed W.P(MD)No.10529 of 2011, before this Court, to direct the respondent to disburse the subsistence allowance in pursuance to the order of suspension dated 26.03.2009; even though that writ petition was allowed on 11.01.2013, payment of subsistence allowance was not made and that compelled the petitioner to file contempt application which was in Contempt Petition SR.No.28795 of 2016; that contempt application was returned on the ground that it suffered from limitation;



therefore, once again, on 20.08.2016, the petitioner submitted a representation to the respondent, requesting to disburse the subsistence allowance.

2. Needless to point out that the respondent being a statutory authority cannot violate the law and say that the subsistence allowance is not paid. Non payment of subsistence allowance provides continuing cause of action. At this juncture, it is relevant to extract Section 3 of the Tamil Nadu Payment of Subsistence Allowance Act, 1981, which deals with payment of subsistence allowance.

'3. Payment of subsistence allowance.--(1) An employee who is placed under suspension shall, during the period of such suspension, be entitled to receive payment from the employer as subsistence allowance, an amount equal to fifty per centum of the wages which the employee was drawing immediately before suspension, for the first ninety days reckoned from the date of such suspension:

Provided that where the period of suspension exceeds ninety days, but does not exceed one-hundred and eighty days, the employee shall be entitled to receive, after the said period of ninety days, a subsistence allowance equal to seventy-five per centum of the wages which the employee was drawing immediately before his suspension:

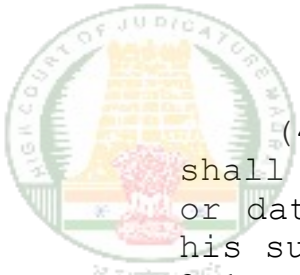
Provided further that where the period of suspension exceeds one hundred and eighty days, the employee shall be entitled to receive wages in full which the employee was drawing immediately before his suspension:

Provided also that where the enquiry or criminal proceeding is prolonged beyond the period of ninety days for reasons directly attributable to the employee, the subsistence allowance shall, for the period exceeding ninety days, be reduced to fifty per centum of the wages, which the employee was drawing immediately before his suspension.

(2) An employee shall not be entitled to receive any subsistence allowance if he accepts any other employment during the period of his suspension in any establishment other than the establishment where he had been working immediately before his suspension.

(3) An employee shall not, in any event, be liable to refund or forfeit any part of the subsistence allowance admissible to him under sub-section (1):

Provided that where the employee is exonerated of the charges based on which his suspension was ordered, the subsistence allowance paid to him for any period shall be adjusted against the full wages admissible to him for the period of suspension.



(4) The subsistence allowance under sub-section (1) shall be paid by the employer to the employee on the date or dates on which the wages due to the employee, but for his suspension, would have become payable.''

2.1. It is also relevant to extract Rule 3 of the Tamil Nadu Payment of Subsistence Allowance Rules, 1981, which deals with mode of payment of subsistence allowance.

''3. Conditions for payment of subsistence allowance.--- The payment of subsistence allowance to an employee shall be subject to the following conditions, namely:--

(i) The subsistence allowance shall be paid either in person or by postal money order. If subsistence allowance is sent by postal money order, the cost of postal commission for the money order shall be borne by the employer;

(ii) The subsistence allowance payable under the Act shall be paid in full subject to the restrictions under the Act and it shall not be liable for any deduction;

(iii) The employer shall maintain a register in respect of employees placed under suspension in Form 1. The signature of the employee shall be obtained for each payment of subsistence allowance. If subsistence allowance is sent by postal money order, the postal receipt shall be affixed in the register.''

3. The petitioner is continuously filing writ petitions one after another seeking payment of subsistence allowance. The very purpose of paying subsistence allowance is that the petitioner must survive to face the disciplinary proceedings.

4. Under such circumstances, without driving the petitioner to file second contempt petition, this Court directs the respondent to comply with the order passed by this Court in W.P(MD)No.10529 of 2011, dated 11.01.2013, by paying subsistence allowance to the petitioner right from the year 2009, i.e., from the date of suspension on 26.03.2009 till the completion of enquiry. As per the judgment of the Hon'ble Supreme Court in **Ajay Kumar Choudhary vs. Union of India and others**, reported in **2015 (3) CTC 119**, the respondent shall conclude the disciplinary proceedings initiated against the petitioner, within a reasonable time, otherwise the proceedings are liable to be quashed. Having regard to the seriousness of the charges alleged against the petitioner under Sections 409, 467, 471 IPC, this Court is not inclined to quash the disciplinary proceedings on the ground of protracted suspension and protracted enquiry. However, the respondent shall ensure the payment of subsistence allowance as ordered by this Court within a period of four weeks from the date of receipt of a copy of this order.



With the above observation, this Writ Petition stands allowed.
No costs.

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/True copy/

Sd/-

Assistant Registrar (AE)

Sub Assistant Registrar

+1 CC to Mr.C.K.M.APPAJI, Advocate, SR No.59576

W.P (MD) No.19405 of 2016
06.10.2016

nbi

SH/SKS-RR:16.11.2016:4P/2C