



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2018

CORAM :

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD).No.19970 of 2013

and

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

A.Subramanian

... Petitioner

Vs.

The Tamil Nadu Forest Plantation Corporation Limited,
by its Managing Director,
Karur Main Road, Mallachipuram,
kamparasampettai,
Trichy-620 101.

... Respondent

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in respect on the file of the respondent in connection with the impugned order of rejection in regard to payment of Subsistence Allowance passed by him in Ref.No.7069/2013 (E1) (ii) dated 23.09.2013 and quash the same as illegal and arbitrary and consequently direct the respondent to pay subsistence allowance to the petitioner right from the date of suspension i.e. 30.08.2011 onwards.

For Petitioner

: Mr.G.Thalaimutharasu

For Respondent

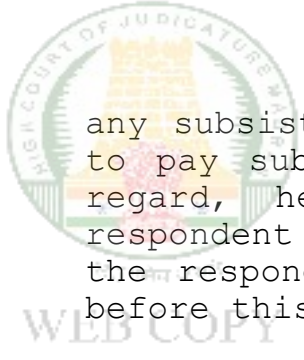
: Mr.Aiyaram K.Selvakumar

Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2. The petitioner was working as a Forest Watcher in the respondent Corporation from 02.03.1975 and thereafter he was promoted as Forest Guard on 26.04.1986 and subsequently he was promoted as Forester on 27.11.2006. The petitioner reached the age of superannuation on 31.08.2011. However, he was not allowed to retire from service. This was on account of disciplinary proceedings initiated against him. He was placed under suspension on 30.08.2011 as per Rule 56 (6) (a) of Tamil Nadu Forest Plantation Corporation Staff Rules, 1974. But unfortunately, he was not paid



any subsistence allowance on the ground that there is no provision to pay subsistence allowance to the suspended employee. In this regard, he has given a representation on 23.09.2013 to the respondent herein. Since the said request has not been considered by the respondent and no orders have been passed, the petitioner is before this Court with the present Writ Petition.

3. The learned Additional Government Pleader appearing for the respondent would submit that the petitioner was involved in a criminal case and Directorate of Vigilance and Anti Corruption proceedings was also initiated against the petitioner. The petitioner has attained the age of superannuation on 31.08.2011. He would further submit that there was also instructions to take disciplinary action against the petitioner.

4. The stand of the respondent is that there is no provision for giving subsistence allowance to the suspended employee, is not acceptable, as the suspended employee is entitled to subsistence allowance irrespective of pendency of criminal / vigilance enquiry. To be more specify as per Rule 56 (7) of the Tamil Nadu Forest Plantation Corporation Limited Staff Regulation, 1974, a suspended employee is entitled to subsistence allowance not exceeding half of his total salary. The said Rule i.e., 56(7) of the Tamil Nadu Forest Plantation Corporation Limited Staff Regulation, 1974 was amended and Fundamental Rule 53 deals with suspension and same is extracted:-

(1) 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, namely:-

(a) Subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn, if he had been on leave on half average pay or half pay and in addition, dearness allowance, if admissible on the basis of such leave salary:

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



(ii) The amount of subsistence allowance may be reduced by a suitable amount, not exceeding fifty per cent 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, directly attributable to the Government servant;

(iii) the amount of dearness allowance shall be based on the increase or the increase in the amount of subsistence allowance, as the case may be, admissible under Clause (i) or (ii) above;

8. Where the suspension is not followed by a punishment the period of suspension and the salary thereof shall be regulated in such manner as may be decided by the Competent Authority. Where the Competent Authority is of the opinion that the suspension was wholly unjustifiable, the employee may be granted pay and allowances which he would have been entitled to, had he not been suspended.

9. Where suspension is followed by punishment, the period under suspension shall be excluded for increment, leave the retrenchment benefits, unless otherwise decided by the Competent Authority"

5. The learned counsel appearing for the respondent is not disputing the grant of subsistence allowance to the petitioner herein. Even otherwise, subsistence allowance is must and the Hon'ble Supreme Court has categorically held in (**State of Maharashtra Vs. Chandrabhan Tale**) - (1983) 3 SCC 387 that any departmental enquiry made without payment of subsistence allowance, contrary to the provision of 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 one 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.

6. Perusal of the impugned order shows that it is a non speaking order. The impugned order Ref.No.7069/2013 (E1) (ii) dated 23.09.2013 passed by the respondent is interfered with and set aside. It is needless to mention that it is open to the respondent to proceed with the departmental enquiry if the Rules and Regulations permits. The respondent is directed to conclude the enquiry proceedings, if already commenced and continue after retirement if the Rules permit. The petitioner is entitled to the subsistence allowance in terms of the aforesaid rules and it shall be paid within a period of two months from the date of receipt of a copy of this order. If any enquiry is conducted without payment of



subsistence allowance, the enquiry will have to be set aside on that sole ground.

7. This Writ Petition is allowed accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

WEB COPY

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

The Managing Director,
The Tamil Nadu Forest Plantation Corporation Limited,
Karur Main Road, Mallachipuram, kamparasampettai,
Trichy-620 101.

TSG

TE/BK/SAR-4 : 24/12/2018 : 4P/2C

W.P. (MD) .No.19970 of 2013
21.08.2018