



W.P.(MD) No.17059 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.17059 of 2020

and

W.M.P.(MD) Nos.14257 and 14258 of 2020

S.Manickam

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep., by its Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai-9.
- 2.The Director of Rural Development and Panchayat Raj,
Directorate of Rural Development and Panchayat Raj,
Panagal Building, Chennai-600 015.
- 3.The District Collector,
Ramanathapuram District,
Ramanathapuram.
- 4.The Personal Assistant to
District Collector (Development),
O/o. The Collector Office Campus,
Ramanathapuram District,
Ramanathapuram.



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5. The Block Development Officer (Village Panchayat),
O/o. Block Development Officer,
R.S.Mangalam Union & Taluk,
Ramanathapuram District.

6. The President,
Thiruppalaikudi Village Panchayat,
R.S.Mangalam Union & Taluk,
Ramanathapuram District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 3rd respondent in his proceedings Roc.V5/56001/2018 dated 14.12.2018 and quash the same as illegal and consequentially to direct the respondent to reinstate the petitioner in service within the period as stipulated by this Court.

For Petitioner : Mr.S.Mohamed Suhail

For Respondents : Mr.D.Sasikumar
Additional Government Pleader

ORDER

Though this writ petition is filed challenging the impugned order, whereby the petitioner was placed under suspension, learned counsel for the petitioner restricted the relief only to the extent of enhancing the subsistence



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allowance in terms of Section 3 of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 (hereinafter referred to as “the Act, 1981”).

2. The petitioner herein was placed under suspension through the impugned proceedings on 14.12.2018 and the same is continued as on date. Criminal proceedings that were initiated against the petitioner are still pending for enquiry before the competent Court.

3. Learned counsel for the petitioner placed reliance on a judgment passed by a learned Division Bench of this Court in W.A.(MD) No.386 of 2022, dated 13.03.2023 and contended that after expiry of 180 days from the date of suspension, the petitioner is entitled for full salary.

4. This Court has gone through the judgment passed by the learned Division Bench. No doubt, the learned Division Bench stated that Section 3 of the Act, 1981 provides for payment of subsistence allowance of entire salary as subsistence allowance, if the suspension period exceeds 180 days. As a matter of fact, Section 3 of the Act, 1981 does not speak as to what is the



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quantum of subsistence allowance for which the employee under suspension is entitled to after 180 days. The issue that fell for consideration before the learned Division Bench was whether the respondents therein are justified in reducing the subsistence allowance to fifty percentum under the facts and circumstances of the case. Thus, the observation made by the learned Division Bench, in the considered view of this Court, is a passing observation. Except stating that Section 3 of the Act, 1981 reads as noted above, there is no other discussion or any point is framed in that regard. In that circumstances, there is no ratio laid down in the decision of the Hon'ble Division Bench. Hence, the contention of the learned counsel for the petitioner for payment of full salary as subsistence allowance cannot be accepted.

5. Section 3 of the 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 payment from the employer as subsistence allowance, an amount equal to fifty percentum of the wages which the employee was



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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.

(3) An employee shall not, in any event, be liable to refund or forfeit any part of the subsistence



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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.”

6. In the light of the above provision, in case if the suspension is continued beyond 90 days, the employee under suspension is entitled for subsistence allowance at the rate of seventy-five percentum of the wages which the employee was drawing immediately before his suspension.

7. In the instant case, there is no allegation of the petitioner being responsible for the delay in conclusion of the criminal proceedings that are pending against him. In view of the same, the entitlement of the petitioner



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for payment of subsistence allowance at the rate of seventy-five percentum cannot be denied. In the circumstances, this Writ Petition is disposed of directing the respondents to pay the subsistence allowance at the rate of seventy-five percentum from the 91st day of suspension to till date and continue to pay the same at the same rate till the conclusion of the criminal proceedings or during the period he was continued under suspension. All the arrear shall be cleared within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition, if any, shall stand closed.

14.02.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

ABR



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To

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State of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai-9.
- 2.The Director of Rural Development and Panchayat Raj,
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- 3.The District Collector,
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- 4.The Personal Assistant to
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O/o. The Collector Office Campus,
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- 5.The Block Development Officer (Village Panchayat),
O/o. Block Development Officer,
R.S.Mangalam Union & Taluk,
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- 6.The President,
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MUMMINENI SUDHEER KUMAR, J.

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