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WP.No.10373 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE R.VIJAYAKUMAR

W.P.No.10373 of 2016 and
WMP.No.9156 of 2016

N.Mathaiyan

... Petitioner

Vs.

The Assistant Director,
Survey and Land Records Department,
District Land Survey Office,
Salem

...Respondent

Prayer : Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records in connection with the impugned order passed by the respondent in his proceedings bearing Na.Ka.A3/3036/2015 dated 18.12.2015 and to quash the same and to consequently direct the respondent to pay the subsistence allowance at the rate of 75% from 07.11.2015 to the petitioner.

For Petitioner : No appearance

For Respondent : Mr.M.Shahjahan,
Special Government Pleader



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ORDER

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The writ petition has been filed to quash the impugned order passed by the respondent in his proceedings bearing Na.Ka.A3/3036/2015 dated 18.12.2015 and consequently to direct the respondent to pay the subsistence allowance at the rate of 75% from 07.11.2015 to the petitioner.

2. The petitioner herein, while working as Sub Inspector of Survey in Salem Corporation, was arrested under the Prevention of Corruption Act on 07.05.2015 and he was remanded to judicial custody. The respondent, by his proceedings dated 09.05.2015, has placed the petitioner under suspension with effect from 07.05.2015. As per the said order of suspension, the petitioner was entitled to receive 50% of the salary as subsistence allowance.

3. It is the further case of the petitioner that so far charge sheet has not been laid and trial has not yet begun in the said criminal proceedings. Thereafter, by order dated 08.12.2015, subsistence



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allowance was enhanced from 50% to 75% on the ground that the petitioner had been under suspension for more than six months. The impugned order has been passed on 18.12.2015 reducing the subsistence allowance from 75% to 50% on the ground that pendency of the criminal case is only due to the act of the writ petitioner and therefore, the subsistence allowance is being reduced. This order is under challenge in the present writ petition.

4. A perusal of the impugned order indicates that no finding has been recorded that the petitioner is responsible for any delay in conducting the departmental proceedings. In fact, there is no reference at all about the initiation of any departmental proceedings. Order enhancing the subsistence allowance from 50% to 75% has been passed on 08.12.2015. Within a period of ten days, the present impugned order has been passed, again reducing it from 75% to 50%.

5. Non filing of the charge sheet in the criminal proceedings



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cannot be attributed to the delay on the part of the writ petitioner. The writ petitioner is no way responsible for the non filing of the said charge sheet by the police authorities. Therefore, the reasons assigned in the impugned order for reducing the subsistence allowance from 75% to 50% is not sustainable in the eye of law.

6. In view of the above said reasons, the order impugned in the writ petition is set aside. The petitioner shall be entitled to 75% of the salary as subsistence allowance from 08.12.2015 onwards. The writ petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
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To

- 1.The Assistant Director,
Survey and Land Records Department,
District Land Survey Office,
Salem
- 2.The Public Prosecutor,
High Court of Madras.



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R.VIJAYAKUMAR, J.

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