IN THE HIGH COURT OF MANIPUR
AT IMPHAL

W.P.C No. 838 of 2016

Md. Yahiya Khan, Rfm. No. 405077, 4th Indian Reserve Batallion, Manipur, Thenguchingjin, aged about 31 years, S/o Md. Hassimiddin of Lilong Chingkham Mamang Tamyai Sumang, P.O. & P.S. Lilong, District-Thoubal, Manipur

... Petitioner

- Versus -

1. The State of Manipur represented by the Additional Chief Secretary (Home), Government of Manipur.
2. The Director of General of Police, Manipur.
3. The Commandant, 4th Indian Reserve Battalion, Manipur, Thenguchingin.

... Respondents

B E F O R E
HON'BLE MR. JUSTICE MV MURALIDARAN

For the petitioner	:: Mr M. Devananda, Adv.
For the respondents.	:: H.Mr.Samarjit, GA.
Date of hearing and Reserved for order.	:: 17.12.2019.
Date of judgment & Order.	:: 27.1.2020.

JUDGMENT & ORDER
(CAV)

[1] This writ petition has been filed by the petitioner seeking to quash the impugned suspension order dated 23.5.2015

and to reinstate him and to release the pay and allowances entitled by the petitioner from the date of his suspension till date.

[2] According to the petitioner, while he was working, the Commandant, 4th Indian Reserve Battalion, Manipur, issued the impugned suspension order dated 23.5.2015 in contemplation of a disciplinary proceedings initiated against him. Since no subsistence allowance was given, on 12 .7.2016, the petitioner has submitted a representation to the Commandant, 4th Indian Reserve Battalion, requesting to revoke the suspension order and grant him subsistence allowance, as he is entitled to the subsistence allowance under the provisions of FR 53. Since no action was taken by the respondents for payment of subsistence allowance, the petitioner has filed the present writ petition.

[3] The second respondent filed counter stating that the petitioner who was attached with CDO, BPR was absent with effect from 17.5.2015 till 23.5.2015 and during which he was arrested by Imphal West District Police on 19.5.2016 in connection with FIR No.68(5)2015. Hence, he was suspended with effect from 23.5.2015. As far as payment of subsistence allowance is concerned, the petitioner was asked to furnish a certificate that he is not engaged in any other employment, business, profession or vocation and till date the petitioner has not furnished non-

engagement certificate. As per FR 53(2) no payment shall be made unless a Government servant furnishes a certificate that he is not engaged in any other employment, business or vocation. It is stated that whether sub-rule (6) of Rule 10 of CCS (CCA) Rules, 1965 is adopted or not is the subject matter in W.A.No.82 of 2016 and the same is still pending for disposal before this court.

[4] Assailing the suspension order, the learned counsel for the petitioner submitted that no departmental enquiry was initiated against the petitioner till date even after lapse of more than four years and as per FR 53, employee under suspension or deemed to be under suspension is entitled to subsistence allowance, however, the petitioner has not been provided so. The learned counsel further submitted that the official respondents did not review the said Suspension order before the expiry of 90 days in accordance with Rule 10(7) of CCS (CCA) Rules, 1965 and as such, the order of suspension is illegal in the eye of law and therefore, the same is liable to be quashed.

[5] Per contra, the learned counsel for the State respondent submitted that the petitioner has not furnished a certificate that he is not engaged in any other employment and only if the petitioner furnishes certificate, the respondent authorities able to pay the subsistence allowance. As far as reviewing of

suspension is concerned, the subject matter is pending before this Court in W.A.No.82 of 2016.

[6] I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

[7] While the petitioner was working with CDO, BPR, he was absent for duty with effect from 17.5.2015, for which, he was issued with the impugned suspension order dated 23.5.2015. According to the petitioner, he is entitled to get subsistence allowance as admissible under rules during the period of suspension.

[8] According to the petitioner, the respondent authorities issued the suspension order on the ground that the petitioner was arrested by the City Police on 19.5.2015 in connection with FIR No.68(5) 2015 and was released on bail on 22.4.2016. In this regard, the petitioner submitted a representation on 12.7.2016 seeking to revoke the suspension order and to grant subsistence allowance from the date of suspension i.e. 23.5.2015. Since the said representation has not been considered by the respondent authorities, the petitioner has approached this Court by filing the present writ petition. According to the petitioner, no departmental

enquiry was initiated against him till date. The said fact has not been disputed by the respondent authorities.

[9] It is the say of the petitioner that even though the suspension order was issued on 23.5.2015, the respondent authorities had not paid subsistence allowance, which the petitioner is entitled to under the provisions of FR 53 and that the non-compliance of the provisions of FR 53 had led to violation of his Right to Life guaranteed under Article 21 of the Constitution of India. It is further contended that the purpose of keeping the petitioner under suspension without giving subsistence allowance is to harass and humiliate the petitioner and such action of the respondent authorities are arbitrary and illegal.

[10] On the other hand, it is the say of the respondent authorities that subsistence allowance could not be given to the petitioner since he had not furnished the certificate to the effect that he was not engaged in any other employment during the period of suspension.

[11] It is not in dispute that the petitioner was placed under suspension on 23.5.2015 and the said order had not been revoked till date. The learned counsel for the petitioner submitted that as per the dictum laid down by the Hon'ble Supreme Court in the case of **Union of India and others v. Deepak Mali, reported in (2010) 2**

SCC 222, the suspension order dated 23.5.2015 is liable to be quashed.

[12] In Deepak Mali, supra, the Hon'ble Supreme Court held that having regard to the amended provisions of sub-rule (6) and (7) of Rule 10, the review for modification or revocation of the order of suspension was required to be done before the expiry of 90 days from the date of order of suspension and as categorically provided under sub-rule (7), the order of suspension made or deemed would not be valid after a period of 90 days unless it was extended after review for a further period of 90 days.

[13] The learned counsel for the petitioner brought to the notice of this Court that the order dated 11.3.2015 passed by this Court in similar case being W.P.(C) No.1032 of 2014, wherein it has been held that it is clear from the sub-rule (6) that an order of suspension made under the Rule shall be reviewed by the authority which is competent to modify or revoke the, suspension order before the expiry of 90 days from the effective date of suspension and only on recommendation of the Review Committee constituted for the purpose, the order of suspension can be extended not exceeding 180 days at a time.

[14] Sub-rule (7) prescribes that order of suspension made under sub-rule (1) of Rule 10 shall not be valid after a period of 90

days unless extended after a review for a further period before expiry of 90 days from the effective date of suspension.

[15] This Court is of the view that the present writ petition is squarely covered by the law laid down by the Hon'ble Supreme Court in the case of Deepak Mali, supra, and that the suspension order dated 23.5.2015 is liable to be set aside.

[16] Qua non-grant of subsistence allowance, it is undoubtedly clear that as per provisions of FR 53, a Government servant under suspension shall be entitled to subsistence allowance at an amount equal to the 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.

[17] The argument advanced by the learned counsel for the respondent State is that since the petitioner has not furnished the certificate to the effect that he was not employed anywhere during the period of suspension, the subsistence allowance could not be given to him. If that be so, the petitioner can be directed to furnish such certificate and on receipt thereof, the respondent authorities shall grant the subsistence allowance to the petitioner.

[18] For the foregoing discussions, the writ petition is allowed and the impugned suspension order dated 23.5.2015 is set aside. This Court directs the petitioner to furnish the certificate within a week to the effect that he was not employed anywhere during the period of suspension and on receipt of such a certificate from the petitioner, the respondent authorities shall grant the pay and allowances to the petitioner, within a period of eight weeks from the date of receipt of the said certificate. No costs.

JUDGE

FR/NFR

John kom

WAIKHOM TONEN MEITEI Digitally signed by WAIKHOM TONEN MEITEI Date: 2020.02.03 12:15:46 +05'30'