

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2018

CORAM:

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.A.No.2288 of 2011

R.Kumar

..Appellant

Vs

The Secretary,
Tamil Nadu Public Service Commission,
Govt. Estate, Chennai - 2.

...Respondent

Appeal preferred under Clause XV of Letters Patent against the order dated 07.07.2011 made in W.P.No.16187 of 2011.

PRAYER IN W.P.No.16187/2011: Writ Petition is preferred under Article 226 of Constitution of India praying for the issue of a Writ of Certiorarified Mandamus to call for the records of the respondent in connection with the impugned order passed by the respondent in Memorandum No.6952/PD-B3/2007, dated 25.03.2011 and quash the same and to further direct the respondent to pay subsistence allowance at 75% p.m. from 20.06.2008 to till date.

For Appellant : Mr.K.Venkataramani,
Sr. Counsel
For Mr.M.Muthappan

For Respondent : Ms.C.N.G.Niraimathi

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JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The request made by the appellant seeking enhancement of subsistence allowance was rejected by the impugned order. Learned single Judge dismissed the writ petition inter alia

holding that there is no right vested with the appellant to seek enhancement. Hence the present writ appeal.

2.The appellant was suspended pending disposal of the criminal case. He was paid 50% of the salary as subsistence allowance. Seeking enhancement, the appellant made a request, which was rejected and therefore, he approached this Court by filing writ petition. The learned single Judge has held that it is not the case in which the employee was a last grade Government Servant. Therefore, there is no economic deprivation to run the family. He has also been paid 50% of salary as subsistence allowance.

3.Learned senior counsel appearing for the appellant would submit that inasmuch as the appellant is not responsible for the delay, the subsistence allowance will have to be enhanced.

4.We do not find any merit in the submission made. It cannot be stated that the respondent is responsible for the delay. We are not dealing with a case of suspension pending enquiry. Due to the pendency of the criminal case, the appellant was suspended. Therefore, the appellant cannot claim enhancement as a matter of right. Considering the very same issue, the Apex Court in Principal, J.D. Patil Sangludkar and Another Vs. Ganesh ((2003) 9 SCC 164), has held as follows:

"5.The provision to increase the rate of subsistence allowance pending suspension after a certain stipulated period is normally envisaged to ensure that the employer or the management concerned does not indefinitely keep an employee under the pretext of suspension out of his office without completing the inquiry and take advantage of its own lapse or delay in completing the disciplinary proceedings. In a case of the nature where the accused is charged with a serious criminal offence and is facing prosecution for the same at the instance of the police before competent criminal courts and the adjudication in respect of the same by the competent criminal court which is seized of the matter has to be awaited as a matter of necessity, and the service rule does not permit as such, the court cannot allow full subsistence allowance amounting to full pay and allowances. Unless the respondent could substantiate that in cases of the nature pertaining to him, where for any lapse or delay, the employer cannot be found fault with at all, the High Court could not have passed such an order of the nature under challenge. We therefore, set

aside the order of the High Court on this ground alone. The respondent will be allowed only 50% of the salary towards his subsistence allowance, which seems to have been already paid to him."

5. We do not find any merit in the writ appeal. Accordingly, the writ appeal stands dismissed. No costs. However, in view of the request made by the learned senior counsel appearing for the appellant, we direct the learned Judicial Magistrate, Udhagamandalam to dispose of the criminal case pending on his file, within a period of six months from the date of receipt of a copy of this order.

mmi

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Udhagamandalam.
2. The Secretary,
Tamil Nadu Public Service Commission,
Govt. Estate, Chennai - 2.

+lcc to M/s.M.Muthappan, Advocate, S.R.No.84940

W.A.No.2288 of 2011

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