

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.19939 OF 2018

ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

The State of Andhra Pradesh and its officials filed this writ petition aggrieved by the order dated 24.01.2018 passed by the Andhra Pradesh Administrative Tribunal (*hereinafter*, 'the Tribunal'), Hyderabad, in O.A.No.85 of 2018. The said O.A. was filed by the respondent herein seeking a direction to the authorities to review his suspension from service *vide* proceedings dated 07.08.2017 and either reinstate him in service or pay enhanced subsistence allowance under Rule 53(1) of the Fundamental Rules. By the order under challenge, the Tribunal directed the Engineer-in-Chief, Panchayat Raj Department, Government of Andhra Pradesh, to review and revise the quantum of subsistence allowance payable to the respondent-applicant in terms of Fundamental Rule 53(1) since his suspension was being continued after three months. This exercise was directed to be completed within a time frame.

By order dated 15.06.2018, this Court stayed the operation of the order under challenge till further orders.

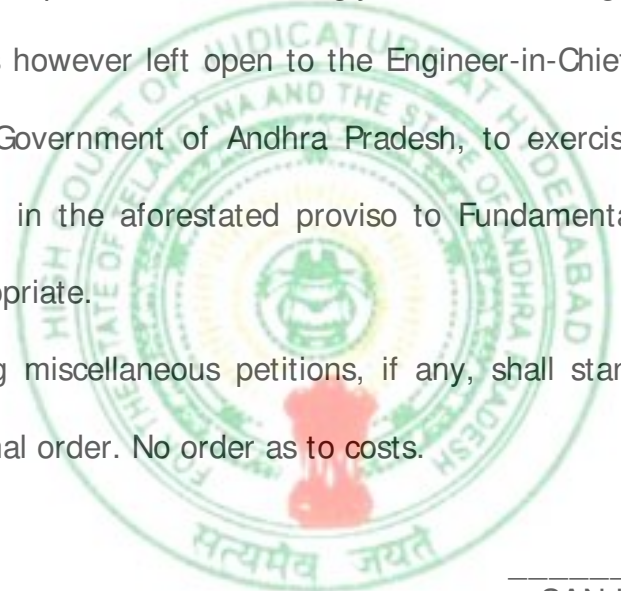
Heard the learned Government Pleader for Services, State of Andhra Pradesh, and Sri Sapthagiri, learned counsel representing Sri K.B.Ramanna Dora, learned counsel for the respondent-applicant.

The proviso to Fundamental Rule 53(1)(ii) states to the effect that where the period of suspension exceeds three 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 three months. This proviso therefore

makes it clear that there is no mandate cast upon such authority to invariably enhance the subsistence allowance after expiry of first three months. It only vests such authority with a discretion to do so in a deserving case. It would be for the authority concerned to exercise such discretion judiciously in a given case. No positive direction could therefore be given to the Engineer-in-Chief, Panchayat Raj Department, Government of Andhra Pradesh, to enhance the respondent-applicant's subsistence allowance as was done by the Tribunal in the order under challenge.

The writ petition is accordingly allowed setting aside the said direction. It is however left open to the Engineer-in-Chief, Panchayat Raj Department, Government of Andhra Pradesh, to exercise the discretion vested in him in the aforestated proviso to Fundamental Rule 53(1), if deemed appropriate.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR, J

M. GANGA RAO, J

Dt: 31.08.2018
PGS/IBL