



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **01.12.2021**

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THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P (MD)No.14292 of 2020

& WMP (MD) No.11945 of 2020

WEB COPY

Julius Ravichandran

... Petitioner

Vs.

The Chief Educational Officer,
Tirunelveli Education District,
Tirunelveli-627 009.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the respondent in his Proceedings in Na.Ka.No.7133/A4/2020 dated 09.09.2020 and quash the same as arbitrary and consequently, directing the respondent to pay subsistence allowance enhancing from 50% to 75% for every month from 03.03.2019.

For Petitioner : Mr.T.R.Janarthan

For Respondents : Mr.A.Kannan, AGP

ORDER

Heard Mr.T.R.Janarthan, learned counsel appearing for the petitioner and Mr.A.Kannan, learned Additional Government Pleader appearing for the respondent.

2.This Writ Petition has been filed, challenging the impugned order passed by the respondent in his Proceedings in Na.Ka.No.7133/A4/2020 dated 09.09.2020, in and by which, the request of the petitioner for enhancing the payment of subsistence allowance from 50% to 75%, was rejected.

3.According to the petitioner, he was placed under suspension on 03.09.2018 and he is entitled to get subsistence allowance of 50% upto six months from the date of suspension and from 7th month onwards, he is entitled to get 75% of his salary as subsistence allowance. However, he is being paid only 50% subsistence allowance till date. In this regard, he made a representation dated 22.05.2020 to the respondent. But, no response is forthcoming from the respondent till date. Therefore, the petitioner has come forward before this Court by way of the present Writ Petition.



4.The learned Additional Government Pleader appearing for the respondent would submit that the petitioner was working as Headmaster and a criminal case was registered in Crime no.288 of 2018, against him under Section 10 of the Protection of Children from Sexual Offences Act, 2012 based upon the complaint of the District Children Welfare Protection Officer alleging his misbehavior with a student and the same is pending trial on the file of the Mahila Court, Tirunelveli. The Department has not proceeded with the disciplinary proceedings in view of the pendency of the criminal case.

5.This Court paid its anxious consideration on the rival submissions of the learned counsel on either side and perused the entire materials placed on record.

6. This Court is of the view that pendency of the criminal case cannot be a bar for proceeding with the departmental enquiry. The position has been settled in "**Capt M. Paul Anthony v. Bharat Gold Mines Ltd. and another**", reported in 1999 (3) SCC 679. The relevant portion is extracted as under:

"The conclusions which are deducible from various decisions of this Court referred to above are :

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.



(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

7. Therefore, the Writ Petition is disposed of, with a direction to the respondent to issue charge memo and proceed with the enquiry within a period of six months from the date of receipt of a copy of this order. Till such time, the petitioner is to be paid with the enhanced subsistence allowance as per Section 53 (1)(2) of the Fundamental Rules. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

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Sub Assistant Registrar (CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Chief Educational Officer,
Tirunelveli Education District,
Tirunelveli-627 009.

+1 CC to M/s.SPL GP (SR-37045[F] dated 02/12/2021)

W. P (MD) No. 14292 of 2020

01.12.2021

SR (CO)

SB (30.12.2021) 3P 3C