IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.10.2021

PRONOUNCED ON : 23.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.21866 OF 2021
(Through Video Conferencing)

R.Ganesan ...Petitioner

vs.

1. The Secretary to Government,
   Revenue (Services II) Department,
   Fort St.George, Chennai - 9.

2. The Commissioner of Revenue Administration,
   & Additional Chief Secretary to Government,
   Revenue Administration, Disaster Management,
   & Mitigation Department,
   Chepauk, Chennai - 5.

3. The District Collector,
   Namakkal District.

4. The Revenue Divisional Officer,
   Namakkal Division, Namakkal Dist.

5. The Tahsildar,
   Namakkal Taluk,
   Namakkal. ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 4th respondent in connection with the impugned order passed by him in Na.Ka.No.3318/2017/A1 dated 28.12.2020 and quash the same and direct the respondents to sanction and disburse the subsistence allowance due to the petitioner from 01.07.2017 to till date within a reasonable time frame .

For Petitioner : Mr.M.Alagu Goutham

For Respondents : Mr.L.S.M.Hasan Fizal
Govt.Advocate.

ORDER

This writ petition has been filed to issue a writ of Certiorarified Mandamus calling for the records of the 4th respondent to sanction and disburse the subsistence allowance due to the petitioner from 01.07.2017 to till date within a reasonable time frame.

2. The short point for consideration in this Writ Petition is whether the petitioner was entitled for subsistence allowances during the period of suspension under Rule 56(1)(c) of the Fundamental Rules or not. It is the case of the petitioner that on the date of superannuation, the petitioner was placed under suspension and that till date, the respondents have not initiated any disciplinary proceedings against the petitioner. It is submitted that the petitioner is entitled for subsistence allowances.

3. The learned counsel further submits that though the petitioner had earlier challenged the suspension order dated 30.06.2017 in W.P.No.19121 of 2017 and that the said writ petition was dismissed on 26.07.2017, yet the petitioner is entitled for subsistence allowances.

4. Appearing on behalf of the respondents, the learned Government Advocate submits that the petitioner was appointed only under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules and that the petitioner was covered only by the Contributory Pension Schemes for having been appointed after the cut off date and consequently and therefore the question of paying the subsistence allowances in terms of Rule 56(1)(c) of the Fundamental Rules does not arise.

5. By way of rejoinder, the learned counsel for the petitioner submits that the petitioner is entitled for subsistence allowances in terms of the decision of the Hon'ble Supreme Court in Captain M.Paul Anthony Vs. Bharat Gold Mines Limited and Another, (1999) 3 SCC 679. The learned counsel has specifically drawn attention to the following paragraphs:-

> 26. To place an employee under suspension is an unqualified right of the employer. This right is conceded to the employer in service jurisprudence everywhere. It has even received statutory recognition under service rules framed by various authorities, including the Government of India and the State Governments. [See: for example, Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules.] Even under the General Clauses Act, 1897, this right

is conceded to the employer by Section 16 which, inter alia, provides that power to appoint includes power to suspend or dismiss.

27. The order of suspension does not put an end to an employee's service and he continues to be a member of the service though he is not permitted to work and is paid only subsistence allowance which is less than his salary. (See: State of M.P. v. State of Maharashtra [(1977) 2 SCC 288 : (1977) 2 SCR 555 : AIR 1977 SC 1466] .)

28.Service rules also usually provide for payment of salary at a reduced rate during the period of suspension. (See: Fundamental Rule 53.) This constitutes the "subsistence allowance". If there is no provision in the rules applicable to a particular class of service for payment of salary at a reduced rate, the employer would be liable to pay full salary even during the period of suspension.

29. Exercise of right to suspend an employee may be justified on the facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by a "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension. Suspension notwithstanding, non-payment of subsistence allowance is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilised and the salary is also paid to him at a reduced rate under the nickname of "subsistence allowance", so that the employee may sustain himself. This Court, in O.P. Gupta v. Union of India [(1987) 4 SCC 328 : 1987 SCC (L&S) 400 : (1987) 5 ATC 14] made the following observations with regard to subsistence allowance: (SCC p. 340, para 15)

> "An order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as explained by this Court in Khem Chand v.

> Union of India [AIR 1958 SC 300 : (1959) 1 LLJ 167] is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance — generally called subsistence allowance — which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental enquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression 'subsistence allowance' has an undeniable penal significance. The dictionary meaning of the word 'subsist' as given in Shorter Oxford English Dictionary, Vol. II at p. 2171 is 'to remain alive as on food; to continue to exist'. 'Subsistence' means — means of supporting life, especially a minimum livelihood." (Emphasis supplied).

30. If, therefore, even that amount is not paid, then the very object of paying the reduced salary to the employee during the period of suspension would be frustrated. The act of non-payment of subsistence allowance can be likened to slow-poisoning as the employee, if not permitted to sustain himself on account of non-payment of subsistence allowance, would gradually starve himself to death.

31. On joining government service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights, in favour of the Government. The Government, only because it has the power to appoint does not become the master of the body and soul of the employee. The Government by providing job opportunities to its citizens only fulfils its obligations under the Constitution, including the Directive Principles of State Policy. The employee, on taking up an employment only agrees to subject himself to the regulatory measures concerning his service. His association with the Government or any other employer, like instrumentalities of the Government or statutory or autonomous corporations, etc., is regulated by the terms of contract of service or service

rules made by the Central or the State Government under the proviso to Article 309 of the Constitution or other statutory rules including certified standing orders. The fundamental rights, including the right to life under Article 21 of the Constitution or the basic human rights are not surrendered by the employee. The provision for payment of subsistence allowance made in the service rules only ensures non-violation of the right to life of the employee. That was the reason why this Court in State of Maharashtra v. Chandrabhan Tale [(1983) 3 SCC 387 : 1983 SCC (L&S) 391 : 1983 SCC (Cri) 667 : (1983) 3 SCR 337 : AIR 1983 SC 803] struck down a service rule which provided for payment of a nominal amount of rupee one as subsistence allowance to an employee placed under suspension. This decision was followed in Fakirbhai Fulabhai Solanki v. Presiding Officer [(1986) 3 SCC 131 : 1986 SCC (L&S) 411 : (1986) 2 SCR 1059 : AIR 1986 SC 1168] and it was held in that case that if an employee could not attend the departmental proceedings on account of financial stringencies caused by non-payment of subsistence allowance, and thereby could not undertake a journey away from his home to attend the departmental proceedings, the order of punishment, including the whole proceedings would stand vitiated. For this purpose, reliance was also placed on an earlier decision in Ghanshyam Das Shrivastava v. State of M.P. [(1973) 1 SCC 656 : 1973 SCC (L&S) 289 : AIR 1973 SC 1183]

6.In this counter, the fourth respondent has stated that the petitioner was appointed as Village Administrative Officer (VAO) vide order dated 14.02.2009 of the fourth respondent in ROC.No.723/2009 (A1) and he had joined the duty only on 19.02.2009 and his service was regularised with effect from 19.02.2009 vide proceedings dated 02.03.2016 in ROC No.1311/2016 (A), but, the petitioner has filed this Writ Petition stating that he was appointed on 19.02.2005. It is submitted that since the petitioner was appointed on 19.02.2009, the petitioner is covered by G.O.Ms.No.430, Finance (Pension) Department, dated 06.08.2004 and is entitled for only contributory pension as per the Contributory Pension Scheme under the said G.O.

7. That apart, it is submitted that when the petitioner was working as Village Administrative Officer at Rasampalayam Village, Namakkal Taluk from 27.03.2013 to 29.06.2017, he had

indulged in misconduct and failed to inspect the work of Lift Irrigation Scheme and had given false certificate by receiving bribe. Based on a complaint given by a person, the Directorate of Vigilance and Anti-Corruption conducted preliminary enquiry and submitted a report to the Commissioner of Vigilance gave a concurrence in letter No.300/VC-in 2017-1 dated 15.05.2017 and registered a detailed enquiry on 21.06.2017, wherein, the petitioner has been arrayed as Accused Officer 4.

8.It is also submitted that Director of Vigilance and Anti-Corruption, Chennai in Letter dated 28.06.2017 bearing reference No.DE.62/2017/PWD/NK submitted a report to the Commissioner of Revenue Administration that detailed enquiry has been registered on 21.06.2017 and the Government vide letter No.23983 Ser-7(2)/ 2017-1 Revenue and Disaster Management Department Services Wing Ser-7(2) Section, dated 30.06.2017 has instructed the Principal Secretary and Commissioner of Revenue Administration to instruct the Competent Authority to take suitable action on the mode of retirement of the petitioner and the fourth respondent who is the Competent Authority has placed the petitioner under suspension and not allowed to retire from service on 30.06.2017 vide order dated 30.06.2017 in ROC No.3318/2017(A1).

9.It is also submitted that the Writ Petition filed by the petitioner challenging the suspension order was dismissed and based on a report, the fourth respondent had framed charges under Section 17(b) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules and called upon the petitioner to submit his explanation and the said disciplinary proceeding is under progress. It is therefore prayed for dismissal of this Writ Petition.

10.I have considered the arguments advanced by the learned Counsel for the petitioner and the learned Government advocate on behalf of the respondents. In the State of Tamil Nadu, Tamil Nadu Payment of Subsistence Allowance Act, 1981 has been enacted. Under Section 3 of the said Act, "an employee "of an "establishment" is entitled for subsistence allowance during the period of suspension. Section 3 of the said act reads as under:-

> Section 3. Payment of subsistence allowance-
>
> (1) An employee who is placed under suspension shall, during the period of such suspension, be entitled to receive payment from the employer as subsistence allowance, an amount equal to fifty percentum of the wages which the employee was drawing immediately before suspension, for the first ninety days reckoned from the date of such

suspension:

Provided that where the period of suspension exceeds ninety days but does not exceed one-hundred and eighty days, the employee shall be entitled to receive, after the said period of ninety days, a subsistence allowance equal to seventy-five percentum of the wages which the employee was drawing immediately before his suspension:

Provided also that where the enquiry or criminal proceeding is prolonged beyond the period of ninety days for reasons directly attributable to the employee, the subsistence allowance shall, for the period exceeding ninety days, be reduced to fifty percentum of the wages, which the employee was drawing immediately before his suspension.

(2) An employee shall not be entitled to receive any subsistence allowance if he accepts any other employment during the period of his 3 suspension in any establishment other than the establishment where he had been working immediately before his suspension.

(3) An employee shall not, in any event, be liable to refund or forfeit any part of the subsistence allowance admissible to him under sub-section (1) :

Provided that where the employee is exonerated of the charge based on which his suspension was ordered, the subsistence allowance paid to him for any period shall be adjusted against the full wages admissible to him for the period of suspension.

(4) The subsistence allowance under sub-section (1) shall be paid by the employer to the employee on the date or dates on which the wages due to the employee, but for his suspension, would have become payable.

11. The above Act applies to an employee employed by an employer in an establishment. The respective definitions, read as under:-

Section 2 (a) and (b)	Section 2 (c)
(a) "employee" means any person employed in, or in connection with the work or activities of, any establishment to do any skilled, semi-skilled or unskilled, manual, supervisory, technical, clerical or any other kind of work or activities for hire or reward, whether the terms of employment be expressed or implied, but does not include any such person- (i) who is employed mainly in a managerial or administrative capacity; or (ii) who, being employed in a supervisory capacity 1 [draws wages exceeding fifteen thousand rupees per mensem] or exercises, either by the nature of the duties attached to the office or by reason of the powers vested to him, functions mainly of a managerial nature; (b) "employer" means the owner of an establishment and includes any person entrusted with the supervision and control of employees in such establishment;	(c) "establishment" means any place where any industry, trade, business, undertaking, manufacture, occupation or service is carried on, and with respect to which the executive power of the State extends but does not include- (i) any office or department of the Central or the State Government;or (ii) a railway administration; or (iii) any mine or oil-field; or (iv) any major port; or (v) any public sector undertaking of the Central Government. Explanation.- For the purpose of this clause "any public sector undertaking of the Central Government" means an establishment owned, controlled or managed by- (1) The Central Government or a department of the Central Government; (2) a Government company as defined in section 617 of the Companies Act, 1956 (Central Act I of 1956) and owned or controlled by the Central Government; (3) a Corporation established by or under a Central Act, which is owned, controlled or managed by the Central Government;

12. The petitioner is an employee of the State Government, therefore the petitioner is not entitled to the benefit of the

Act. However, the issue as to whether the petitioner is entitled to subsistence allowance stands clarified by G.O.Ms.No.207 PERSONNEL AND ADMINISTRATIVE REFORMS (FR.III) DEPARTMENT Dated 8.5.1996, it has been clarified as follows:-

PERSONNEL AND ADMINISTRATIVE REFORMS (FR.III) DEPARTMENT.

G.O.Ms.No.207 Dated 8.5.1996.

Read:

1. Govt. Letter No.88099/F.R.III/94-1, P & A.R. Department, dated 24.5.1995.

2. Govt. Letter No.61570/FR.III/95-7, P & A.R. Department, dated 12.3.1996.

ORDER: Rule 56(1)(c) of Fundamental Rules provides that "Not withstanding anything contained in Clause (a), a Government servant –

(i) Who is already under suspension on a charge of misconduct; or

(ii) In respect of whom an order of suspension has been issued and against whom an enquiry into grave charges of criminal misconduct is pending; or

(iii)in respect of whom an order of suspension has been issued and against whom an enquiry into allegations of criminal misconduct is pending;

(iv) in respect of whom an order of suspension has been issued and an enquiry into grave charges is contemplated or is pending; or

(v) in respect of whom an order of suspension has been issued and a complaint of criminal offence is under investigation or trail shall not be permitted to retire on his reaching the date of retirement, but shall be retained in service until the enquiry is concluded and the final orders passed thereon.

2. Accordingly, the Government servant who is under suspension, who has not been permitted to retire on the date of superannuation and who has been placed on extension of service under F.R.56(1)(c) is entitled for subsistence allowance which is restricted to the amount of provisional pension. During the period of extension of service, the service rights which have accrued to the Government servant shall freeze at the level reached on the date of normal retirement.

3.A point has arisen on the entitlement of Dearness Allowance along with the subsistence allowance in their cases as there is no provision in the Fundamental Rules in this aspect.

4. In the Government letter first read above, clarifications have been issued that the Government servants under suspension who are not permitted to retire and are place on extension of service under F.R.56(1)(c) are entitled for proportionate Dearness Allowance, along with the subsistence allowance. In the Government letter second read above further clarifications have been issued that the Government servants referred to above are entitled to proportionate Dearness Allowance, along with the subsistence allowance, from the date following the date of their superannuation, i.e. the date from which the Government servants are placed on extension of service under F.R.56(1)(c).

5. After careful examination of the various issues involved the Government direct that the Government servant under suspension who is not permitted to retire on reaching the date of superannuation and is placed on extension of service be entitled to for the proportionate Dearness Allowance, along with subsistence allowance, which should not exceed provisional pension and D.A. on provisional pension from the date of following the date of superannuation, i.e. the date from which the Government servant is placed on extension of service, under F.R.56(1)(c).

6. Necessary amendments to Fundamental Rules will be issued separately.

(BY ORDER OF THE GOVERNOR)

C.K.Sundaravarathan

JOINT SECRETARY TO

GOVERNMENT.

13. Paragraph 2 of the above clarification dated 12.3.1996 merely caps the maximum subsistence allowance after the age of superannuation to provisional pension where such employees are entitled for provisional pensions under the provisions of the Tamil Nadu Pension Rules, 1978. It is for that reason a maximum cap has been fixed so that such employees who have not been allowed to retire on the date of superannuation do not end up

getting any higher incentives during the period of suspension till the completion of the disciplinary proceedings. It has therefore been clarified that during the period of extension of service, the service rights which have accrued to the Government servant shall freeze at the level reached on the date of normal retirement.

14. Merely because a Government servant was outside the about mentioned Tamil Nadu Pension Rules, 1978, will not mean that such Government servant is not entitled for subsistence allowance.It is for the respondents to complete the disciplinary proceedings within a time frame so that there is no wastage of Government funds on account of subsistence allowance to be paid to an employee who is to be eventually dismissed from service.

15.If the petitioner was not Government servant, the petitioner would have been entitled to subsistence allowance under the provisions of the Tamil Nadu Payment of Subsistence Allowance Act, 1981.

16.Therefore, the interpretation placed in the respondents impugned order cannot be sustained. As a government servant, the petitioner cannot be put to a disadvantage, merely because the provisions of the Tamil Nadu Pension Rules, 1978, do not apply to the petitioner as he was employed after 1.4.2003 in the government department with the respondents.

17. I do not, therefore, find any merits in the submission of the learned Government Advocate for the respondents to sustain the impugned order dated 28.12.2020.

18. The Writ Petition therefore deserves to be allowed. Accordingly, the impugned order stands quashed with the consequential relief to the petitioner. Respondents are therefore directed to pay arrears of subsistence allowance to the petitioner from the date of suspension till December 2021 by 10th day of January 2022.

19. For succeeding period the subsistence allowance shall be paid on the due date, as if petitioner was a Government servant whose services has been extended. Considering the fact that the petitioner has been under suspension since 30.6.2017, respondents shall also endeavour to complete the pending disciplinary proceedings against the petitioner within a period of six months from date of receipt of a copy of this other.

20.It is made clear that during the period suspension, there shall be no deviation in payment of subsistence allowance to the petitioner by the due date as mentioned above.

21. This writ petition stands allowed with the observation. No cost. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Secretary to Government,
   Revenue (Services II) Department,
   Fort St.George, Chennai - 9.

2. The Commissioner of Revenue Administration,
   & Additional Chief Secretary to Government,
   Revenue Administration, Disaster Management,
   & Mitigation Department,
   Chepauk, Chennai - 5.

3. The District Collector,
   Namakkal District.

4. The Revenue Divisional Officer,
   Namakkal Division, Namakkal Dist.

5. The Tahsildar,
   Namakkal Taluk, Namakkal.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.60792

W.P.No.21866 of 2021

PM(CO)
RGA(19/01/2022)