



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No. 15592 of 2011
and M.P.No. 1 of 2011

K.Annamalai

..Petitioner

vs.

1.The Oriental Bank of Commerce,
rep.by its Chairman and
Managing Director,
'E' Block, Cannught Place,
New Delhi -100001

2.The General Manager (HRD)
The Oriental Bank of Commerce
'E' Block, Cannught Place,
New Delhi -100001

3. The Assistnat General Manager,
Oriental Bank of Commerce
Regional Office,
Spencer Plaza, 2nd Floor,
769, Anna Salai,
Chennai-600002.

4.Punjab National Bank,
rep.by its Deputy General Manager,
Circle Office, Royapettah,
Chennai-600014
(R4 Suo-motu impleaded vide order of
this Court dated 07.09.2020)

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, Calling for the records relating to the proceedings of the 2nd respondent in No. HO:HRD:C-1474/3699 dated 19.05.2011 and quash the same and direct the respondents to pay the petitioner his full pay and allowances as subsistence allowance from 1.3.2010 pending termination of the disciplinary proceedings initiated against the petitioner by charge memo dated 3.4.2009 and to pass such further or other orders.



For Petitioner : M/s.R.N.Amarnath

For Respondents : No Appearance

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O R D E R

The relief sought for in the writ petition is to call for the records relating to the proceedings of the 2nd respondent in No. HO:HRD:C-1474/3699 dated 19.05.2011 and quash the same and direct the respondents to pay the petitioner his full pay and allowances as subsistence allowance from 1.3.2010 pending termination of the disciplinary proceedings initiated against the petitioner by charge memo dated 3.4.2009 and to pass such further or other orders.

2. Heard the learned counsel appearing for the petitioner. Notice served to the 3rd respondent. This Court by order dated 07.09.2020 suo-motu impleaded the Punjab National Bank as 4th respondent in the present writ petition. Despite notice served none appeared for the respondents. Based on the merits and the submissions made by the learned counsel for the petitioner, the writ petition is disposed of.

3. The learned counsel for the petitioner has submitted that the writ petitioner was working under the 3rd respondent bank, now merged with Punjab National Bank/impleaded as 4th respondent herein. The petitioner was suspended from service on 21.02.2009 and the charge sheet was served upon the petitioner on 03.04.2009. The enquiry officer concluded the disciplinary proceedings and passed final orders on 18.02.2002.

4. The learned counsel for the petitioner has further submitted that the respondent had paid the subsistence allowance till the month of February'2010, thereafter the respondent has not paid the same to the petitioner. The petitioner has made representation on 13.12.2010 to settle the subsistence allowance to him in accordance with law. The respondent had rejected the representation of the officer on the ground that the delay was on the part of the petitioner in concluding the disciplinary proceedings, therefore the petitioner is not entitled for the subsistence allowance payable to the petitioner.

5. The learned counsel for the petitioner has further submitted that the reasons stated in the impugned order is totally false and the petitioner is eligible for subsistence allowance as per Rules till final orders passed. Without considering the same, the respondent has rejected the claim made by the petitioner, which according to the petitioner is illegal and liable to be quashed.



6. Admittedly, pending disciplinary proceedings, the writ petitioner made a representation to the 3rd respondent on 01.03.2010 seeking full pay and allowance from March'2010. The 2nd respondent informed the petitioner by letter dated 19.11.2011 that the petitioner is not entitled to get full pay and allowance as the enquiry delayed due to the petitioner.

7. In view of the fact that the respondents permitted the petitioner to have the assistance of an advocate as defence representative only after the directions of this Court, the reasons stated in the impugned order that the enquiry came to be delayed due to the reasons attributable to the petitioner is without any basis and the same cannot be sustained.

8. The learned counsel for the petitioner relied upon the decision of this Court reported in 1999 4 LLN (527) in the case of T.Seshachalam Vs.Andhra Bank. The relevant portion is extracted hereunder;

"8. In order to appreciate the rival contentions, now I shall consider the relevant clauses from the Sastri award and bipartite settlement. Chapter XXX of the Sastri award speaks about subsistence allowance during periods of suspension. According to other clauses, we are concerned with Cl. 557.

"557. Having considered the matter in all its aspects we think that suspension allowance should be granted on the following scale:

(1) For the first three months one-third of the pay and allowances which the workman would have got but for the suspension.

(2) Thereafter where the enquiry is departmental by the bank, one-half of the pay and allowances for the succeeding months. Where the enquiry is by an outside agency, one-third of the pay and allowances for the next three months and thereafter one-half for the succeeding months until the enquiry is over.

By relying on the above clauses Sri Jayaraman would contend that the said clause alone is relevant and applicable to the petitioner's case and according to him in terms of the said clause subsistence allowance has been paid and there is no arrears as on date. Sri N.G.R. Prasad relying on Para. 17.15 of the Third Bipartite Settlement would contend that the petitioner is entitled to



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subsistence allowance in terms of the said clause. Paragraph 17.15 of the Third Bipartite Settlement are as follows:

"Paragraph 17.15

Clause 5:

In partial modification of Para. 557 of the Sastry award and Para. 17.14 of the Desai award, the following provisions shall apply in regard to payment of subsistence allowance to workmen under suspension.

(a) Where the investigation is not entrusted to or taken up by an outside agency, (i.e., Police/CBI), subsistence allowance will be payable at the following rates:

(1) For the first 3 months ? of the pay and allowances which the workmen would have got but for the suspension.

(2) Thereafter $\frac{1}{2}$ of the pay and allowances.

(3) After one year, full pay and allowances if the enquiry is not delayed for reasons attributable to the concerned workmen or any of his representative where the investigation is done by an outside agency and said agency has come to the conclusion not to prosecute the employee, full pay and allowances will be payable after six months from the date of receipt of report of such agency, or one year after suspension, whichever is later and in the event the enquiry is not delayed for reasons attributable to the workman or any of his representative."

It is clear that Para. 557 of Sastri award and Para. 17.14 of the Desai Award have been modified and new clauses have been added by virtue of bipartite settlement. In the light of Cl. 5, I hold that Cl. 17.15 alone is applicable to the petitioner's case and I accept the stand of the counsel for petitioner.

9. In the light of the above conclusion let us consider whether subsistence allowance has been paid in terms of 17.15 (Clause 5). It is seen from the records that the petitioner was suspended on 1 June 1990. As per the provisions referred to above, where the matter is entrusted to an outside agency an employee has got to be paid full salary after one year. However it is to be ascertained that whether petitioner has caused any delay in the enquiry. Even



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though it is stated by the learned counsel for the respondent-management that the enquiry was prolonged only at the instance of the petitioner, the perusal of the particulars furnished, on either side show that there is no acceptable material for such conclusion. It is settled law that the provisions for subsistence allowance have been enacted with a view to provide decent means to an employee when the enquiry is on and the guilt is yet to be established. In *Employees' State Insurance Corporation v. Kirloskar Systems, Ltd.* [1984 (2) L.L.N. 780], Division Bench of the Karnataka High Court, has held, in Paras. 11 and 12, at page 783:

"11...Thus, it is clear that subsistence allowance is paid during suspension for just bare subsistence of the employee. They are not remuneration paid for services rendered. Hence, they are not wages as contemplated under S. 2 (22) of the Employees' State Insurance Act." They further held:

"12... If it does not amount to wages, there is no question of contribution on the same because contribution shall be with reference to and in respect of average daily wages..."

10. The following conclusion of their Lordships of the Supreme Court in *State of Maharashtra v. Chandrabhan Tale* [1983 (2) L.L.N. 644], are relevant. Their Lordships have held, in Paras. 17 and 19, at pages 650 and 651:

"17... If the civil servant under suspension, pending a departmental enquiry or a criminal trial started against him, is ??? to subsistence allowance at the normal rate which is a bare minimum required for the maintenance of the civil servant and his family, he should undoubtedly get it even pending his appeal filed against his conviction by the trial Court, and his right to get the normal subsistence allowance pending consideration of his appeal against his conviction should not depend upon the chance of his being released on bail and not being lodged in person on conviction by the trial Court. Whether he is lodged in prison or released on bail on his conviction pending consideration of his appeal, his family



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requires the bare minimum by way of subsistence allowance...

19. Any departmental enquiry made without payment of subsistence allowance contrary to the provision for its payment, is violative of Art. 311(2) of the Constitution as has been held by this Court in the above decision. Similarly, any criminal trial of a civil servant under suspension without payment of the normal subsistence allowance payable to him under the rule would be violative of that article. Payment of subsistence allowance at the normal rate pending the appeal filed against the conviction of a civil servant under suspension is a step that makes the right of appeal fruitful and it is, therefore-obligatory. Reduction of the normal subsistence allowance to the nominal sum of Rs. 1 per month on conviction of a civil servant under suspension in a criminal case pending his appeal filed against that conviction, whether the civil servant is on bail or has been lodged in prison on conviction pending consideration of his appeal, is an action which stultifies the right of appeal and is consequently unfair and unconstitutional. Just as it would be impossible for a civil servant under suspension who has no other means of subsistence to defend himself effectively in the trial Court without the normal subsistence allowance — there is nothing on record in these cases to show that the civil servants concerned in these cases have any other means of subsistence — it would be impossible for such civil servant under suspension to prosecute his appeal against his conviction fruitfully without payment of the normal subsistence allowance pending his appeal. Therefore, Baban's contention in the writ petition that the subsistence allowance is required to support the civil servant and his family not only during the trial of the criminal case started against him but also during the tendency of the appeal filed in the High Court or this Court against his conviction is correct...."

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22. In the light of what is stated above, the petitioner is entitled to subsistence allowance being



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is full salary with effect from 1 June 1991 in accordance with Para 17.15 of Third Bipartite Settlement and on payment of the said amount it is open to the respondent to proceed further with the enquiry without further delay. I also held that, in the above facts and circumstances, petitioner is not entitled to the assistance of a lawyer as long as the presenting officer of the respondent-bank is not a legally trained person.

23. The writ petition is allowed to the extent mentioned above. No costs. The respondent-bank is entitled to adjust the amounts already paid either of their own instance or on the direction of this Court while complying with the direction."

9. On the facts of the case, the petitioner was initially paid subsistence allowance till the month of February'2010, thereafter the respondent had stopped the payment of subsistence allowance on the ground that the petitioner had delayed the proceedings. In view of the decision cited supra, the contention of the learned counsel for the respondent cannot be accepted and the petitioner is eligible for the subsistence allowance. Hence, this Court with no hesitation inclined to quash the impugned order passed by the 2nd respondent. Accordingly, the following directions are issued;

- (i). The impugned order passed by the 2nd respondent 19.05.2011 is quashed.
- (ii). The 4th respondent Bank is directed to consider the representation of the petitioner for granting subsistence allowance and pass appropriate orders in accordance with law, within a period of twelve (12) weeks from the date of receipt of a copy of this order.
- (iii). The writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman and Managing Director,
The Oriental Bank of Commerce,
'E' Block, Cannught Place,
New Delhi -100001

2. The General Manager (HRD)
The Oriental Bank of Commerce
'E' Block, Cannught Place,
New Delhi -100001

3. The Assistnat General Manager,
Oriental Bank of Commerce
Regional Office,
Spencer Plaza, 2nd Floor,
769, Anna Salai,
Chennai-600002.

4. The Deputy General Manager,
Punjab National Bank,
Circle Office, Royapettah,
Chennai-600014.

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and M.P.No. 1 of 2011

BS(CO)
CB(03/02/2022)