



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.07.2023

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THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

**W.P.No.25827 of 2018 and
W.M.P.No.30037 of 2018**

S.A.Murali

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Revenue Department, Secretariat, Fort St.George,
Chennai – 600 009.
2. The Director of Land Reforms,
Chepauk, Chennai – 600 005.
3. The Tahsildhar,
Namakkal Taluk,
Namakkal District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus, forbearing the respondents from proceeding with notice issued by 2nd respondent in Letter/Memo No.A1/13275/2004 (L.Ref) dated 23.07.2018 without making payment of subsistence allowance to the petitioner and consequently direct the respondent to continue to pay subsistence allowance to the petitioner from



December 2017 pending disposal of Criminal Appeal filed by the petitioner in Crl.A.No.776 of 2017 on the file of this Court.

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For Petitioner : Mr.J.Jayamalan for
M/s.S.Nedunchezhiyan

For Respondents : Mr.S.Ravikumar,
Special Government Pleader.

ORDER

The writ petition has been filed in the nature of writ of mandamus seeking a direction to grant subsistence allowance to the petitioner herein from December, 2017 to till October, 2018, even though the relief sought is slightly different worded.

2 The petitioner was appointed as Junior Assistant through the then Madras Public Service Commission and was allotted to join duty in Chengalpet revenue unit and he joined duty on 11.01.1973. He then rendered 25 years of service and was awarded with Indira Vikas Pathra vide proceedings of the Commissioner and Director of Land Reforms dated dated

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20.11.1988. He was also posted as Superintendent and completed 10 years of service as Superintendent. He was then nominated for the city list of Tahsildar for the year 1999 and he was awarded with three appreciation letters issued by the then Collector, Namakkal.

3 On the basis of a complaint, a criminal case was filed against the petitioner herein and consequent to that he was placed under suspension. Such criminal case was taken cognizance by the Special Court/Chief Judicial Magistrate Court, Namakkal, in Spl.C.C.No.54 of 2002 under the provisions of Prevention of Corruption Act, 1989. The petitioner was convicted by judgment dated 28.11.2017 and sentenced to undergo 2 years Simple Imprisonment with fine of Rs.1000/- for the offence under Section 7 of Prevention of Corruption Act, 1989 and also similar sentence and fine for the offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1989. Thereafter the petitioner had filed an appeal in CrI.A.No.776 of 2017, which is now pending before this Court. The petitioner had filed an application seeking suspension of sentence and that was granted on 11.12.2017. In the meanwhile since the petitioner was



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convicted, the subsistence allowance which was paid to him was discontinued by the respondents. Thereafter the respondents issued show cause notice calling upon the petitioner to clarify as to why he should not be dismissed and after considering his request proceeded to dismiss him from service on 04.10.2018. In the present writ petition, the actual relief is continuation of payment of subsistence allowance from 28.11.2017 the date of conviction till 04.10.2018 the date of dismissal from service. The other aspects regarding his services can be examined only on passing final judgment in the afore mentioned criminal appeal in CrI.A.No.776 of 2017.

4 The learned counsel placed reliance on the judgment of the Hon'ble Supreme Court reported in 1983 (3) SCC 387 *State of Maharashtra vs. Chandrabhan Tale*. In that particular case, the petitioner therein was convicted by the criminal Court and he had filed an appeal before the High Court and when the High Court was called upon to examine the issue of payment of subsistence allowance, a direction was issued to pay a sum of Rs.1.00 per month as subsistence allowance. The matter was taken up before the Honourable Supreme Court and the learned Judges by a



detailed judgment with respect to this particular issue, observed as follows:

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“20. The learned Judges of the Division Bench have found in the judgment under appeal that the object and purpose of the main Rule 151 is to provide for subsistence allowance pending suspension of the civil servant and that the subsistence allowance mentioned in the main Rule and the second proviso means a bare minimum which can reasonably be provided for a civil servant who is kept under suspension and without work and therefore not entitled to full wages. If the civil servant under suspension, pending a departmental enquiry or a criminal trial started against him, is entitled 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 prison 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 requires the bare minimum by way of subsistence allowance. Subsistence allowance provided for in the second proviso at the nominal rate of Re 1 per month is illusory and meaningless. The contention of the appellant that even the nominal



sum of Re 1 per month is subsistence allowance for a civil servant under suspension is as unreasonable as the contention of the appellant that what should be the subsistence allowance for a civil servant under suspension is for the authority empowered to frame rules under Article 309 of the Constitution to consider and that the civil servant who has entered service is bound by the second proviso. The sum of Re 1 per month can never sustain a civil servant for even a day much less for a month.”

5 The reasoning of the Honorable Supreme Court for providing subsistence allowance even pending criminal appeal is that a civil servant should maintain his family and also has to prosecute the criminal appeal, which was pending before the High Court. This observation in the aforementioned paragraph was re-emphasised in paragraph no.23, which reads as follows.

“23. Any departmental enquiry made without payment of subsistence allowance contrary to the provision for its payment, is violative of Article 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



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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 Re 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 pendency of the appeal filed in the High Court or this court against his conviction is correct. If any provision in any rule framed under Article 309 of the Constitution is illusory or unreasonable, it is certainly open to the civil servant concerned to seek the aid of the court for declaring that provision to



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be void. In these circumstances, I hold that the second proviso is unreasonable and void and that a civil servant under suspension is entitled to the normal subsistence allowance even after his conviction by the trial court pending consideration of his appeal filed against his conviction until the appeal is disposed of finally one way or the other, whether he is on bail or lodged in prison on conviction by the trial court. In this view, I dismiss the civil appeal and allow the writ petition. The parties will bear their respective costs in the civil appeal. The respondent shall pay the petitioner's costs in the writ petition. “

6 Once again they had taken into consideration the fact that the civil servant though under suspension should have some means to defend himself effectively in the trial Court and also to prosecute the appeal against conviction. Applying the ratio to the facts of this case, it is trite to point out the subsistence allowance is payable to civil servant during the period of suspension from service. The petitioner herein had been suspended and dismissed from service on 04.10.2018 and till the order of dismissal of service, the petitioner is entitled for payment of subsistence allowance.

7 The petitioner had been convicted after due process by



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the trial Court for the offence under Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1989, and his appeal is still pending before this Court. The appellate court had deemed it fit to suspend the sentence. However, even though he had been convicted, the ratio in the above case referred would apply to the petitioner herein and I hold there is obligation of the respondents to pay subsistence allowance till the date of his dismissal, which effectively means the petitioner has to be paid subsistence allowance from 28.11.2017 till 04.10.2018 the date of his dismissal from service.

8 The respondents have justified the suspension of payment of subsistence allowance on the ground that the petitioner had been convicted by the Court of law and that he cannot seek subsistence allowance after his conviction, but the reasoning of the Honourable Supreme Court is that a civil servant should also be provided with some means to prosecute his appeal even though he had been convicted. But, in this case, such benefit cannot be granted and subsistence allowance can be granted only till the order of dismissal from service. In view of the reasons, though relief sought for in this writ petition is not granted, namely payment of subsistence



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allowance till the disposal of the criminal appeal, still the respondents are directed to pay the subsistence allowance till the date of dismissal from service as afore mentioned. Such payment should be effected within a period of twelve weeks from the date of receipt of a copy of this order.

9 The writ petition stands disposed of. No costs.

Consequently connected miscellaneous petitions is closed.

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Index: Yes/No
Internet: Yes/No
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To

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2. The Director of Land Reforms,
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3. The Tahsildhar, Namakkal Taluk,
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C.V.KARTHIKEYAN, J.,

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