



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

W.P.NO.15247 OF 2021

AND

W.M.P.NO.16135 OF 2021

P.Isvarane

... Petitioner

.Vs.

1. The Puducherry Housing Board,  
Rep by its Chairman,  
Nellithope, Anna Nagar,  
Puducherry - 605 005.

2. The Secretary,  
Pudhucherry Housing Board,  
Nellithope, Anna Nagar,  
Puducherry - 605 005.

3. The Chairman,  
Pudhucherry Housing Board,  
Nellithope, Anna Nagar,  
Puducherry - 605 005.

... Respondent

PRAYER:-

This Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents to pay subsistence allowance to the petitioner as per Rule 53 of the Fundamental Rules during the period for which the petitioner stands suspended with effect from 22/01/2021, by virtue of the suspension order dated 22.01.2021, passed by the second respondent bearing No.15516/PHB/Estt/2020/22/667 and as extended for a further period of 3 months under the order of the second respondent dated 20.04.2021, bearing No.15516/PHB/Estt/E3/91/158.

For Petitioner : Mr.P.V.Ramachandran

For Respondents : Ms.V.Usha  
Additional Government Pleader  
(Pondy)



## O R D E R

(The case has been heard through video conference)

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The petitioner has filed the present writ petition seeking a Mandamus, directing the respondents to pay subsistence allowance to the petitioner for the period of suspension from 22.01.2021.

2. According to the petitioner, he was employed as Junior Engineer in the first respondent Housing Board and he was also the former President of the Puducherry Housing Board Employees Union. According to the petitioner the first respondent Board has not paid the salary for the past 4 years and it was informed by the first respondent that certain passive properties would be sold and outstanding salaries would be paid from the sale proceeds. Further, according to the petitioner, the Employees Provident Fund Organisation (EPFO) had offered to purchase the passive properties, however, ignoring the good offer made by the EPFO, the first respondent attempted to bring the properties for sale through e-auction. Therefore, the petitioner sent a representation dated 25.06.2020, to the Lieutenant Governor of Puducherry in his capacity as Secretary of the Pondicherry Housing Board Employees Union putting forth the Union's views on the issues, inadvertently in the letter-head of the Pondicherry Housing Board Employees Union, whose registration has been cancelled.

3. Subsequently, the second respondent issued a memo dated 29.12.2020, seeking explanation from the petitioner for falsification/misuse of official documents and false allegation against superiors. The petitioner submitted his reply on 07.01.2021 and not being satisfied with the same, suspended the petitioner from service vide its order dated 22.01.2021 and subsequently by another order dated 20.04.2021, extended the suspension for three more months. The petitioner submitted a representation dated 26.04.2021, seeking subsistence allowance from 22.01.2021 and the respondents vide memo dated 17.05.2021, informed the petitioner that subsistence allowance will be given to the petitioner as per Rules on receipt of funds after sale of Murungapakkam land. Being aggrieved over non-payment of subsistence allowance, the petitioner has come up with the present writ petition.

4. It is contended by the learned counsel appearing for the petitioner that the order of suspension has been issued not as a measure of punishment, but as an order of suspension pending disciplinary proceedings, the employer is bound to pay subsistence allowance to the petitioner.



5. Ms.V.Usha, learned Additional Government Pleader (Pondy) appearing for the respondents sought eight weeks time to pay the subsistence allowance to the petitioner.

6. This Court heard the submissions of the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and also perused the records carefully.

7. It is settled law that even though the employer has inherent right to suspend an employee, such employee, during the period of suspension, must be paid subsistence allowance, so that the employee can survive during the period of continuance of departmental proceeding. Further, in many decisions non-payment of subsistence allowance has been considered as sufficient ground for vitiating the ultimate order passed in the departmental proceedings, hence it is in the interest of employer to pay subsistence allowance to the employee before conclusion of the departmental proceedings. Further, the Hon'ble Supreme Court in very many decisions, has held that payment of subsistence allowance itself is considered as an incidence of right to life as reflected in Article 21 of the Constitution of India.

8. Considering the facts and circumstance of the case, this Court is inclined to dispose of the writ petition with a direction to the respondents to pay the subsistence allowance to the petitioner as per Rules, from the date of suspension. The arrear amount payable till the end of August, 2021 should be paid within a period of six weeks. The amount payable from the month of September, 2021 onwards should be paid by 10<sup>th</sup> of each succeeding month. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Puducherry Housing Board,  
Nellithope, Anna Nagar,  
Puducherry - 605 005.



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SPD(CO)  
PBS/16/09/2021