



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2018

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.A. (MD) No.425 of 2018
and C.M.P. (MD) No.2517 of 2018

1.The Chief Educational Officer,
O/o. the Chief Educational Office,
Tirunelveli.

2.The District Educational Officer,
Cheranmadevi,
Tirunelveli District,
Tirunelveli.

... Appellants/Respondents 1 &

2

Vs.

1.B.Srinivasan ... 1st Respondent/Petitioner

2.The Secretary,
Thirthapathy Higher Secondary School,
Ambasamudram,
Tirunelveli District.

... 2nd Respondent/3rd

Respondent

Writ Appeal filed under Clause 15 of Letter Patent against
the order passed by this Court in W.P.(MD)No.2697 of 2018 dated
26.02.2018.

Prayer in WP(MD). 2697/ 2018 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a Writ of
Mandamus to direct the Respondents to provide subsistence allowance
from 09/08/2017 to the petitioner ...

For Appellants : Mr.N.Shanmuga Selvam,
Additional Government Pleader

For 1st Respondent : Mr.T.Lajapathi Roy

For 2nd Respondent : Mr.S.Chellapandian

JUDGMENT

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

This appeal is preferred against the order of the learned Single Judge, by which, the appellants were directed to pay subsistence allowance for a period of four months and full salary thereafter with arrears to the first respondent.

2.The learned Additional Government Pleader appearing for the appellants would submit that though the power of suspension is available to respondent No.2, the appellants are liable to pay subsistence allowance only for two months and further period of two months if extension of suspension is sought and granted. In the case on hand, the Respondent No.2 has neither asked for extension nor reinstated the first respondent. For the aforesaid fault, the appellants cannot be made to pay.

3.The learned counsel for the first respondent would submit that the first respondent is entitled to receive subsistence allowance and this Court can direct payment of subsistence allowance either from the appellants or from the second respondent.

4.The learned counsel for the respondent No.2 would submit that approval was sought for on the disciplinary proceedings concluded and no decision is made by the appellants till now.

5.We have considered the rival submissions and perused the materials available on record.

6.We are on the question of payment of subsistence allowance and thereafter the entitlement till the conclusion of the proceedings. In other words, the question is as to whether the direction of the learned Single Judge has to be complied with by the appellants in full or in part. The same thing applies to the respondent No.2 as well.

6.Admittedly, the respondent No.2 did not ask for extension. Therefore, any enquiry beyond two months without seeking extension from the appellants would entitle the respondent No.1 to get the subsistence allowance only from the respondent No.2. Appellants are merely statutory authorities, who give aid. In other words, they play a very limited role. Admittedly, the respondent No.2 is the disciplinary authority and respondent No.1 is a teacher working under him. Therefore, it is the primary duty of the respondent No.2 to make payment. Since beyond two months no extension was sought for and granted, the disciplinary authority shall continue payment of subsistence allowance as payment of subsistence allowance pending completion of enquiry is the look out of the respondent No.2. In such view of the matter, we are inclined to modify the order of the learned Single Judge by holding that only for two months the appellants are to pay subsistence allowance and thereafter,

direction of the learned Single Judge will have to be complied with by respondent No.2. The respondent No.2 shall make payment of subsistence allowance to the first respondent within a period of eight weeks from the date of receipt of a copy of this order.

7. Accordingly, this Writ Appeal stands partly allowed to the extent indicated above. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Chief Educational Officer,
O/o. the Chief Educational Office,
Tirunelveli.
2. The District Educational Officer,
Cheranmadevi,
Tirunelveli District,
Tirunelveli.

+1CC TO MR.T.LAJAPATHY ROY, ADVOCATE IN SR.NO.80680.
+1CC TO MR.S.CHELLAPANDIYAN, ADVOCATE IN SR.NO.80920.
+1CC TO SPECIAL GOVERNMENT PLEADER IN S.R.NO.80974.

SJ
DS SV SAR-4:28.09.2018: 3P/6C

W.A. (MD) No.425 of 2018
and C.M.P. (MD) No.2517 of 2018

28.08.2018