IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 11.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.15258 of 2005
and
W.M.P.No.16599 of 2005

M.Shanmugam ... Petitioner

Vs

The Revenue Divisional Officer,
Dharmapuri. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the respondent relating to the proceedings Na.Ka.8585/2000/A3 dated 12.08.2004 and quash the same and direct the respondent to release the eligible subsistence allowance under the fundamental Rule of the Tamil Nadu Government for the date of suspension 27.11.2002 to date of termination 12.08.2004 with interest at 18%.

For Petitioner : Mr.R.Ravi

For Respondent : Mrs.K.Bhuvaneswari, AGP

O R D E R

The petitioner herein, who was appointed as a Village Administrative Officer at Akkamanahalli Village, Dharmapuri District on 24.05.2000, was charged for a criminal offence in C.C.No.380 of 2000. In view of this, the petitioner herein was placed under suspension under Section 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules, by an order dated 27.11.2002. Pursuant to the suspension, a charge memo was issued and the petitioner was ultimately dismissed from the services. Since the respondent herein had failed to pay the subsistence allowance during the period of suspension, the present writ petition has been filed.

2. The learned counsel for the petitioner submitted that under the Fundamental Rules of the Tamil Nadu Government, the

petitioner, who has been placed under suspension will be entitled to subsistence allowance on an amount equal to half of the last drawn pay in addition to the dearness allowance, and for the period exceeding 6 months of suspension, he would be entitled for enhancement. Since the respondent had failed to pay the subsistence allowance in time, the petitioner had sent representations on 16.12.2003 and 21.06.2004, which were also not considered in time. Since the order refusing the subsistence allowance was passed along with the dismissal order, the same cannot be sustained.

3. The learned Additional Government Pleader submitted that since the suspension order required the petitioner to stay within the limits of the headquarters during the period of suspension and the petitioner had admitted to have shifted his residence outside the headquarters in his letter dated 09.08.2004, he is not entitled for subsistence allowance. Hence, the learned Additional Government Pleader submits that there is no infirmity in the impugned order.

4. I have given careful consideration to the submissions made by the respective counsels.

5. It is not in dispute that the suspension order was issued to the petitioner on 27.11.2002. Likewise, it is also not in dispute that the petitioner herein was never paid the subsistence allowance from the date of suspension, till the date of his dismissal. Fundamental Rule 53(1) entitles a Government Servant to receive subsistence allowance, when he is placed under suspension, at the rate of 50% of his last drawn pay, along with the dearness allowance and incase the period of suspension exceeds 6 months, he will be entitled for enhancement as contemplated under Fundamental Rule 53.

6. In the instant case, when the suspension order was passed on 27.11.2002, the respondent was bound to pay the subsistence allowance in view of Fundamental Rule 53. As a matter of fact, such a statement has also been made in the suspension order. When the respondent had failed to pay the subsistence allowance, the petitioner had sent a representation on 16.12.2003, i.e., immediately after his non-receipt of the first month is subsistence allowance. Thereafter, the petitioner had filed an original application before the Tamil Nadu Administrative Tribunal in O.A.No.1706 of 2004 and by an order dated 22.04.2004, the respondent was directed to immediately disburse the subsistence allowance for the period prior to the interim order of stay of the departmental proceedings. It was also observed in the order of the Tribunal that since the applicant himself had obtained the stay of the department proceedings, he

will not be entitled for enhancement of the subsistence allowance, after the expiry of 6 months.

7.In continuation of the order of Tribunal, the petitioner had sent another representation on 21.06.2004, seeking for subsistence allowance in accordance with the order of the Tribunal dated 22.04.2004. Thereafter, the respondent had chosen to conduct an enquiry with regard to the payment of the subsistence allowance and through a notice dated 30.07.2004, the petitioner was called upon for an enquiry. At this juncture, it would be appropriate to mention here that the action of the respondent in calling for an enquiry for the payment of statutory due of subsistence allowance, inspite of the direction of the Tribunal to pay the dues of the subsistence allowance, is highly illegal.

8. It is during the course of this enquiry, that a finding came to be rendered in the impugned order dated 12.08.2004 that the petitioner himself has admitted to have shifted his residence from the jurisdiction of the headquarters and therefore, had justified non-payment of the subsistence allowance.

9. It is not clear from the impugned order as to, from what date the petitioner is alleged to have shifted his residence from the jurisdiction of the headquarters. As observed earlier, the enquiry itself is illegal and in violation of the direction given by the Tribunal and in view of Fundamental Rule 53, the respondent was bound to pay the subsistence allowance with effect from 27.11.2002 itself. There is absolutely no explanation as to why the subsistence allowance was not paid earlier from 27.11.2002 onwards, till the impugned order was passed. In view of the high handedness on the part of the respondent in calling for an enquiry for the purpose of determining whether the petitioner is entitled for subsistence allowance or not, inspite of the direction of the Tribunal and the Fundamental Rule, I am of the view that the petitioner is entitled for payment of interest on the arrears of the subsistence allowance.

10. For the sake of clarity, with regard to the quantum of the subsistence allowance to be paid to the petitioner, the respondent herein shall take into account the period from 27.11.2002 till 09.12.2003 for payment of subsistence allowance, in accordance with Fundamental Rule 53 and thereafter, since the petitioner had obtained stay of the department proceedings with effect from 09.12.2003, the respondent shall pay the subsistence allowance from 09.12.2003 till 12.08.2004 at the rate of 50% of the last drawn pay, along with dearness allowance.

11. In the light of the foregoing reasons, the impugned order dated 12.08.2004 on the file of the respondent in proceedings Na.Ka.8585/2000/A3, is quashed. Consequently, the respondent herein is directed to forthwith disburse the entire outstanding subsistence allowance dues together with interest at the rate of 6% p.a. from the date of suspension till the date of actual payment. Such an exercise shall be completed within a period of 6 weeks from the date of receipt of copy of this order.

12. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jas/hvk

To

The Revenue Divisional Officer,
Dharmapuri.

+1 cc to Mr.R.Ravi, Advocate, Sr.No. 36541
+1 cc to The Government Pleader, Sr.No. 36320

W.P.No.15258 of 2005
and
W.M.P.No.16599 of 2005

CSL/06.06.2019