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W.A.No.2599 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.A.No.2599 of 2022

and

C.M.P.No.20535 of 2022

1. The Secretary to Government
Revenue (Services-I) Department,
Fort St.George, Chennai-9.
2. The Commissioner of Revenue Administration &
Additional Chief Secretary to Government,
Revenue Administration, Disaster Management &
Mitigation Department, Chepauk,
Chennai-5.
3. The District Collector,
Namakkal.
4. The Revenue Divisional Officer,
Namakkal Division, Namakkal Dist.
5. The Tahsildar,
Namakkal Taluk, Namakkal.

... Appellants/Respondents

-VS-

R.Ganesan

... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 23.11.2021 passed in W.P.No.21866 of 2021.



W.A.No.23 of 2021

For Appellants : Mrs.Yamudadevi
Spl.Govt.Pleader
For Mr.Abishek Murthy, Govt. Advocate
For Respondent : Mr.K.Venkataramani, Senior Counsel,
For Mr.M.Muthappan

J U D G M E N T

(By D.Krishnakumar,J.)

This Writ Appeal has been filed, challenging the order of the learned Single Judge dated 23.11.2021 passed in W.P.No.21866 of 2021, by which the Writ Petition filed by the Writ Petitioner/respondent herein, was allowed with a direction to pay arrears of subsistence allowance till December, 2021 and continue to pay the subsistence allowance for the succeeding period.

2. The case of the appellants is that the respondent herein was appointed as Village Administrative Officer (VAO) and he joined duty on 19.02.2009 and his services were regularized with effect from 19.02.2009. While serving as VAO in Rasampalayam Village, Namakkal Taluk, it was alleged that he had indulged in misconduct and failed to inspect the work of Lift Irrigation System done by one Shanmugam, President, Farmers Lift Irrigation Societies and helped him to hide malpractices by giving a false certificate after receiving bribe. The further case of the appellants is that based on the report of the Investigating Officer of Directorate of



W.A.No.23983 Ser-7(2)/2017-1 Revenue and

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Vigilance and Anti Corruption, a detailed enquiry has been registered on 21.06.2017, on the basis of which, the Government vide letter No.23983 Ser-7(2)/2017-1 Revenue and Disaster Management Department Services Wing dated 30.06.2017 instructed the Principal Secretary and Commissioner of Revenue Administration to advise the competent authority to take suitable action against the respondent, who was due to retire on 30.06.2017. As per the instruction of the Government, the 4th appellant passed an order dated 30.06.2017, placing the petitioner under suspension from service under Rule 17(3) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (in short 'TNCS (D&A) Rules') with immediate effect.

3. It was urged by the appellants that against the order of suspension, the respondent had filed a Writ Petition in W.P.No.19121 of 2017 before this Court and the same was dismissed on 26.07.2017. In consequence of the report of the Investigating Officer of Directorate of Vigilance and Anti Corruption, Namakkal, a departmental enquiry was initiated against the respondent under Rule 17(b) of the TNCS (D&A) Rules. Subsequently, the respondent made a representation for payment of subsistence allowance, which came to be rejected on 28.12.2020 on the ground that as the respondent joined duty only on 19.02.2009 and is covered under contributory pension scheme, he is not entitled for subsistence allowance. As against the order of rejection,



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the respondent filed W.P.No.21866 of 2021, in which, learned Single Judge issued a direction to the respondents/appellants herein as stated supra and the said order is impugned in the instant appeal.

4. Learned Senior Counsel appearing for the respondent contended that there is no error apparent in the order of the learned Single Judge, inasmuch as a direction was issued to pay subsistence allowance owing to the reason of non-initiation of disciplinary proceedings for quite a long time. The Apex Court in the case of *P.V.Mahadevan vs. Managing Director, Tamil Nadu Housing Board*, reported in *2005 (4) CTC 403* held that domestic enquiry at a distant point of time would cause unbearable mental agony and distress to the employee concerned and not only in the interest of employee and also in public interest. That apart, the respondent was suspended from service at the eleventh hour of his attainment of superannuation, which is contrary to the settled law. Hence, it was vehemently contended that the Writ Appeal lacks merits acceptance and is liable to be dismissed.

5. Heard the learned counsel on either side and perused the material documents available on record.



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6. The core contention raised by the appellants is that the respondent herein was suspended from service on the last day of his service, viz., 30.06.2017 on the basis of the report of the Investigating Officer of Directorate of Vigilance and Anti Corruption and the respondent was not permitted to retire from service. According to the appellants, learned Single Judge has not taken into consideration the G.O.No.430 Finance (Pension) Department dated 06.08.2004, which clearly stipulates that those who joined services on or after 01.04.2003 are covered under the Contributor Pension Scheme and it is mandatory for them to contribute 10% of the basic pay and DA towards Contributory Pension Scheme. Once the respondent does not come within the ambit of the aforesaid Government Order, the question of payment of subsistence allowance does not arise at all.

7. Learned Special Government Pleader for the appellants drew the attention of this Court the proviso to Rule 53(1)(a)(iii) of the Fundamental Rules of the Tamil Nadu Government, wherein it has been evidently stated as follows:

“53. (1) A Government servant who is placed or deemed to have been placed or continues to be under suspension shall be entitled to the following payments, namely:-

(a) Subsistence allowance at an amount equal to half of the pay last drawn by the Government servant and in addition dearness allowance, if admissible on the basis of half of the pay last drawn: (G.O. Ms. No. 180, Personnel and Administrative Reforms Department, dated 4th March 1983.)



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Provided that where the period of suspension exceeds six months, the authority which made or is deemed to have made, the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first six months as follows:-

(i) (ii)

(iii) the amount of dearness allowance shall be based on the increase or the decrease in the amount of subsistence allowance, as the case may be, admissible under clause (i) or (ii) above:

Provided further that if a Government servant under suspension continues to be under suspension after the date of retirement, the amount of subsistence allowance shall be reduced to the amount of pension which will be provisionally admissible to him, whether or not the Government servant will be exonerated of the charges for which he was placed under suspension and the provisions of the preceding proviso shall not apply to such cases.”

8. Admittedly, the respondent joined duty as VAO on 19.02.2009 and thus, he does not come within the purview of Old Pension Scheme. Therefore, he cannot be granted any subsistence allowance in the light of Rule 53(1)(a)(iii) of the Fundamental Rules of the Tamil Nadu Government (extracted supra), as the payment of subsistence allowance is applicable to employees covered under Old Pension Scheme and not otherwise. On that score, the order of the learned Single Judge warrants interference by this Court and is liable to be set aside.



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9. In view of what is stated herein-above, this Writ Appeal is allowed and the order dated 23.11.2021 passed in W.P.No.21866 of 2021 is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

[D.K.K., J.,]

[K.B., J]

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Index: Yes / No

Internet: Yes / No

Speaking Order/Non Speaking Order
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AND
K.KUMARESH BABU,J.,
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