

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 28.08.2019****CORAM:****THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM****W.P. (MD) No. 1502 of 2014****and****M.P. (MD) No. 1 of 2014**

A. Gabriel Sammanasu

... 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 under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for entire records relating to the impugned proceedings of the first respondent vide Copy of Proceedings No.DC6/7551/2012, dated 28.11.2013 received on 02.01.2014 and quash the same in so far as giving effect to the enhancement of subsistence allowance from 25.11.2013 instead of 01.09.2012 and consequently direct the respondent to pay 75% subsistence allowance to petitioner from 01.09.2012 till the order of suspension is revoked.

For Petitioner : Mr. AL. Kannan
For Respondents : Mr. R. Ravichandran

ORDER

The order dated 28.11.2013 rejecting the claim of the writ petitioner for grant of 75% of subsistence allowance with effect from 1.9.2012 is under challenge.

2. The writ petitioner was employed as Work Assistant in Trichirapalli Housing Unit of the Tamil Nadu Housing Board and was placed under suspension on the ground that a criminal case was registered against him for demand and acceptance of bribe under Section 7 read with 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The criminal case registered against the writ petitioner under the Prevention of Corruption Act is pending as of now. But the grievance of the writ petitioner is that the period of suspension exceeded beyond six months and therefore, he is entitled for 75% of the subsistence allowance.



3. This Court is of the considered opinion that the rule relating to the subsistence allowance says that grant of 75% subsistence allowance is the discretion of the competent authority. The claim of 75% subsistence allowance with effect from 1.9.2012 cannot be a right of an employee, who is under suspension. The allegations against the writ petitioner are undoubtedly serious and in relation of demand and acceptance of bribe and the criminal case was registered against the writ petitioner under the Prevention of Corruption Act. In this regard, the writ petitioner submitted an application to the respondents and the said application was rejected on the ground that 75% of the subsistence allowance cannot be paid with effect from 1.9.2012, however, subsistence allowance was ordered to be paid with effect from 25.11.2013 at the rate of 75%.

4. The learned counsel appearing on behalf of the writ petitioner states that even the order impugned dated 28.11.2013 has not been implemented. In this regard, the learned Special Government Pleader appearing on behalf of the respondents states that the writ petition is pending and on that ground the enhancement of subsistence allowance has not been paid to the writ petitioner.

5. May that it be, this Court is of the considered opinion that the writ petitioner is under suspension for about six years. Keeping an employee under suspension for unspecified period is not desirable. The Principal Bench of this Court in W.P.No.14854 of 2018, dated 25.02.2017 dealt with the similar matter and the relevant portion of the said order in paragraph Nos.2,3,4 & 5 reads as under:-

"2. Prolonged suspension is bad in law. On initiation of disciplinary proceedings, undoubtedly an employee shall be placed under suspension by the Competent Authority. However, the authorities competent must ensure that the departmental disciplinary proceedings initiated against the employees are concluded within a reasonable period of time. In the event of an enormous delay in concluding the departmental disciplinary proceedings, then the authorities competent must review the order of suspension for its revocation. If it is not possible for the authorities to conclude the departmental disciplinary proceedings, then the order of suspension can be revoked and the employees shall be reinstated into service and post in any one of the non-sensitive post till the conclusion of the departmental disciplinary proceedings as well as the criminal case registered against him. Contrarily, an employee cannot be kept under suspension for years together without any progress in departmental disciplinary proceedings.

<https://hcservices.ecourts.gov.in/hcservices> 3. Undoubtedly, disposal of the criminal case may take long years by the Competent Court of law. However, there is no bar for the disciplinary authorities to continue the



departmental disciplinary proceedings even during the pendency of the criminal case. In other words, mere pendency of the criminal case is not a bar for the continuance of the departmental disciplinary proceedings. If the files, materials and other records are available with the authorities competent, then they are at liberty to continue the departmental disciplinary proceedings, conclude the same and pass final orders pending disposal of the criminal case.

4. If an employee after departmental disciplinary proceedings is convicted by the Competent Court of Law, then further actions shall be taken or the earlier orders shall be reviewed for issuing appropriate orders based on the conviction. There is no impediment for the authorities on initiation of fresh proceedings, if a public servant is convicted in criminal case by the competent Court of Law. Considering all these aspects, the disciplinary authorities shall continue the departmental disciplinary proceedings and pass final orders pending disposal of the criminal case. This being the legal principles settled by the Constitutional Courts, the authorities need not keep an employee under suspension for an unspecified period. Keeping an employee under suspension for long years and paying subsistence allowance for an unspecified period is causing financial loss to the State exchequer. Payment of subsistence allowance without extracting work is a financial loss to the State exchequer. Thus, the authorities must be vigilant and review the order of suspension periodically and if there is no impediment, conclude the disciplinary proceedings and pass final orders.

6. In respect of the present writ petition, the respondents have already passed an order granting 75% of subsistence allowance with effect from 25.11.2013. Such an order itself will cause great financial loss to the Board. Contrarily, the respondents can reinstate the writ petitioner and pay the salary after extracting the work. The writ petitioner already under suspension for about six years and criminal case may take some more time for final disposal. Under these circumstances, this Court is inclined to mold the relief sought for in the present writ petition in the interest of justice and the following orders are passed:-

(i) The order of suspension issued by the first respondent in Memo No.DC-6/7551/2012, dated 27.02.2012 is quashed. Consequently, the impugned order passed by the respondent in proceedings No.DC6/7551/2012, dated 28.11.2013 also stands quashed.

<https://hcservices.ecourts.gov.in/hcservices/>

(ii) The respondents are directed to reinstate the writ petitioner in service and post him in any one of the non-



sensitive post till the disposal of the Departmental Disciplinary Proceedings as well as the criminal case pending against the writ petitioner.

(iii) All further actions shall be initiated based on the development made in the criminal case as well as in the Departmental Disciplinary Proceedings.

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

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS)

To

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.

+1 CC to Mr.R.RAVICHANDRAN, Advocate (SR-84696[F] dated
30/08/2019)

W.P. (MD) No.1502 of 2014
28.08.2019

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MK (09.09.2019) 4P 4C