BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 07.01.2025

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THE HONOURABLE MR. JUSTICE B.PUGALENDHI

WP(MD)No.27504 of 2022

N.Murugesan ... Petitioner

versus

The Principal Secretary to Government,
Revenue and Disaster Management Department,
Secretariat,
Chennai 600 009. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondent i.e., the Principal Secretary to Government, Revenue and Disaster Management Department, Secretariat, Chennai, to make payment of enhanced subsistence allowance to the petitioner with effect from 09.07.2021, within a specified time.

For Petitioner : Mr.S.Visvalingam
For Respondent : Mr.K.Balasubramani,
Special Government Pleader

ORDER

The petitioner, while working as District Adi Dravidar and Tribal Welfare Officer, Madurai, was placed under suspension, vide G.O.

(2D)No.234, Revenue and Disaster Management Department, dated 31.12.2020. The petitioner, with a grievance that he was not paid with the enhanced subsistence allowance, as per Rule 53(1)(a)(i) of the Fundamental Rules, has filed this writ petition.

2. The learned Special Government pleader, based on the instructions provided by the Additional Chief Secretary to Government, submits that the petitioner was placed under suspension on the allegation of irregular appointment of Cooks and Sweepers in Adi Dravidar Welfare Schools and Hostels. He further submits that apart from this allegation, the petitioner is also facing yet another charge for having issued a false Scheduled Tribe Certificate to an ineligible person. He further submits that the enquiry as to the first charge is now pending before the Tribunal established for disciplinary proceedings. According to him, there are 19 witnesses, out of which, 18 witnesses have already been examined and the Deputy Superintendent of Police, Vigilance and Anti-Corruption Department alone has to be examined. The Tribunal has listed the enquiry proceedings for further hearing on 21.01.2025.

3. The learned Special Government Pleader, by referring the proviso to Rule 53 of the Fundamental Rules, submits that in the event, if a suspended employee has attained the age of superannuation, then, he is entitled for the reduced subsistence allowance to the amount of pension which will be provisionally admissible to him. Therefore, according to him, the petitioner has been paid provisional pension from the date of his attaining superannuation, with effect from 31.05.2023.

4. The learned counsel appearing for the petitioner submits that the petitioner is entitled for provisional pension and for the period from the month of June 2021 till 31.05.2023, the petitioner is also entitled for the enhanced subsistence allowance, as per Rule 53 of the Fundamental Rules.

5. This Court considered the rival submissions made and also perused the materials placed on record.

6. The petitioner, who has been placed under suspension, has approached this Court that the enhanced subsistence allowance as

eligible under Rule 53(1)(a)(i) of the Fundamental Rules, has not been provided to him. Rule 53(1)(a) of the Fundamental Rules is extracted as under:

> "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:-
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> (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) The amount of subsistence allowance may be increased by a suitable amount, not exceeding fifty per cent of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the said authority, the period of suspension has been prolonged for

reasons to be recorded in writing, not directly attributable to the Government servant;

(ii) the amount of subsistence allowance may be reduced by a suitable amount, not exceeding fifty per cent of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, directly attributable to the Government servant;

(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."

7. Rule 53(1) of the Fundamental Rules is only a discretionary relief vested with the Department, depending upon the facts and

circumstances of the case.

8. Since the learned counsel appearing for the petitioner is taking a plea that the disciplinary proceedings has not been delayed by the petitioner, the respondent shall take a decision with regard to the eligibility of the petitioner for the enhanced subsistence allowance, if any, for the period from 01.07.2021 till 31.05.2023. The petitioner is permitted to submit a fresh representation in this regard, by referring the provision of Rule 53(1) of the Fundamental Rules. On receipt of such representation, the respondent shall consider the same in accordance with Rule 53(1) of the Fundamental Rules and pass orders within a period twelve (12) weeks from the date of receipt of a copy of this order.

9. With the above direction, this writ petition is disposed of. No costs.

07.01.2025

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

To

The Principal Secretary to Government,
Revenue and Disaster Management Department,
Secretariat,
Chennai 600 009.

B.PUGALENDHI, J.

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