

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-07-2017

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.18943 of 2017

R.Sakthivel

.. Petitioner

vs.

The Assistant Director,
Survey and Land Records Department,
Collectorate Complex,
Thiruvannamalai District.

.. Respondent

This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondent to enhance the subsistence allowance at the rate of 75% from May, 2016 onwards, namely, from the date of completion of six months as per the provisions of Fundamental Rule and to disburse the arrears within the stipulated time.

For Petitioner : Mr.S.Sivakumar

For Respondent : Mr.K.Dhananjeyan,
Special Government Pleader.

O R D E R

This writ petition is filed seeking for a direction to the respondent to enhance the subsistence allowance at the rate of 75% from May, 2016 onwards.

2. The writ petitioner was placed under suspension in proceedings dated 9.11.2015 on account of the registration of a criminal case by the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Thiruvannamalai, more specifically, the case was registered in Crime No.3 of 2015 under Sections 7 and 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988.

3. The allegation against the writ petitioner is that the writ petitioner working as Field Surveyor, Thiruvannamalai Taluk Office, was trapped on account of bribery received from Thiru S.Lakshmanan, aged 47, S/o.Thiru Shanmugam @ Chinnaiyan, No.30, C.C.Main Road, Kariandal Village, Maruthuvampadi Post, Thiruvannamalai Taluk and

District, on 6.11.2015 at 8.00 hours, regarding demand of Rs.6,000/- to survey his partition land in Vadapuzhudiur Village SF No.179/1B1, preparing sub-divisional report and arranging to get separate patta.

4. The writ petitioner submitted an application on 8.2.2015 for revocation of suspension and thereafter filed WP No.18673 of 2016 with a prayer to revoke the order of suspension and to regularise the period of suspension.

5. This Court passed an order on 3.6.2016, directing the first respondent to consider the appeal preferred by the writ petitioner and pass appropriate orders on merits and in accordance with law.

6. Pursuant to the directions, the Government reconsidered the order of suspension and rejected the claim of revocation, in G.O.(1D) No.46, Revenue [SS.4(2)] Department, dated 2.2.2017. Since the attempt of the writ petitioner for revocation of suspension was failed, he moved another application for enhancement of subsistence allowance. The enhancement of subsistence allowance petition was filed on 3.4.2017. Not stopping with that, immediately the writ petitioner moved this writ petition with a prayer to grant enhancement of subsistence allowance of 75%. This Court has to weigh the conduct of the writ petitioner as well as the Rules in this regard.

7. The learned counsel appearing for the writ petitioner contended that Rule 53 of the Fundamental Rules deals with payment of subsistence allowance. As per Rule 53 sub-clause (1), the writ petitioner is entitled for 75% of the subsistence allowance and this becomes a right. The respondent ought to have granted 75% subsistence allowance to the writ petitioner.

8. The learned Special Government Pleader, appearing for the respondent, opposed the contention of the learned counsel appearing for the writ petitioner by stating that in normal circumstances, 50% of the salary drawn by the employee under suspension will be paid as the subsistence allowance, and there is no mandate to grant 75% as subsistence allowance.

9. The learned counsel appearing for the writ petitioner cited a decision of this Court, passed on 24.11.2016 in WP No.41305 of 2016, wherein 75% of the subsistence allowance has been granted. In another order of this Court dated 3.9.2010 in WP No.16316 of 2010 also, the similar relief was considered. In order dated 12.6.2017 in WP

(MD) No.6923 of 2017 also the similar relief was granted.

10. The learned counsel appearing for the writ petitioner cited a judgment of the Supreme Court in Umesh Chandra Misra vs. Union of India {1993 Supp.(2) SCC 210}, wherein the Hon'ble Supreme Court of India granted 75% subsistence allowance in respect of an employee of a Railway Board.

11. Let us now look into the spirit of Rule 53(1) of the Fundamental Rules. The Rule 53 of the Fundamental Rules proceeds that a Government Servant who is placed or deemed to have been placed or continues to be under suspension shall be entitled to the following payments. Sub-Clause (a) stipulates subsistence allowance at an amount equal to half of the pay last drawn by the Government Servant and in addition dearness allowance, if admissible on the basis of half of the pay last drawn. Thereafter, it is 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 percent 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."

12. On reading of the entire provisions, cited supra, it is clear that half of the pay last drawn by the Government Servant under suspension is guaranteed under Rule 53(1)(a). Rule 53(1)(a)(i) stipulates that the amount of subsistence allowance may be increased by a suitable amount, not exceeding fifty per cent of the subsistence allowance admissible.

13. Thus, it is clear that the Competent Authority, while continuing the order of suspension beyond six months may increase the quantum of subsistence allowance not exceeding 75% of the pay last drawn. Thus, the learned counsel relying on that, submitted that 75% of the subsistence allowance is the entitlement of the writ petitioner, since the order of suspension has continued even beyond the period of six months.

14. This Court is curious to understand the language used in the Rules. The language used in Rule 54(1)(a)(i) of the Fundamental Rules is that the amount of subsistence allowance may be increased and the word 'shall be' used in Rule 53(1) is not used in this Clause. In Rule 53(1), the word 'shall be entitled' is used in respect of payment of subsistence allowance at an amount equal to the half of the pay last drawn.

15. Thus, this Court is of the clear view that fifty percent of the last pay drawn is the clear entitlement of an employee, who is under suspension. The Hon'ble Supreme Court of India as well as this Court repeatedly reiterated and emphasised that the payment of subsistence allowance is a right of an employee and non-payment will vitiate the entire disciplinary proceedings. Payment of subsistence allowance is a livelihood and non-payment of subsistence allowance is violative of Article 21 of the Constitution of India. No person shall be deprived of his life and an employee placed under suspension, cannot undertake any employment elsewhere during the period of suspension.

16. Such being the condition imposed by the employers, normally, the payment of subsistence allowance to lead the livelihood is mandatory and non-payment is certainly in violation of Article 21 of the Constitution of India. The subsistence allowance, being a basic right, cannot be denied to an employee who is under suspension. But this Court has to look into the aspect whether an employee is entitled to seek the enhanced subsistence allowance of 75% of the last pay drawn.

17. The case on hand is a case relating to the demand of bribe and the writ petitioner, who is facing the criminal case under the provisions of the Vigilance and Anti-Corruption Act, moved the application for revocation of suspension earlier, filed the writ petition and failed to get the suspension order revoked. Then he suddenly raised and filed this writ petition, seeking enhancement of subsistence allowance from 50% to 75%. Under these circumstances, the Rule and its spirit has to be analysed, considering the nature of allegation and the quantum of amount for the purpose of livelihood of an employee under suspension and the other aspects in relation to the order of suspension.

18. The language used in Rule 53(1)(a)(i) is 'may be' and not 'shall be'. Therefore, this Court is of the clear view that it is the discretion of the Authorities either to enhance the subsistence allowance from 50% to 75% or to maintain the same amount of 50% of the pay last drawn till the order of suspension is revoked. Thus, the Authorities

competent, while considering the facts and the circumstances of the case, has to take a decision whether the subsistence allowance to be enhanced from 50% to 75% or 50% alone to be continued.

19. Such a decision on enhancement of subsistence allowance to be taken by considering the nature of allegations and the involvement of the employee under suspension and other relevant factors. Thus, this Court is of the view that enhancement of subsistence allowance from 50% to 75% is neither automatic nor an entitlement under Rule 53(1) of the Fundamental Rules. When it is not an entitlement, it is for the Competent Authorities to decide the factors relating to this case and take a decision in this regard.

20. Under these circumstances, the Court cannot issue a straight direction to the Authorities to grant 75% of the subsistence allowance as a matter of right. Thus, the arguments advanced by the learned counsel for the writ petitioner in this regard, that Fundamental Rules mandate in enhancement of subsistence allowance from 50% to 75% deserves to be rejected. However, this Court is of the opinion that since there is a provision under the Fundamental Rules, it is for the Competent Authorities to consider the facts and circumstances of the case and take a decision in this regard. Leaving this issue at this stage in respect of the enhancement of subsistence allowance, this Court expects that in all such cases of suspension and grant of subsistence allowance, the authorities has to consider the enhancement based on the facts and circumstances, nature of allegations and other aspects of the issue and pass appropriate orders, furnishing adequate reasons for the decision taken in this regard.

21. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs.

-s/d-
Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

Svn

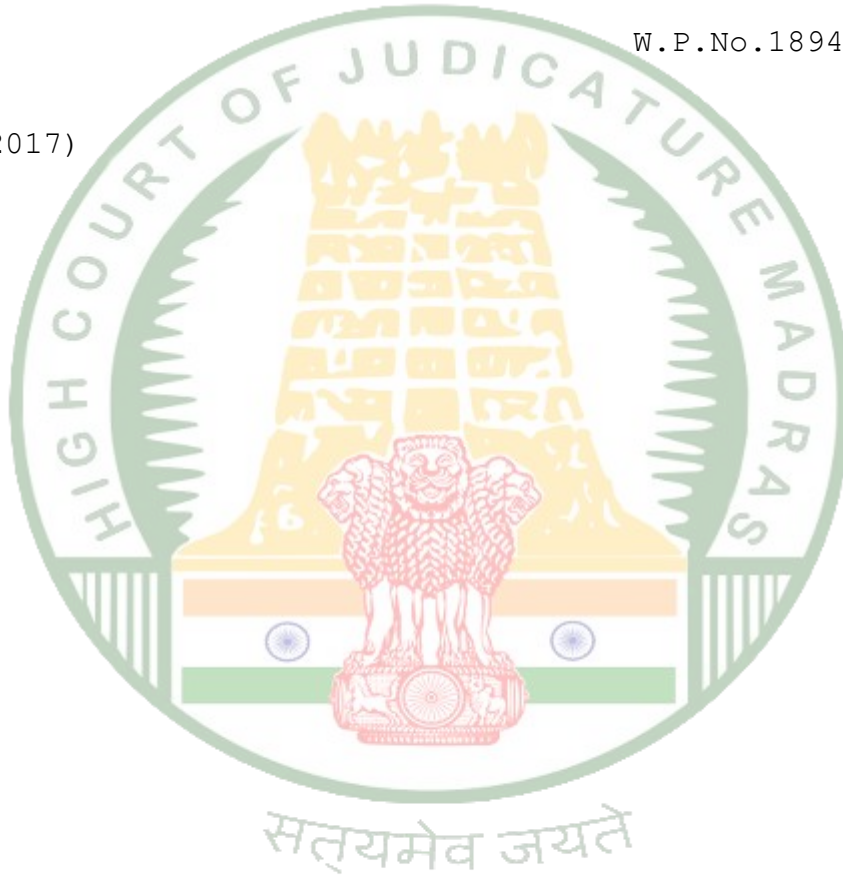
To

The Assistant Director,
Survey and Land Records Department,
Collectorate Complex,
Thiruvannamalai District.

+1 CC to Mr.S. Sivakumar, advocate sr 52452
+1 CC to Govt. Pleader sr 53489.

W.P.No.18943 of 2017

LRS (CO)
sp(08/08/2017)



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