



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.01.2020**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

Writ Petition(MD) No.433 of 2020

T.S.Chandrasekaran

... Petitioner

/vs./

1.The Director of School Education,
Chennai-6.

2.The Joint Director of School Education,
(Personnel) Chennai-6.

3.The Joint Director of School Education,
(Secondary Education), Chennai-6.

4.The District Educational Officer,
Tenkasi.

5.The Block Educational Officer,
Nanguneri.

... Respondents

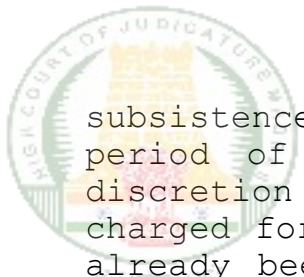
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the second respondent in his proceedings in Na.Ka.No.9925/A3/E3/2019, dated 04.12.2019 and quash the same and the consequently directing the second respondent to increase the subsistence allowance as per Rule 53 (1) (a) (i) of Fundamental Rules of Tamil Nadu Government Servants within stipulated time.

For Petitioner : Mr.T.A.Ebenezer

For Respondents : Mr.M.Karuppasamy
Government Advocate

ORDER

The petitioner herein has been placed under suspension on 20.02.2019, on a set of alleged charges, for which, departmental action has already been initiated. When the suspension order continued to be in force for more than six months, the petitioner herein had sought for increase of his subsistence allowance, through his letter dated 17.09.2019. However, through the impugned order, dated 04.12.2019, it was stated that the provisions for increase of



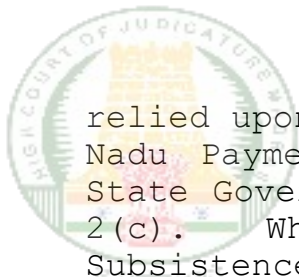
subsistence allowance in case of Government employees, after a period of six months of the suspension, by another 50%, is a discretion of the Authority and since the petitioner has been charged for certain misconducts, for which, departmental action has already been initiated, the discretion to increase the subsistence allowance cannot be exercised. The impugned order also places reliance upon Rule 3(1) of the Payment of Subsistence Allowance Rules under the Tamil Nadu Act 43. Challenging the same, the present writ petition has been filed.

2.At the outset, it is to be pointed out that the interpretation of the respondents, rendered in the impugned order, is totally misconceived. Firstly, Fundamental Rule 53(1)(a)(i) empowers the respondents to increase the subsistence allowance by a suitable amount, not exceeding fifty per cent of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the said authority, the period of suspension has been prolonged, for reasons to be recorded in writing, is not directly attributable to the Government servant. Though the payment of the increased subsistence amount after a period of six months seems to be made discretionary in view of the employment of the word "may", such a discretion is coupled with the consequential provisions, stating that the discretion could be exercised only when the suspension period is prolonged for reasons directly attributable to the Government servants. In other words, when the Government servants do not attribute to the delay, he would be entitled to increase of the subsistence allowance, after a period of six months from the date of the suspension. The present impugned order does not refer to any delay on the part of the petitioner for prolonging the departmental action and in the absence of the same, it can only be considered that the delay is on the part of the respondents, in failing to complete the enquiry.

3.Incidentally, by a letter dated 28.09.2017, a notice contemplating enquiry was issued by the third respondent, to which, the petitioner had given his explanation on 06.10.2017 itself. Thereafter, the suspension order came to be passed only on 20.02.2019. Immediately, after the expiry of six months, the petitioner had made an application for increase of the subsistence allowance on 17.09.2019. The impugned order came to be passed on 04.12.2019. In this background, it cannot be said that there was any delay on the part of the petitioner herein in attributing to the delay in the departmental action.

4.While that being so, the very reasoning that the Fundamental Rule 53(1)(a)(i) is a discretion of the Authority, cannot be sustained.

5.There is also a reference made to Rule 3(1) of the Payment of Subsistence Allowance Rules under the Tamil Nadu Act 43 of 1981. In <https://hcservices.mca.gov.in/cases>, the purpose for which the Rule or the Act is



relied upon in the impugned order, is not clear. Further, the Tamil Nadu Payment of Subsistence Allowance Act does not apply to the State Government, in view of the definitions under Section 2(a) and 2(c). While that being so, the reference to the Payment of Subsistence Allowance Rules, is unwarranted.

6. For all the foregoing reasons, this Court is of the view that the impugned order cannot be sustained. Accordingly, the impugned order passed by the second respondent in Na.Ka.No.9925/A3/E3/2019, dated 04.12.2019, is set aside. Consequently, there shall be a direction to the second respondent to increase the subsistence allowance of the petitioner with effect from the expiry of six months from the date of the original suspension order, on such percentage as specified under Rule 53(1)(a)(i) of the Fundamental Rules of Tamil Nadu Government Servants, within a period of thirty (30) days from the date of receipt of a copy of this order.

7. The writ petition stands allowed accordingly. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sjj

To

1. The Director of School Education, Chennai-6.

2. The Joint Director of School Education,
(Personnel) Chennai-6.

3. The Joint Director of School Education,
(Secondary Education), Chennai-6.

4. The District Educational Officer, Tenkasi.

5. The Block Educational Officer, Nanguneri.

+1 CC to M/s.T.A.EBENEZER, Advocate (SR-4097[F] dated 31/01/2020)

+1 CC to M/s.SPL.GP (SR-4334[F] dated 31/01/2020)

Order made in
W.P.(MD) No.433 of 2020
30.01.2020

JMN(18.02.2020) 3P : 8C

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