



W.P.No.22043 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **25.11.2024**

CORAM:

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

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I.Selvakumaran

... Petitioner

-VS-

1.The Deputy Director of Health Services,
Villupuram, Villupuram District.

2.The Medical Officer,
Primary Health Centre,
Vlathi, Thiruvannamalai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 16.07.2014 on the file of the 1st respondent, quash the same and issue consequential direction directing the respondents to release the subsistence allowance from 14.02.2014 to till date and pay and allowance for the month of January, 2014 to 13.02.2014 by considering petitioner's representation dated 14.07.2014.

For Petitioner : Mr.R.Bakayaraj



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For Respondents : Mr.K.Tippu Sultan,
Government Advocate

ORDER

This writ petition is filed challenging the order of the 1st respondent dated 16.07.2014 and for a consequential direction to release the subsistence allowance from 14.02.2014, pay and allowance for the month of January 2014 to 13.02.2014.

2. The case of the petitioner is that, the petitioner was working as an Assistant in Primary Health Centre, Valathy, Thiruvannamalai District and he was placed under suspension by the first respondent on 13.02.2014 in view of the charges of misappropriation. The petitioner was directed to stay at the head quarters at Primary Health Centre, Melsithamur, in view of the suspension order issued by the first respondent. It is the grievance of the petitioner that pay and allowances for the month of January, 2014 was not paid and also the subsistence allowance had not been paid from 14.02.2014. Further the leave



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application of the petitioner was rejected by the impugned order dated 16.07.2014 and assailing the same and for the consequential relief, the petitioner filed this writ petition.

3. When the writ petition is taken up for hearing, the learned Government Advocate relying on the counter affidavit submitted that while the petitioner was working as an Assistant, Primary Health Centre, Valathy, Villupuram District, misappropriated a sum of Rs.37,27,000/- which was due towards salary, advance and other benefits for 70 employees in the Valathy Block Primary Health Centre. Based on the complaint, a case was registered in FIR No.14 of 2014 on 17.02.2014 by the District Crime Branch, Villupuram. Only after this misappropriation, came to the notice of the respondents, by order dated 13.08.2014, the petitioner was placed under suspension and he was directed to stay in head quarters, Melsithamur, Villupuram District. Since the petitioner had not stayed in the head quarters and has not submitted necessary certificates to that effect, he is not eligible for subsistence allowance from 13.02.2014 to 21.07.2014 as per F.R.No.53(2) and 53(3).



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4. It is also brought to the notice of this Court that pursuant to the charges framed against the petitioner, enquiry was conducted and based on the enquiry report submitted by the Enquiry Officer, by order dated 25.10.2023, the petitioner has been removed from service.

5. However, for the period prior to the order of removing from service, the petitioner had been paid this subsistence allowance. In fact when the petitioner had submitted representation to change the head quarters from Government Primary Health Centre, Melsithamur to Sathyamangalam, the same was also considered by order dated 16.02.2017, the change of head quarters was allowed and the subsistence allowance also paid from 16.02.2017 to till date of service on 17.11.2023.

6. It is not clear as to whether the subsequent order of removal from service has been put to challenge. However, insofar as the period for which the petitioner compliants that the salary was not paid, only since the petitioner was on unauthorized absence and since his leave was rejected, the pay for that month was not made and insofar as the subsistence allowance regarding the period from 13.02.2014 to



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21.07.2014, since the petitioner had not stayed in the head quarters and not submitted the certificates as required for payment of subsistence allowance, the same has not been paid. In this regard, the relevant portion of the counter affidavit is extracted hereunder:

“4. With regard to the averments made in paras 1 to 3 of the affidavit, it is submitted that while the petitioner was working as an Assistant, Primary Health Centre, Valathy, Villupuram District, he was suspended by this respondent on 13.02.2014 vide proceedings No.R.No.5239/B1/2013, fixing the Head quarter is Melsithamur, Villupuram District, since the petitioner has misappropriated a sum of Rs.37,27,000/- towards salary, advance and other benefits of the about 70 employees of the Valathy Block Primary Health Center. In this regard, a case was registered in the District Crime Branch, Villupuram in FIR No.14/2014, dated 17.02.2014 and also the same person had misappropriated government money a sum of Rs.16,23,678/- for which the separate FIR had been filed against him by the Sub Treasury Officer in the District Crime Branch, Villupuram in FIR No.68/2014, dated 13.08.2014.

5. With regard to the averments made in para 4 of the affidavit, it is submitted that the petitioner is eligible for duty pay for a period from 01.01.2014 to 10.01.2014 ie. 10 days only. It is submitted that as his compulsory deduction exceeds 10 days gross pay of the individual, this respondent is not able



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to draw the duty pay of the petitioner. It is submitted that from 10.01.2014 to 19.01.2014, the petitioner has unauthorized absent without any leave application. It is submitted that the petitioner had applied for leave from 20.01.2014 to 14.02.2014 without Medical certificate and hence that period cannot be treated as medical leave.

6. With regard to the averments made in paras 5 and 6 of the affidavit, it is submitted that when the petitioner was suspended from service, he was directed to stay in Headquarter ie. Melsithamur, Villupuram District, but the petitioner had reported to the Block Medical Officer, Govt. Primary Health Centre on 22.07.2014 and gave a written statement, so he is not eligible for subsistence allowance from 13.02.2014 to 21.07.2014 as per F.R.No.53(2) and 53(3). It is submitted that the petitioner was suspended from service on 13.2.2014, but Melsithamut Village President had issued certificate dated 25.01.2014 that the petitioner was staying in Melsithamur village ie. before the suspension. Further, the Village Administrative Officer, Melsithamur has also issued certificate without mentioning the date of residing of the petitioner in the head quarter. Hence, this certificate could not be considered for sanction of the subsistence allowance.

7. With regard to the averments made in para 7 of the affidavit, it is submitted that the house owner of the petitioner has stated in his written statement that the petitioner was



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staying in No.108, Pillayar Kovil Street, Melsithamur, Villupuram District and he has received house rent of Rs.500/- for the month of June 2014. It is clearly reveals that the petitioner was residing in the said address from June 2014, but the petitioner had given wrong information and submitted the wrong residential certificate for the period from February 2014 to July 2014. It is submitted that during suspension period, the petitioner should reside continuously in the head quarter and he should get permission from the competent authority for outgoing from the head quarter. It is submitted that as per G.O.Ms.No.893 Finance Department, dated 18.07.1970, the petitioner should produce the subsistence allowance certificate every month in person to the Head Office and get his subsistence allowance. But, the petitioner has not produced necessary certificate for claiming his subsistence allowance. Hence, the petitioner has not followed the F.R.53(2) and F.R.53(3) and violated the rules for getting his subsistence allowance. Hence, the impugned order dated 16.07.2014 in Na.Ka.No.5239/Aa1/2013 was passed by the 1st respondent rejecting the application of the petitioner requesting subsistence allowance from 14.02.2014 and pay and allowance for the month of January 2014 to 13.2.2014.”

7. In view of the facts that the petitioner was on unauthorized absence for the month of January and February 2014, his salary was not



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paid and further since the petitioner did not stay in the head quarters as per the orders of the suspension, he was not paid subsistence allowance for the period from 13.02.2014 to 21.07.2014. But, however, for all the subsequent periods the subsistence allowance has been paid and pursuant to the enquiry submitted, by G.O.Ms.No.27, dated 25.10.2023, the petitioner also been removed from service.

8. In view of the same, this writ petition fails and is accordingly dismissed. No costs.

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Index:Yes/No
Speaking order/Non-speaking order
rna

To

1.The Deputy Director of Health Services,



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Villupuram, Villupuram District.

2.The Medical Officer,
Primary Health Centre,
Vlathi, Thiruvannamalai District.

G.ARUL MURUGAN,J.

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