



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P. (MD) No. 11115 of 2013

and

M.P. (MD) Nos. 1 & 2 of 2013

S. Bernath Issac

.. Petitioner

Vs.

1. The Tamil Nadu Housing Board,
Through its Managing Director,
Anna Salai, Chennai.

2. The Secretary and Personnel Officer (i/c),
The Tamil Nadu Housing Board,
Anna Salai, Chennai.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of CERTIORARI MANDAMUS, calling for the records relating to the impugned proceedings dated 19.03.2012 in Memo.No.DC5/11262/11 of the second respondent and quash the same and consequently direct the respondents to pay the petitioner salary, subsistence allowance, as provided by the law, till his suspension vide suspension order dated 26.03.2011 in Memo.No.DC-5/11261/2011-2 is in existence.

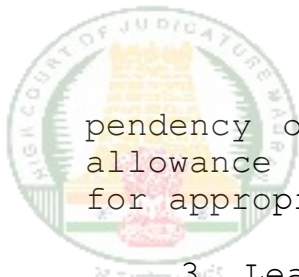
For Petitioner : Mr. AL. Kannan

For Respondents : Mr. V. Sivaramalingam

ORDER

The petitioner came forward with the present writ petition challenging the impugned proceedings of the second respondent, dated 19.03.2012, in and by which, the petitioner's request for enhancing the subsistence allowance from 50% to 75% came to be negatived. The petitioner also sought for a direction to the authorities to enhance the subsistence allowance from 50% to 75%.

2. The facts leading to filing of this writ petition is that the petitioner, who was employed as Watchman under the respondent Board, was trapped and charged for illegal gratification, followed by which, the petitioner was suspended from service vide proceedings dated 26.03.2011. The grievance of the petitioner is that instead of granting 75% subsistence allowance, the authorities citing the



pendency of the criminal case, have only granted 50% subsistence allowance and hence, the learned Counsel for the petitioner prayed for appropriate orders.

3. Learned Standing Counsel appearing for the respondents would submit that since the case is pending with the Vigilance and Anti Corruption Department, the petitioner's request for enhancing the subsistence allowance is not feasible.

4. It is pertinent to mention here that this Court, while dealing with the issue of subsistence allowance, has passed a detailed order in the case of R.Arivanandam vs. The District Collector, Madurai District at Madurai and others [W.P.(MD) No.17662 of 2018] decided on 09.08.2018, by holding as under:

"10. It is pertinent to mention here that as held by the Hon'ble Supreme Court in the case of State of Maharashtra vs. Chandrabhan Tale, reported in (1983) 3 SCC 387, any departmental enquiry made without payment of subsistence allowance contrary to the provision for its payment is violative of Article 311(2) of the Constitution of India. But, at the same time, it is to be noted that the employees, who have been suspended from service, have been stalling the entire disciplinary proceedings, under some pretext or the other, by taking a stand that on account of pendency of criminal proceedings, they are unable to participate in the departmental proceedings. Therefore, in order to bring such issues to a logical conclusion or standstill, this Court is of the view that the provisions of payment of subsistence allowance to the suspended Government employees and also the Payment of Subsistence Allowance Act, 1981 have to be amended suitably as under:

i) When an employee is under suspension, initially, he/she has to be paid 75% of the salary as subsistence allowance;

ii) if, for any reason, the enquiry is not completed within six months from the date of suspension, the payment of subsistence allowance has to be reduced from 75% to 50%, even if an employee has obtained an interim order from any Court of law;

iii) If the enquiry is not completed or has been concluded after expiry of one year, the subsistence allowance has to be further reduced to 25%;

iv) In case of demise of an employee, after period of suspension of one year and if it is found that the delay is purely on the part of the employee in proceeding with the enquiry, then the employer need not pay the balance subsistence allowance to his/her legal heirs."



5. It is a settled principle that the petitioner, being a Government Servant, is entitled to subsistence allowance at the rate of 75% on date, which cannot be denied. Therefore, the respondents are directed to pay 75% subsistence allowance to the petitioner. The pendency of criminal case is not a bar for the respondents to proceed with the disciplinary proceedings. It is very unfortunate that unnecessarily payment is being made from the exchequer to an employee, i.e., the petitioner herein, without work, which itself shows the sluggishness of the respondents in initiating and completing the departmental proceedings.

6. Therefore, the respondents shall initiate disciplinary proceedings, by issuing charge memo and conduct enquiry on day-to-day basis, without granting long adjournments, in any event, not beyond seven working days and complete the proceedings, as expeditiously as possible. Once the petitioner receives charge memo, he shall appear and co-operate for enquiry. If the authority feels that the petitioner is dragging on the enquiry proceedings for any reason, then the subsistence allowance can be reduced to 50%. The petitioner can question only the final order in the departmental proceedings and cannot approach this Court intermittently. In case, the petitioner approaches any forum to stall the proceedings, even if there is an interim order, the subsistence allowance shall automatically reduced to 50%.

7. With the above observations and directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Managing Director,
Tamil Nadu Housing Board,
Anna Salai, Chennai.

2. The Secretary and Personnel Officer (i/c),
The Tamil Nadu Housing Board,
Anna Salai, Chennai.

W.P. (MD) No.11115 of 2013
and

M.P. (MD) Nos.1 & 2 of 2013
06.09.2018

GK