

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.03.2019

Delivered on: 19.03.2019

C O R A M

The Honourable Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.43945 of 2006

A.Abdul Samadh

... Petitioner

Vs

1. The Deputy Inspector of General of Police,
Tirunelveli Range,
Tirunelveli.
2. The Deputy Inspector General of Police,
Technical Services,
Chennai-600 004.
3. The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents to grant subsistence allowance to the petitioner at the rate of 75% with effect from 04.10.2002 and to pay house rent allowance and city compensatory allowance admissible at the Chennai rate from 01.11.2003 in the light of Para 10 of the counter filed by the first respondent in C.A.No.311 of 2003 in O.A.No.2083 of 2003 and also in the light of the Judgment in O.A.No.3581 of 1994 and disburse the arrears with immediate effect.

For Petitioner : Mr.K.Vijayakumar
for Mr.S.Selvathirumurugan

For Respondents : Mr.K.S.Suresh
Government Advocate

O R D E R

This Writ Petition has been filed for issue of a Writ of Mandamus directing the respondents to grant subsistence allowance to the Petitioner at the rate of 75% with effect from

04.10.2002 and to pay house rent allowance and city compensatory allowance admissible at the Chennai rate from 01.11.2003 in the light of Para 10 of the counter filed by the first respondent in C.A.No.311 of 2003 in O.A.No.2083 of 2003 and also in the light of the Judgment in O.A.No.3581 of 1994 and to disburse the arrears with immediate effect.

2.This case has had a long history with multiple litigations in different fora. However, for purposes of deciding this Writ Petition it is sufficient to set out the salient facts briefly. The Petitioner was suspended with effect from 16.07.1993 by an Order of suspension dated 19.07.1993 on account of the alleged contravention of provisions of the erstwhile Foreign Exchange Regulation Act, 1973 by being in the alleged possession of foreign currency of the value of Rs.2,94,50,000/-. By Order dated 18.09.1995 in O.A.No.3581 of 1994, the Tamil Nadu Administrative Tribunal directed the respondents to increase the subsistence allowance payable to the Petitioner to 75% with effect from 15.01.1994. Thereafter, the suspension order dated 19.07.1993 was challenged by the Petitioner in O.A.No.4525 of 2001 before the Tamil Nadu Administrative Tribunal. The Petitioner also challenged the charge memo dated 23.05.2001 by filing O.A.No.5737 of 2001. Meanwhile, in view of the stay of the suspension Order dated 19.07.1993 in O.A.No.4525 of 2001, an order dated 20.08.2001 was issued by the Second Respondent releasing the Petitioner from suspension with immediate effect. Thereafter, both O.A.No.4525 of 2001 and O.A.No.5737 of 2001 were disposed of by a common Order dated 22.01.2002 of the Tamil Nadu Administrative Tribunal whereby the Tribunal directed the Respondents not to proceed with the departmental proceedings until the criminal case is concluded. In O.A.No.4525 of 2001 the Tribunal held that there is no necessity for passing fresh orders in respect of the suspension order dated 19.07.1993 because the Petitioner had been reinstated in service on 20.08.2001.

3.Strangely, subsequent to the final disposal of O.A.No.4525 of 2001, the First Respondent filed W.P.No.5564 of 2002 against the interim orders of the Tribunal in O.A.No.4525 of 2001. The said Writ Petition was dismissed as infructuous by Order dated 24.04.2002. Meanwhile, by order dated 28.02.2002 of the First Respondent, the Petitioner was posted to the Maniyachi Police Station, Thoothukudi District in an existing vacancy and he assumed charge as Inspector of Police, Maniyachi Police Station on 01.03.2002. Subsequently, by order dated 04.04.2002, the First Respondent once again placed the Petitioner under suspension with headquarters at Maniyachi during the period of suspension. The Petitioner was informed that he would be paid subsistence grant and dearness allowance during the period of suspension as per Fundamental Rule 53(1). This was followed by

the filing of W.P.No.21026 of 2002 by the Respondents challenging the interim orders in O.A.No.5737 of 2001. Once again, this Writ Petition was filed after the disposal of the main O.A.No.5737 of 2001. Accordingly, by Order dated 26.09.2002, a Division Bench of this Court dismissed the Writ Petition as infructuous.

4. Thereafter, the final Order dated 22.01.2002 in O.A.No.4525 of 2001 was challenged by the Respondents by filing W.P.No.37868 of 2002 and an interim stay was obtained by Order dated 07.10.2002. Subsequently, the Petitioner filed O.A.No.4947 of 2002 before the Tamil Nadu Administrative Tribunal challenging the 2nd order of suspension dated 04.04.2002 and by Order dated 02.01.2003 the Tribunal held that there is no necessity to pass orders in O.A.No.4947 of 2002 in view of the fact that W.P.No.37868 of 2002 is pending before this Court against the order dated 22.01.2002 in O.A.No.4525 of 2001. This order dated 02.01.2003 of the Tribunal was challenged by the Petitioner in W.P.No.7793 of 2003 wherein a Division Bench of this Court disposed of the Writ Petition as infructuous on the basis that there was no necessity for passing the fresh order of suspension on 04.04.2002 in view of the Order dated 07.10.2002 of this Court granting a stay of the Order dated 22.01.2002 in O.A.No.4525 of 2001 of the Tamil Nadu Administrative Tribunal. Thereafter, after submitting the representation dated 09.04.2003 and issuing legal notice dated 07.05.2003, the Petitioner filed O.A.No.2083 of 2003 praying that the Respondents should be directed to fix the headquarters of the Petitioner at the Police Computer Wing, Chennai as per suspension Order dated 19.07.1993 and to consequently direct the Respondents to pay subsistence allowance with arrears from 04.04.2002. By Order dated 24.06.2003, O.A.No.2083 of 2003 was disposed of by acceding to the request of the Petitioner to fix the headquarters at Chennai and by directing payment of subsistence allowance.

5. Thereafter, by proceeding dated 21.10.2003, the Director General of Police, Chennai directed the First Respondent to issue an order to the effect that the headquarters of the Petitioner would be at Chennai from 01.11.2003 but his subsistence grant will be drawn in Thoothukudi District and paid to the Petitioner during the suspension period.

6. It also appears that C.A. No.311 of 2003 was filed by the Petitioner in O.A.No.2083 of 2003 and a reply/counter was filed therein by the Respondents. In Paragraph 10 of the said reply, the Respondents have stated as follows:

"10. The averment of the applicant that he is under suspension from 19.07.1993 is in force can not be considered as he was ordered to be released from suspension on 17.12.2001 by

Deputy Inspector General of Police, Technical Services, Chennai and subsequently he was transferred to Maniyachi Police Station, where he served from 01.03.2002 to 05.04.2002. Hence his request to draw the subsistence allowance to be drawn by the then Deputy Inspector General of Police, Technical Services, Chennai can not be entertained. The Superintendent of Police, Thoothukudi has been instructed to draw the House Rent Allowance and City Compensatory Allowance admissible at the Chennai City Rate from 01.11.2003. 75% subsistence allowance will be considered and sanctioned from 04.10.2002 and he was placed under suspension and stipulated period of six months completed on 04.10.2002 after getting report from the investigating officer with regard to his cooperation of the applicant in the investigation of the above case."

7.The learned counsel appearing for the Petitioner submitted that by virtue of the Order dated 07.10.2002 in M.P.No.56802 of 2001 in W.P.No.37868 of 2002 interim stay of the Order dated 22.01.2002 in O.A.No.4525 of 2001 was granted by a Division Bench of this Court. He also contended that by Order dated 17.03.2003 in W.P.No.7793 of 2003, a Division Bench of this Court held that there was no necessity for passing a fresh order of suspension on 04.02.2002 in the light of the above mentioned Order dated 07.10.2002 in W.P.No.37868 of 2002. Accordingly, the contention of the learned counsel appearing for the Petitioner is that the order of suspension dated 19.07.1993 continues to be in operation and that the said order of suspension was issued when the Petitioner was employed as the Inspector of Police in the Police Computer Wing, Chennai. Consequently, he contends that subsistence allowance and city compensatory allowance, as admissible in Chennai, should be paid to the Petitioner. In this regard, the learned counsel for the Petitioner also invited the attention of this Court to paragraph 10 of the reply affidavit of the Respondents in C.A.No.311 of 2003 in O.A.No.2083 of 2003, which has been extracted in paragraph 6 above. On the basis of the averments in the said paragraph 10, he submitted that the respondents have admitted that house rent allowance and city compensatory allowance would be admissible at the Chennai city rate from 01.11.2003.

8.In response, the learned counsel appearing for the Respondents submitted that the Petitioner was released from suspension by Order dated 20.08.2001 and posted as Inspector of Police at Maniyachi Police Station by Order dated 28.02.2002 and that he assumed charge as Inspector of Police at Maniyachi

Police Station on 01.03.2002. Therefore, according to the learned counsel for the Respondents, the headquarters of the Petitioner was at Maniyachi Police Station, Thoothukudi District as of the date of the second suspension Order dated 04.04.2002. Accordingly, the learned counsel appearing for the Respondents submitted that Fundamental Rule (FR) 53(1)(c) would be applicable to the Petitioner with regard to the payment of house rent allowance and other applicable allowances. He further contended that the said FR 53(1)(c) would prevail notwithstanding the contrary averments in paragraph 10 of the reply affidavit of the respondents in C.A.No.311 of 2003.

9.This Court has carefully considered the documents and submissions of both sides.

10.Notwithstanding the long history of the dispute, the issue to be decided in this Writ Petition is limited. There is no dispute that subsistence allowance was paid at 75% as per FR 53(1) because the period of suspension of the Petitioner admittedly exceeded six months. Accordingly, the dispute gets narrowed down to the entitlement for house rent allowance and city compensatory allowance. If the headquarters of the Petitioner was at Chennai as on the date of suspension, the house rent allowance and city compensatory allowance as applicable to Chennai, would apply. On the other hand, if the headquarters of the Petitioner at the time of suspension was at Maniyachi Police Station, the allowances applicable to Chennai would not apply to the Petitioner. From the documents on record, it is abundantly clear that by order dated 20.08.2001, the Petitioner was released from suspension and thereafter posted as Inspector of Police, Maniyachi Police Station by order dated 28.02.2002. It is also an admitted position that the Petitioner assumed charge as Inspector of Police, Maniyachi Police Station on 01.03.2002. Accordingly, there is no doubt that the headquarters of the petitioner was at Maniyachi Police Station, Thoothukudi District as of the date of the second order of suspension dated 04.04.2002. In these facts and circumstances, FR 53(1)(c) should be examined and the said provision reads as under:

"(c) Government servants under suspension shall be paid house rent allowance in full at the rates admissible at the place where they are ordered to stay during suspension with reference to the pay last drawn before suspension. Where the headquarters of a Government servant under suspension is changed on his request, he shall be eligible for the house rent allowance at the rates admissible at the earlier headquarters or at the new headquarters whichever is less."

From the above provision, it is clear that Government servants under suspension shall be paid house rent allowance in full at the rates admissible at the place where they are ordered to stay during suspension and that if the headquarters of a Government servant under suspension is changed on his request, he shall be eligible for the house rent allowance at the rates admissible at the earlier headquarters or at the new headquarters whichever is less.

11.The question that arises for consideration is whether the Respondents are entitled to rely upon FR 53(1)(c) notwithstanding the averments in paragraph 10 of the reply affidavit in C.A.No.311 of 2003 in O.A.No.2083 of 2003. In this connection, it is relevant to refer to the judgments of the Hon'ble Supreme Court in SHREE SIDHBALI STEELS LIMITED AND OTHERS Vs. STATE OF UTTAR PRADESH reported in (2011) 3 SCC 193 and M/s. KOTHARI INDUSTRIAL CORPORATION LIMITED Vs. TAMIL NADU ELECTRICITY BOARD AND ANOTHER reported in (2016) 4 SCC 134 wherein the Hon'ble Supreme Court reiterated that there can be no estoppel against law/ statute. There is no doubt that the FRs are statutory rules and the Petitioner cannot claim a promissory estoppel on the basis of averments in a reply affidavit dated 29.03.2004. It would also be inequitable in the overall factual context.

12.In the instant case, although the Tamil Nadu Administrative Tribunal by Order dated 24.06.2003 directed the Respondents to fix the headquarters of the Petitioner at Chennai during the period of suspension, the said order was passed on the basis that the Petitioner is being prosecuted in a criminal case at Chennai. The said order does not direct the payment of house rent allowance and city compensatory allowance at the rates applicable to Chennai. In this connection, it is also relevant to notice that the Order dated 17.03.2003 of this Hon'ble Court in W.P.No.7793 of 2003 merely records that the second order of suspension dated 04.04.2002 was unnecessary while disposing of the said Writ Petition as being infructuous. In effect, it does not obliterate the fact that the Petitioner admittedly assumed charge as the Inspector of Police, Maniyachi Police Station on 01.03.2002 and that he was suspended by Order dated 04.04.2002 while he was stationed there. Accordingly, FR 53(1)(c) would apply and the house rent allowance at Maniyachi Police Station, Thoothukudi District would have to be compared with that in Chennai and the Petitioner would be entitled to the lower of the two.

13.In fine, this Writ Petition is dismissed. Nevertheless, the Petitioner shall be entitled to arrears, if any, of subsistence allowance, house rent allowances and other applicable allowances as permissible under the FR. There shall be no order as to costs.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

rrg

To

1. The Deputy Inspector of General of Police,
Tirunelveli Range,
Tirunelveli.
2. The Deputy Inspector General of Police,
Technical Services,
Chennai-600 004.
3. The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

+1 cc to Mr.S.Selvathirumurugan, Advocate, S.R.No.26383

+1 cc to the Government Pleader, S.R.No.26856

Order in
W.P.No.43945 of 2006

PP(CO)
SSM(10/04/2019).

सत्यमेव जयते

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