



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED : 12.06.2017

CORAM

**THE HONOURABLE MR. JUSTICE S.S.SUNDAR**

W.P. (MD) .No.6923 of 2017

S.Rajendran

.. Petitioner

Vs.

1.The Deputy Inspector General of Police,  
Madurai Circle, Madurai-2.

2.The Superintendent of Police,  
Virudhunagar District,  
Virudhunagar.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to revise the Subsistence Allowance from 50% to 75% as the Suspension is prolonged for more than six months from 08.07.2016 in terms of Rule 53 (1) (a) (i) of the Fundamental Rules.

For Petitioner : Mr. S. Govindan

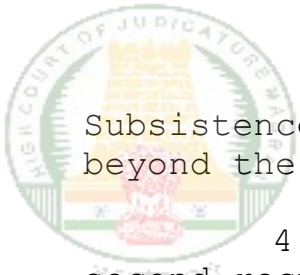
For Respondents : Mr. C. Selvaraj,  
Special Government Pleader  
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### **O R D E R**

The Writ Petition has been filed by the petitioner for issuance of a Writ of Mandamus, directing the respondent to revise the Subsistence Allowance from 50% to 75%, in view of the fact that the suspension order against the petitioner was prolonged for more than six months.

2.Heard Mr. S. Govindan, learned counsel appearing for the petitioner and Mr. C. Selvaraj, learned Special Government Pleader appearing for the respondents.

3.The fact of the case is that the petitioner was placed under suspension from 08.07.2016. The suspension order was passed pending criminal case in Crime No.5 of 2010, under Section 7 of Prevention of Corruption Act. However, even after completion of more than six months from the date of order of suspension, the petitioner is receiving only 50% of the pay as Subsistence Allowance. According to the petitioner, he is entitled to get



Subsistence Allowance up to 75%, when the suspension exceeds beyond the period of six months.

4. Though the petitioner made a representation before the second respondent, the same was not considered. The Writ Petition was contested by the respondent on the only ground that the petitioner's carry home salary should be taken into account and that 50% of his salary by way of Subsistence Allowance exceeds his take home salary before suspension. Hence, it is not necessary to enhance the Subsistence Allowance from 50% to 75%. The learned counsel for the respondents refers to Rule 53 (1) (a) of the Fundamental Rules, which reads as follows:

*" 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:*

*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."*

According to the learned Special Government Pleader for the respondents, the last drawn pay referred to in the Fundamental Rules 53 (1) (a) is the take home salary of the Government Servant.

5. The submission of the learned Special Government Pleader is fallacious. The petitioner is entitled to 50% of the pay for the initial period of six months. Thereafter he is entitled to claim Subsistence Allowance up to 75% of the pay. The last drawn pay can never be compared with the take home salary. The amount that will be disbursed to the employee after deduction may even be a small or meagre sum when compared to his actual pay drawn as per his entitlement.

6. The learned Special Government Pleader for the respondent further submitted that the request of the petitioner for 75% of pay as Subsistence Allowance was also negated by an order. However, the learned Special Government Pleader is not able to produce the copy of the order. Even assuming that the respondents have passed an order rejecting the petitioner's request for payment of 75% of the pay as Subsistence Allowance for the same reason that is stated by them in the Counter Affidavit, this Court is inclined to hold that the said order is totally illegal and will not stand before this Court as a valid reason to deny relief to the petitioners.

<https://hcservices.ecourts.gov.in/Hcservices/>, this Writ Petition is allowed and the petitioner is entitled to 75% of his pay by way of Subsistence Allowance after six months i.e., from 08.01.2017 in terms of Rule 53 (1) (a)



of the Fundamental Rules and the respondents are directed to revise the Subsistence Allowance from 50% to 75% with effect from 08.01.2017 and pass appropriate order within a period of four weeks from the date of receipt of copy of this order. No costs.

sd/-

Assistant Registrar(Records)

WEB COPY

/True copy/

Sub Assistant Registrar

To

1.The Deputy Inspector General of Police,  
Madurai Circle, Madurai-2.

2.The Superintendent of Police,  
Virudhunagar District,  
Virudhunagar.

+1cc to Mr.S.Govindan,Advocate,SR. 59824

+1cc to M/S THE SPECIAL GOVERNMENT PLEADER, SR.NO.60197

ORDER MADE IN  
W.P. (MD) .No.6923 of 2017  
12.06.2017

KM/GSP/MM

KK/SKN RSK/SAR1/30.06.2017/3P-5C