



W.P.(MD) No.210 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2024

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THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.210 of 2021
&
W.M.P(MD)No.169 of 2021

S.Victor

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep by its Secretary
Agriculure Department
Fort St.George
Chennai

2.The Chief Engineer (Agri Eng)
Agricultural Engineering Department
Nandanam, Chennai-35

3.The Assistant Executive Engineer (Agri Dep)
Thuckalay
Kanyakumari District

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus to call for the records of



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the 3rd respondent in Letter No.A./1274/12 dated 24.08.2020 and quash the same and direct the 3rd respondent to disburse the arrears of 25% for the period 13.06.2013 to 30.04.2018.

For Petitioner : Mr.K.Prabakaran

For Respondents : Mr.Na.Ga..Nataraj, Govt. Advocate

ORDER

This Writ Petition has been filed questioning the letter No.A./1274/12 dated 24.08.2020 issued by the 3rd respondent refusing to extend the benefit of subsistence allowance at the rate of 25% during the period from 13.06.2013 to 30.04.2018 and to declare the same as illegal and arbitrary.

2. Petitioner herein while working with the respondents department, he was placed under suspension from 13.12.2012 vide proceedings No.Dc.3/53761/2012 as he was involved in a criminal case in Special Case No.5 of 2015. The said criminal case finally ended in



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convicting the petitioner by a judgment dated 23.07.2019, subsequently, the petitioner was dismissed from service on 04.11.2019.

3. It is the case of the petitioner in the Writ Petition is that he was no way responsible for the delay in disposal of the criminal case registered against him and therefore he is entitled for payment of subsistence allowance at the rate of 75% from the date of expiry of initial six months period i.e., from 13.06.2013 to 30.04.2018. Admittedly, the petitioner was paid subsistence allowance at the rate of 50% of the last drawn wages and the claim of the petitioner in this Writ Petition is only for the balance 25%.

4. The 2nd respondent has filed counter affidavit stating that the competent authority has considered the case of the petitioner for enhancement of subsistence allowance to 75% and same was enhanced with effect from 01.05.2019 to the petitioner. However, it is stated that he is not entitled to claim subsistence allowance at the rate of 75% for the period from 13.06.2013 to 30.04.2018. In support of such contention, the respondents has placed reliance on Fundamental Rules 53(1)(a)(i)(ii)(iii) and contended that it



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is the discretion of the employer to enhance the subsistence allowance to 75% or not.

5. In the State of Tamil Nadu, the payment of subsistence allowance is governed by a Statute viz., The Tamil Nadu Payment of Subsistence Allowance Act, 1981. In terms of Sec. 3 of the said Act, an employee who is place under suspension shall be entitled to receive the subsistence allowance equal to 50% of the wages which the employee was drawing immediately before the suspension for the first 90 days and in terms of the first proviso to Sec.3 in case the suspension exceeds 90 days but does not exceed 180 days the employee shall be entitled to receive subsistence allowance equal to 75% of the wages after the said period of 90 days.

6. Sec.3 of the The Tamil Nadu Payment of Subsistence Allowance Act, 1981 reads as under:

“ 3. Payment of subsistence allowance- (1) An employee who is placed under suspension shall, during the period of such suspension, be entitled to receive



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payment from the employer as subsistence allowance, an amount equal to fifty percentum of the wages which the employee was drawing immediately before suspension, for the first ninety days reckoned from the date of such suspension:

Provided that where the period of suspension exceeds ninety days but does not exceed one-hundred and eighty days, the employee shall be entitled to receive, after the said period of ninety days, a subsistence allowance equal to seventy-five percentum of the wages which the employee was drawing immediately before his suspension:

Provided also that where the enquiry or criminal proceeding is prolonged beyond the period of ninety days for reasons directly attributable to the employee, the subsistence allowance shall, for the period exceeding ninety days, be reduced to fifty percentum of the wages, which the employee was drawing immediately before his suspension.

(2) An employee shall not be entitled to receive any subsistence allowance if he accepts any other employment during the period of his suspension in any establishment other than the establishment where he had been working immediately before his suspension.



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(3) An employee shall not, in any event, be liable to refund or forfeit any part of the subsistence allowance admissible to him under sub-section (1) :

Provided that where the employee is exonerated of the charge based on which his suspension was ordered, the subsistence allowance paid to him for any period shall be adjusted against the full wages admissible to him for the period of suspension.

(4) The subsistence allowance under sub-section (1) shall be paid by the employer to the employee on the date or dates on which the wages due to the employee, but for his suspension, would have become payable.”

7. From the above, it is clear that the employee who is placed under suspension is entitled to 75% of last drawn wages on completion of initial period of 90 days. No doubt discretion is given to the employer to refuse to enhance the subsistence allowance to 75% if the employee concerned is found responsible for the delay in conclusion of the disciplinary proceedings or criminal case. But, in the instant case, the respondents themselves have enhanced themselves the subsistence allowance payable to the petitioner from



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50% to 75% with effect from 01.05.2019 i.e., just before the disposal of the criminal case registered against the petitioner. If the petitioner is responsible for the delay in conclusion of the criminal proceedings, the respondents ought not to have enhanced the subsistence allowance to 75% from 01.05.2019. Further, it is not the case of the respondents in the counter affidavit that the petitioner is in anyway responsible for the delay in conclusion of the criminal proceedings. As the issue of payment of subsistence allowance is governed by a Statute enacted by the State, it is not open to the respondents to place reliance on the Fundamental Rules and to deny the payment of enhancement of subsistence allowance to the petitioner. In the light of the above, this Court is of the considered view that the impugned proceedings is totally unsustainable and contrary to Sec.3 of the Act 43 of 1981.

8. Accordingly, the Writ Petition is allowed directing the respondents to pay the balance 25% of the subsistence allowance during the period commencing from 13.06.2013 to 30.04.2018 as expeditiously as possible at any rate within a period of two months from the date of receipt of



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a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

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MUMMINENI SUDHEER KUMAR, J.

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