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W.P.No.16005 of 2022

5IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.16005 of 2022
and W.M.P.Nos.15332 & 15334 of 2022

K.Velan

...Petitioner

Vs

1. The Commissioner,
Food Safety and Drug Administration,
Guindy, Chennai – 32.

2. The Government Analyst,
Food Analysis Laboratory,
Guindy, Chennai -32.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in connection with the impugned order passed by the respondent in Na.Ka.No.7200/2022/iru10/upathu dated 03.06.2022 and to quash the same and further direct the respondent to enhance the subsistence allowance from 25% to 75% and grant all consequential service and monetary benefits.



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For Petitioner : Mr.S.Sivakumar

For Respondents : Mrs.V.Jamuna Devi
Special Government Pleader

ORDER

By consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner was working as an Office Assistant in the respondent Department. For his involvement in a criminal case, he was placed under suspension by an order dated 26.09.2019 and was being paid with the subsistence allowance during the period of suspension.

3. On 09.02.2021, the petitioner's subsistence allowance was increased to 50% of his pay scale after completion of six months period of suspension. Subsequently, in view of the orders passed by this Court in W.P.No.10438 of 2021 dated 06.04.2022, the petitioner's representation seeking for enhancement of subsistence allowance from 50% to 75% was directed to be considered by this Court, pursuant to



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which, his representation was rejected through the impugned order dated 03.06.2022 by placing reliance on FR 53(1)(A)(ii) as well as the Government letter dated 02.09.1976 stating that the suspension period being prolonged by the petitioner. Challenging the said order, the present writ petition has been filed.

4. Learned counsel appearing for the petitioner submitted that there was no delay on the part of the petitioner in the criminal case being prolonged or in the departmental proceedings, hence such the delay cannot be attributed to the petitioner and therefore, the order reducing the subsistence allowance cannot be sustained.

5. However, Mrs.V.Jamuna Devi, learned Special Government Pleader submitted that the petitioner was placed under suspension owing to his involvement in the criminal case and thereafter, the charges for the departmental proceedings were also laid against him and an Enquiry Officer was also appointed. It is the further submission of the learned Special Government Pleader that since the criminal case has been prolonged owing to the petitioner's conduct, such a reduction in the subsistence allowance is permissible under the Fundamental Rules.



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6. It is no doubt true that FR 53 (1)(A)(ii) provides for reduction of Government employee's subsistence allowance when the authority is of the opinion that the period of suspension has been prolonged, which is directly attributable to the Government servant. The foremost requirement of this provision is that the authority has to substantiate that the period of suspension has been prolonged for the reasons, which are directly attributable to the Government servant.

7. In the instant case, no reliance has been placed on any material or other relevant records to even remotely indicate that the criminal proceedings was being prolonged due to the petitioner's conduct. In normal circumstances, what ought to have been done, is to make a reference that the various adjournments of the case was owing to the petitioner's request or otherwise. Apart from stating that the authority is entitled to reduce the subsistence allowance to 25% when the delay of the proceedings is attributable to the Government employee, no other reasons have been assigned in this regard. In the absence of the mandatory requirement for applying FR 53(1)(A)(ii), the present



8. In a similar set of facts, which came before this Court in the case of *I.Jayabalan Vs. The Assistant Director of Survey and Land Records* in *W.P.No.14903 of 2010* dated *28.07.2010*, this Court had held that in the absence of any reason or justification to implicate a Government employee of having prolonged the suspension, the reduction of his subsistence allowance itself cannot be sustained. The relevant portion of the order reads thus:

“4. At the outset, it is seen from the order dated 29.07.2009 that the petitioner is not found by the respondent to be responsible for the prolongation of the criminal cases. If the delinquent is not found responsible for prolongation of the criminal trial, the respondent cannot reduce the subsistence allowance. Moreover, a period of six years has passed from the date of the order of suspension. Therefore, when the writ petition came up for admission on 13.07.2010, I directed the learned Additional Government Pleader to take notice and got instructions.

5. Today (28.07.2010), the learned Additional



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Government Pleader appearing for the respondent, produced written instructions from the respondent.

6. In the said written instructions, the respondent has taken a stand that since the petitioner was caught red-handed and placed under suspension, following his arrest, it is not possible to revoke the suspension order. The respondent has also taken a stand that since the District Administration was not responsible for the prolonged suspension, the subsistence allowance was also reduced.

7. However, it is seen from the written instructions that the issue of prolonged suspension has not been looked at from the proper perspective by the respondent. The idea behind placing a person under suspension is to keep him out of service pending enquiry into grave charges or pending investigation or trial of a criminal offence. But time and again, the Courts have pointed out that unexplained delay in the conclusion of the proceedings, cannot deprive the right of the sustenance of the delinquent. Unfortunately, the petitioner is under suspension for the past 6 ½ years. The respondent has not stated either in the order reducing the subsistence allowance or in the written instructions given to the learned Additional Government Pleader that the petitioner was in any way responsible for the prolongation. It may be appreciated that if the respondent had called for a report



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from the criminal court and found out as to whether the delay in the conclusion of the disciplinary proceedings was on account of any dilatory tactics on the part of the petitioner. If it has not been done, then the justification for prolongation of suspension, is found to be absent.”

9. Incidentally, when the petitioner was placed under suspension for over a period of six months, he had sought for an enhancement of the subsistence allowance for 75% through his representation. This Court by an order passed in W.P.No.10438 of 2021 dated 06.04.2022 had directed the authority to consider his representation within a period of four weeks.

10. FR 53(1)(A)(i) provides that the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50% of the subsistence allowance admissible during the period of first six months. It is not in dispute that the petitioner has completed six months of his suspension period and therefore, he had rightly claimed for enhancement and this Court had also directed to consider the representation.



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11. In the light of the above findings and in the light of the above directions, this Court is of the view that the petitioner would be entitled for the enhancement of subsistence allowance at the rate of 75% from the day on which he completed his six months period of his suspension. Thus, when the present impugned order has been found to be unsustainable in law, it consequently requires to be held that the petitioner is entitled for subsistence allowance at the rate of 75% as stated supra.

12. Accordingly, the impugned order in Na.Ka.No.7200/2022/iru10/upathu dated 03.06.2022 on the file of the first respondent is quashed. Consequently there shall be a direction to the first respondent herein to pass appropriate orders by enhancing the subsistence allowance of the petitioner from 50% to 75% from the date on which the petitioner had completed his six months suspension period and disburse the arrears within a period of six (6) weeks from the date of receipt of a copy of this order.



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13. With the above directions, this writ petition stands allowed. No costs. Connected miscellaneous petitions are closed.

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Index:Yes
Speaking order
Neutral Citation:Yes
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To

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Food Safety and Drug Administration,
Guindy, Chennai – 32.
2. The Government Analyst,
Food Analysis Laboratory,
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M.S.RAMESH,J.

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