

In the High Court of Judicature at Madras

Dated : 15.3.2017

Coram :

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

AND

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Writ Petition No.21356 of 2010 & M.P.No.1 of 2010

1.P.S.Joseph Amirtham (died)

2.G.G.Aruljothi

3.J.A.Paul Jasmin

4.J.A.Paul Stephen

(Petitioners 2 to 4 were substituted by order of this Court dated 15.3.2017 in MP.No.1 of 2012 by NRRJ & SMSJ) ...Petitioners

Vs

1.The High Court of Judicature at Madras, rep.by Registrar General, High Court, Chennai-104.

2.The Disciplinary Authority/Principal District Judge, Namakkal.

...Respondents

PETITION 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 2nd respondent in connection with the order passed by him in Roc.No.5431/ A/2010 dated 18.8.2010, quash the same and direct the respondents to pay the difference amount between 50% the subsistence allowance/provisional payment already paid and 75% of the same as per Rule 53(i) (a) of the Fundamental Rules for the period from 1.7.2005 to 23.11.2009 with 18% interest from the date of due till the date of payment.

For Petitioners : Mr.R.Singaravelan, Senior Counsel for Ms.M.Sri Vidhya

For Respondents : Mr.C.T.Mohan

ORDER

(Order of the Court was made by NOOTY.RAMAMOHANA RAO,J)

The writ petition is originally instituted by a Central Nazir of the District Court, whose request for enhancement of subsistence allowance to 75% has been turned down by the Principal District Judge, Namakkal by his proceedings dated 18.8.2010.

2. Certain disciplinary proceedings and a simultaneous prosecution in a criminal case have been launched in C.C.No.555 of 2005, which was renumbered as C.C.No.33 of 2007 on the file of the First Class Judicial Magistrate, Salem against the writ petitioner. He was placed under suspension with effect from 31.12.2004 pursuant to registration of a criminal case in Cr.No.62 of 2004 on the file of the Namakkal Crime Branch Police Station and also his apprehension and detention by the police.

3. The disciplinary proceedings culminated in an order passed on 19.10.2006 inflicting upon the original writ petitioner, punishment of dismissal from service. He preferred an appeal there-against to the High Court, which has set aside the said order and remitted the matter back to the Disciplinary Authority for consideration afresh. Even in the de novo enquiry, the original writ petitioner was found guilty of the charges and accordingly, he was once again inflicted with the punishment of dismissal from service by order dated 23.11.2009. There-against, an appeal was preferred and the said appeal has been disposed of by this Court on the Administrative Side by order dated 03.10.2013, affirming the order of punishment inflicted on the original writ petitioner and also the other employees.

4. However, the original writ petitioner appeared to have sought for enhancement of the subsistence allowance to 75% and that request, made on 11.8.2010, has been turned down by the learned Principal District Judge by the impugned order dated 18.8.2010. It is against this order of rejection of enhancement of subsistence allowance, the present writ petition has been instituted.

5. Heard Sri.R.Singaravelan, learned Senior Counsel on behalf of the learned counsel on record for the petitioners and Sri.C.T.Mohan, learned Standing Counsel appearing on behalf of the respondents.

6. The uncontrovertible facts are that the original writ petitioner was placed under suspension with effect from 31.12.2004 and he would have retired from service on attaining the age of superannuation on 31.5.2006 in the normal course. In view of the pendency of criminal case as well as disciplinary proceedings into grave charges, the period of suspension has prolonged.

7. How to regulate the payment of subsistence allowance during this period was the only question that falls for consideration.

8. Mr.R.Singaravelan, learned Senior Counsel, placing reliance upon judgment rendered by the Supreme Court in the case of Paul Anthony Vs. Bharat Gold Mines Ltd. [reported in AIR 1999 SC 1416], would contend that payment of subsistence allowance is not a matter of grace on the part of the Disciplinary Authority. On the other hand, it has now come to be recognized as part of human rights and hence, the deprivation of subsistence allowance should be based upon valid and objective consideration.

9. It is appropriate to notice that certain conditions of service, which are commonly applicable to all the Government servants across the board, have come to be known as Fundamental Rules (FR). FR 53 dealt with the payments, which are entitled to be received by a Government servant, who is placed under suspension or deemed to have been placed under suspension and continues to be under suspension. Clause (a) of Sub-Rule (1) of FR 53 sets out that subsistence allowance at an amount equal to half of the pay last drawn by the Government servant is payable. The Proviso thereunder has a direct bearing upon the controversy raised in this writ petition and hence, we prefer to extract the same, which reads as follows :

"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;

(ii) The amount of subsistence allowance may be reduced 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, directly attributable to the Government servant."

10. From the above, it becomes clear that the amount of subsistence allowance payable for the period beyond the first six months has got to be regulated by the Competent Authority either by enhancing the quantum of subsistence allowance to 75% (50% + 50% of that 50%) or reducing it to not less than 25%. Either enhancement or reduction in the quantum of subsistence allowance is wholly dependent upon factors, which caused the delay in finalising the disciplinary proceedings. If the Government servant is guilty of prolonging the proceedings unjustifiably, then the quantum of subsistence allowance is liable to be reduced.

11. On the other hand, for variety of reasons, including those procedural safeguards, which have got to be followed necessarily by the Disciplinary Authority/Enquiry Officer, for satisfactorily completing the disciplinary enquiry initiated against the Government servant in accordance with law by due observance of all the relevant principles of natural justice, if the delay has occasioned, the delay in finalising the disciplinary proceedings cannot be attributed to the Government servant concerned and in such an event, the subsistence allowance has to be enhanced appropriately to the extent so as not to exceed 75% of normal charges drawn by him prior to being placed under suspension.

12. As we have noticed in the instant case, the disciplinary proceedings have culminated in inflicting a punishment on him for the first time on 19.10.2006 by dismissing him from service. In other words, till 18.10.2006, the relationship of master and servant was made to subsist. However, such relationship stood only suspended. Thus, the obligation to make payment of subsistence allowance right upto the point of the date of retirement on attaining the age of superannuation has got to be made.

13. In the instant case, in normal circumstances, the original writ petitioner would have retired from service on 31.5.2006 on attaining the age of superannuation. Normally, beyond the date of superannuation, the Government employee transforms himself into the status of a pensioner provided he was working in a pensionable establishment and has put in the requisite length of

qualifying service to earn pension. Since the original writ petitioner was stated to have been recruited initially as a Copyist on 19.2.1973, by the time he was placed under suspension, he had completed 31 years of service and hence, he had put in the necessary length of qualifying service to earn pension in normal circumstances.

14. Since the main claim in the writ petition is with regard to enhancement of subsistence allowance, we, therefore, have to confine our scrutiny and limit it upto 31.5.2006 - the date of normal retirement of the original writ petitioner. For that, as we have noticed, FR 53(1) enables the Government servant to receive only 50% of his pay and allowances during the first six months period. Enhancement, if any in the instant case of the subsistence allowance, would commence for the period from 1.7.2005 upto 31.5.2006 i.e for a period of 11 months.

15. We do not require to overemphasise the importance of payment of subsistence allowance to an employee placed under suspension. It is too fundamental a requirement to be complied with, failure of which payment, may vitiate the entire subsequent exercise of disciplinary control.

16. It will be appropriate to notice that the principles relating thereto, are spelt out by the Supreme Court in the following cases :

(i) Khem Chand Vs. Union of India [reported in AIR 1958 SC 300];

(ii) O.P.Gupta Vs. Union of India [reported in AIR 1987 SC 2257];

(iii) State of Maharashtra Vs. Chanderbhan [reported in AIR 1983 SC 803]. After reviewing all the above cases, in Paul Anthony, the Supreme Court has set out the following principles :

"On joining Government service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights in favour of the Government. The Government, only because it has the power to appoint, does not become the master of the body and soul of the employee. The Government, by providing job opportunities to its citizens only fulfills its obligations under The Constitution including the Directive Principles of the State Policy. The employee, on taking up an employment only, agrees to subject himself to the regulatory measures

concerning his service. His association with the Government or any other employer, like Instrumentalities of the Government or Statutory or Autonomous Corporations etc., is regulated by the terms of contract of service or Service Rules made by the Central or the State Government under the Proviso to Article 302 of The Constitution or other Statutory Rules including Certified Standing Orders the Fundamental Rights, including the Right to Life under Article 21 of The Constitution or the basic human rights are not surrendered by the employee. The provision for payment of subsistence allowance made in the Service Rules only ensures non violation of the right to life of the employee."

17. Keeping these principles in mind and reading FR 53(1), it emerges that the Competent Authority is under an obligation to consider as to whether the factors of delay in finalisation of the disciplinary proceedings initiated against the Government servant are attributable to the Government servant concerned or the delay has occasioned because of procedural compliance consuming time for completion. When the delay is not attributable to the employee, the subsistence allowance payable requires to be revised upwardly so as not to exceed 75% of the pay and allowances last drawn by him. Only if a conclusion is drawn that the delay in completion of the disciplinary proceedings is directly attributable to the Government servant, then after drawing appropriate notice bringing out as to how the dilatory tactics adopted by the employee have dragged on the proceedings beyond the first six months period, the Competent Authority can reduce the quantum of subsistence allowance not below 25% of the last drawn wages.

18. Unfortunately, in the instant case, that exercise does not appear to have been carried out properly by the learned Principal District Judge. He has received the representation on 11.8.2010 and rejected it on 18.8.2010. The impugned order does not reflect any serious application of mind to the aforesaid requirement of FR 53(1), as it does not contain any reason much less a justifiable one at that. For that reason, the impugned order deserves to be set aside and the learned Principal District Judge, Namakkal District is directed to examine the record of the Enquiry Officer and find out as to whether, for any factors attributable to the employee concerned, the disciplinary proceedings could not be completed within the first six months or they were dragged on at his instance only or the disciplinary proceedings could not be completed because of the

requirement to adhere to the procedure prescribed as well as the obligation to comply with relevant principles of natural justice at every stage, has caused the delay.

19.

19. If the delay has occasioned only due to procedural requirement and the necessity and obligation to comply with the principles of natural justice, in such a case, the subsistence allowance requires to be enhanced appropriately so as not to exceed 75% of the salary and allowances last drawn by him. Let this exercise be completed as expeditiously as possible, and preferably within a maximum period of two months from the date of receipt of a copy of this order. If the Competent Authority were to come to a conclusion that the disciplinary proceedings could not be finalised upto 31.5.2006 for not any reason directly attributable to the employee concerned, then the differential amount between the quantum of subsistence allowance already paid and the enhancement now to be ordered shall be worked out and paid to the legal representatives/nominees of the employee, as the case may be.

20. Mr.R.Singaravelan, learned Senior Counsel has also urged before us to give an appropriate direction for payment of provisional pension for the period commencing from 1.6.2006.

21. That not being the prayer in this writ petition and as we realise that the original writ petitioner was dismissed from service on 19.10.2006 and after conducting a de novo enquiry, again he has been inflicted with the punishment of dismissal from service on 23.11.2009, we are not inclined to examine, in the instant case, as to whether any such claim for payment of provisional pension/provisional family pension for the period beyond 01.6.2016 and 29.5.2012, the date, on which, the employee is stated to have died, as a separate claim in that regard has to be laid and it has to be examined independently, but not in these proceedings.

22. The writ petition stands disposed of accordingly. No costs. Consequently, the above MP is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

RS

To

1.The Registrar General,
High Court, Madras, Chennai-104.

2.The Disciplinary Authority/Principal
District Judge, Namakkal.

+1 CC to Mr.Mr.R.Singaravelan, Advocate Sr.No.16068

WP.No.21356 of 2010
and MP.No.1 of 2010

RSK(CO)
KP(13/04/2017)



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