

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.22016 of 2017

P.Sivagnanam  
2/281-1, Mangai Nagar  
Kattikanapallikizhputhur  
Krishnagiri - 2.

... Petitioner

Vs

The District Collector  
Krishnagiri District  
Krishnagiri.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus or other appropriate writ or order or direction, to the respondent to consider the representation dated 08.05.2017 of the Petitioner and to pay 75% of subsistence allowance along with the amounts due to the petitioner under the heads of Salary arrears, Special Provident Fund, Gratuity, Earned and Unearned leave on private affairs along with interest as on date.

For Petitioner : Mr.S.Subramanian

For Respondent : Mr.R.S.Selvam  
Government Advocate

O R D E R

The relief sought for in this writ petition is for a direction to the respondent to consider the representation submitted by the writ petitioner on 08.05.2017 with regard to the enhancement of Subsistence Allowance from 50% to 75%.

2. The writ petitioner was holding the post of Huzur Head Assistant of "R Section" in the cadre of Deputy Tahsildar in the office of the District Collector, Krishnagiri. On account of the registration of the Criminal case under Section 120-B, 167, 409, 419, 420, 468 r/w 13(1) (c) (d) of the prevention of Corruption

Act, 1988 and Section 109, IPC for the alleged misappropriation of Government funds in connivance with others, the petitioner was placed under suspension.

3. Learned counsel appearing for the petitioner would submit that the criminal case against the writ petitioner is still pending and not yet disposed of. However, the writ petitioner is in continuous suspension and the respondent is disbursing only 50% of pay as Subsistence Allowance despite the fact that the Rule provides enhancement of Subsistence Allowance from 50% to 75%. In support of the contention learned counsel referred the Judgment of Honourable Supreme Court of India rendered in the case of State of Jharkhand & others Vs. Jitendra Kumar Srivatsava & Another and Paragraph No.14 of the Judgment reads as follows:

"14 Article 300 A of the Constitution of India reads as under:

'300 A Persons not to be deprived of property save by authority of law. No person shall be deprived of his property save by authority of law'. Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300 A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced."

4. On perusal of the above said judgment, this Court is of the view that the proposition laid down in the case cited has no relevance on the facts and circumstances of the present case on hand. However, Fundamental Rules 53 [1] (a) (1) reads as follows:

" The amount of Subsistence Allowance may be increased by a suitable amount : not exceeding 50% of the subsistence allowance admissible during the period of first three 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 servants."

5. Thus, this Court is of the opinion that the competent authorities shall consider the case of persons, who were placed under suspension for enhancement of Subsistence Allowance, if the suspension continues for fairly a long time, the discretion is given to the authorities in this regard to grant enhancement of subsistence allowance. However, such a discretion has to be exercised cautiously by considering various facts and

circumstances of the case. In the case on hand, it is a case of corruption and the criminal case was registered against the writ petitioner under the provision of Prevention of Corruption Act. In respect of corruption case, this Court cannot show any leniency and all such corruption cases to be dealt with strictly in accordance with law and the Courts cannot extend any leniency towards such cases. So also the authorities competent to deal with the disciplinary proceedings, be strict in application of law as far as the corruption cases are concerned. However, the learned counsel appearing for the writ petitioner contended that the prayer in this writ petition is only to direct the respondent to consider the representation.

6. Taking note of the restricted relief sought for in this writ petition, this Court is inclined to direct the respondent to consider the representation submitted by the writ petitioner on 08.05.2017 and pass appropriate orders on merits and in accordance with law within a period of eight weeks from the date of receipt of copy of a order.

7. Accordingly, the writ petition stands disposed of. No costs.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The District Collector  
Krishnagiri District  
Krishnagiri.

+lcc to Mr.S.Subramanian, Advocate, S.R.No.59885  
+lcc to the Government Pleader, S.R.No.60402

W.P.No.22016 of 2017

CS IV  
CA(07/09/2017)