

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2020

CORAM

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

WP.No.1986 of 2020

R.Chensulakshmi

... Petitioner

- Vs -

1. The Government of Tamil Nadu,
represented by the Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai-600 009.

2. The Director of Public Health and
Preventive Medicine,
Chennai-600 006.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, directing the respondents to enhance the subsistence allowance (provisional pension) to 75% with effect from 01.02.2017 and disburse the General Provident Fund, Special Provident Fund and Encashment of Leave to the petitioner within a time limit to be fixed by this Court.

For Petitioner : Mr.P.Rajendran

For Respondents: Mr.K.Parameshwaran
Government Advocate

O R D E R

This writ petition has been filed for the issue of writ of Mandamus directing the respondents to enhance the subsistence allowance payable to the petitioner and also for the disbursement of the General Provident Fund, Special Provident Fund and Encashment of Leave to the petitioner.

2. The petitioner was working as a Sector Health Nurse in the Government Primary Health Centre at Dharmapuri District. A charge memo came to be issued to the petitioner by proceedings dated 13.11.2015. The petitioner submitted her explanation to

the charge memo. Thereafter, another charge memo came to be issued on 20.06.2016, which was in substitution to the earlier charge memo and again the petitioner submitted an explanation denying the charges.

3. The petitioner was due for retirement on 31.07.2016. The second respondent, by proceedings dated 26.07.2016 placed the petitioner under suspension and also did not permit the petitioner to retire from service till the completion of the departmental proceedings.

4. The petitioner being aggrieved by the proceedings of the second respondent dated 26.07.2016, approached this Court and filed a writ petition in WP.No.35619 of 2016. The writ petition itself was taken up for final hearing and by order dated 06.10.2016, this Court directed the Disciplinary proceedings itself to be completed within a period of eight weeks.

5. According to the petitioner, an Enquiry Officer was appointed and two witnesses and the petitioner were examined. Thereafter, there is absolutely no progress for more than two years. According to the petitioner, the petitioner is entitled for the enhanced subsistence allowance and for the General Provident Fund, Special Provident Fund and Encashment of Leave. Claiming the same, the present writ petition has been filed before this Court.

6. Heard Mr.P.Rajendran, learned counsel appearing on behalf of the petitioner and Mr.K.Parameshwaran, learned Government Advocate appearing on behalf of the respondents.

7. This Court had already fixed a time limit for the completion of the disciplinary proceedings by its order dated 06.10.2016 made in WP.No.35619 of 2016. It is seen that this order has not been complied with and till date, the proceedings are kept pending. In the meantime, the petitioner had sought for enhancement of subsistence allowance and for payment of retirement benefits.

8. As per the Fundamental Rules, where the Government Servant continues to be under suspension after the date of retirement, the amount of subsistence allowance will be equal to Provisional Pension that is admissible to the Government Servant. Therefore, the petitioner will be entitled to receive a subsistence allowance, which will be equivalent to the Provisional Pension.

9. The Division Bench of this Court in the case of The Secretary to Government and 2 others Vs. K.Palaniyandi in WA. (MD).No.105 of 2019 has categorically held that the retirement benefits like Provident Fund, Gratuity and Encashment of Leave are considered to be the properties of the employees and irrespective of result of the disciplinary proceedings, an employee is entitled to get these benefits. The above judgment has settled the issue on this aspect.

10. In the light of the above discussion, the following directions are issued to the second respondent:-

a. The second respondent is directed to immediately sanction the subsistence allowance which is equal to the provisional pension that is admissible to the petitioner and pay the entire arrears of subsistence allowance, if any, within a period of four (4) weeks from the date of receipt of a copy of this order. The second respondent will also continue to pay the same amount every month towards subsistence allowance till the completion of the disciplinary proceedings.

b. The second respondent is directed to pass orders within a period of four (4) weeks from the date of receipt of a copy of this order and shall enable the petitioner to receive the General Provident Fund, Special Provident Fund and Encashment of Leave and

c. The second respondent is directed to complete the disciplinary proceedings and pass final orders within a period of eight (8) weeks from the date of receipt of a copy of this order.

11. This writ petition is disposed of with the above directions. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

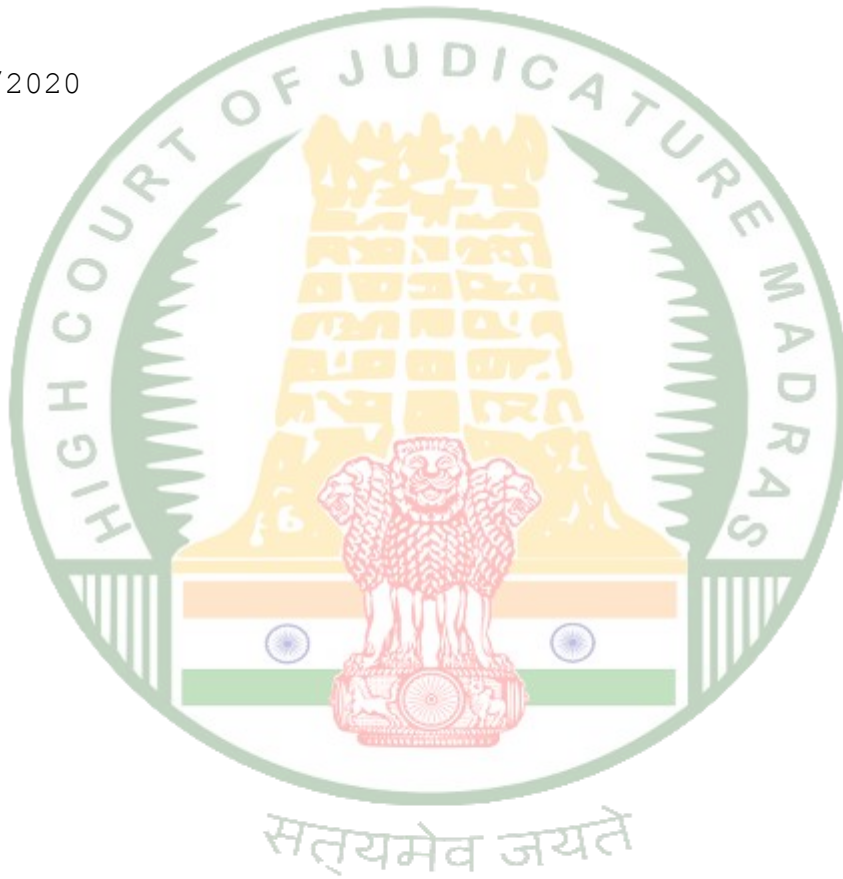
1. The Secretary to Government,
Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George,
Chennai-600 009.

2. The Director of Public Health and Preventive Medicine,
Chennai-600 006.

+1cc to the Government pleader Sr.11831
+1cc to Mr.P.Rajendran, Advocate Sr.11483

WP.No.1986 of 2020

ssd[co]
srg 12/03/2020



WEB COPY