



GOVERNMENT OF KERALA

Abstract

Local Self Government Department - Rural Development -Establishment - TA 352/2013 (WP(c)No. 27142/2008 of Hon'ble High Court Kerala) filed by Sri.K.V.Sebastian-Judgement of Hon'ble Kerala Administrative Tribunal- Complied with - Orders Issued.

LOCAL SELF GOVERNMENT (ERB) DEPARTMENT

G.O. (Rt).No.327 /2017/LSGD.

Thiruvananthapuram, Dated: 04.02.2017

- Read: 1. Order No.RD-1-1431 dated 11/07/2006 of the office the District Collector, Wayanad.
2. Order No. Estt-A4-26605/06 dated 23/03/2007 of the Commissioner for Rural Development Department.
3. Order No. Estt A4 26605/06/CRD dated 26/11/2007 of the Commissioner for Rural Development Department.
4. Petition dated 03/01/2008 submitted by Sri.K.V. Sebastian before the Government.
5. Judgment dated 28/09/2016 of the Hon'ble Kerala Administrative Tribunal, in TA 352/2013 (WP (c) No. 27142/2008 of Hon'ble High Court of Kerala).

ORDER

Sri.K.V.Sebastian while working as Joint Block Development Officer was placed under suspension with effect from 11/07/2006 pending enquiry into certain allegations against him regarding the sanctioning of financial assistance in the IAY Scheme vide 1st paper read above. As per paper 2nd read above, the disciplinary proceedings initiated against him was finalised by awarding a minor penalty of censure and he was also reinstated in service. As per paper 3rd read above, his suspension period was regularised as duty for all purpose except for pay and allowance which was limited to subsistence allowance already drawn.

Against this, Sri.K.V.Sebastian had submitted a petition before the Government vide paper 4th read above, wherein he has complained that his date of increment was due on 01/07/2006 which was not sanctioned to him. Hence the rate of subsistence allowance paid to him was in the basic pay of 30/06/2006. Thus he requested the Government to sanction the following.

- (I) to pay exact rate of subsistence allowance including increment due to him prior to the date of suspension.
- (II) to pay increment in the periodical rise of DA with the subsistence allowance.
- (III) As he was eligible to get 80% of pay and allowances for the period of suspension treated as duty and paid to the difference in the amount.

Meanwhile Sri.K.V.Sebastian has filed WP (c) No. 27142/2008 before the Hon'ble High Court which was transferred to the Hon'ble Kerala Administrative Tribunal as TA 352/2013 and the Kerala Administrative Tribunal vide order 5th read above has directed 1st respondent to consider and pass order on Ext.5 representation after affording an opportunity of being heard to the applicant as pass orders within a period of 3 months from the date of receipt of certified copy of the order. As per direction from the Hon'ble Kerala Administrative Tribunal the applicant was heard on 30/11/2016 by the Under Secretary (LSGD). Shri.Gopinathan Nair, counsel of the applicant also attended the hearing. During the time of hearing the counsel of the applicant stick to the earlier stand.

Government have examined to the matter in detail. As per Rule 55 (i) Part I KSR, an employee under suspension will be eligible for Dearness Allowance not exceeding the amount admissible as such had he been on leave salary equal to the rate of subsistence allowance payable from time to time. Hence the benefit of enhanced Dearness Allowance may be sanctioned to Sri.K.V.Sebastian, in subsistence allowance. Further there is no justification in denying the benefit of increment that becomes due before the date of suspension. As per the Circular No.87059/2000/Fin dated 24/05/2000 an officer under suspension is eligible for periodic increase in Dearness allowances also.

As per judgment dated 08/01/2010 of the Hon'ble High Court of Kerala in W.P (c) No. 23741/2005 filed by Sri.M.T.Mohammed had ordered that under Rule 56 B of Part I, KSR confers a discretion on the authority competent to reinstate the employee to order full pay and allowances, if he is of opinion that the suspension was wholly unjustified. The Manual of Disciplinary Proceedings and Ext.P5 amending the same cannot amend Rule 56B. In private employment where the Kerala Payment of Subsistence Allowance Act applies, an employee suspended pending enquiry is entitled to balance salary only if he is exonerated from the charges. Once the employee is found guilty, whatever be the punishment imposed, he is not entitled to salary other than the subsistence allowance paid to him. I am unable to persuade myself to hold that in Government Service, where the employee is being paid from public funds, a person found guilty of misconduct should be paid salary in full or part, other than the subsistence allowance, without a finding that the suspension was wholly unjustified.

When the guilt is found, then the suspension can only be held to be wholly justified. If that be so, there is no logic in wasting public money on an employee found guilty of misconduct, merely because the punishment imposed on him is minor.

In the above circumstances, the petitioner Sri.K.V.Sebastian's request to sanction 80% of the pay and allowances is rejected. But his request to re-calculate the subsistence allowance including increment, periodic increase in Dearness Allowance is agreed to.

Hence Government are pleased to dispose Ext.P5 (Annexure-VIII) petition submitted by Sri.K.V.Sebastian, by giving direction to the Commissioner for Rural Development Department to disburse his pay and allowances for the period is limited to eligible subsistence allowance taking into consideration of the increment and enhanced Dearness Allowances. The judgment dated 28/09/2016 of Hon'ble Kerala Administrative Tribunal is thus complied with.

(By Order of the Governor)

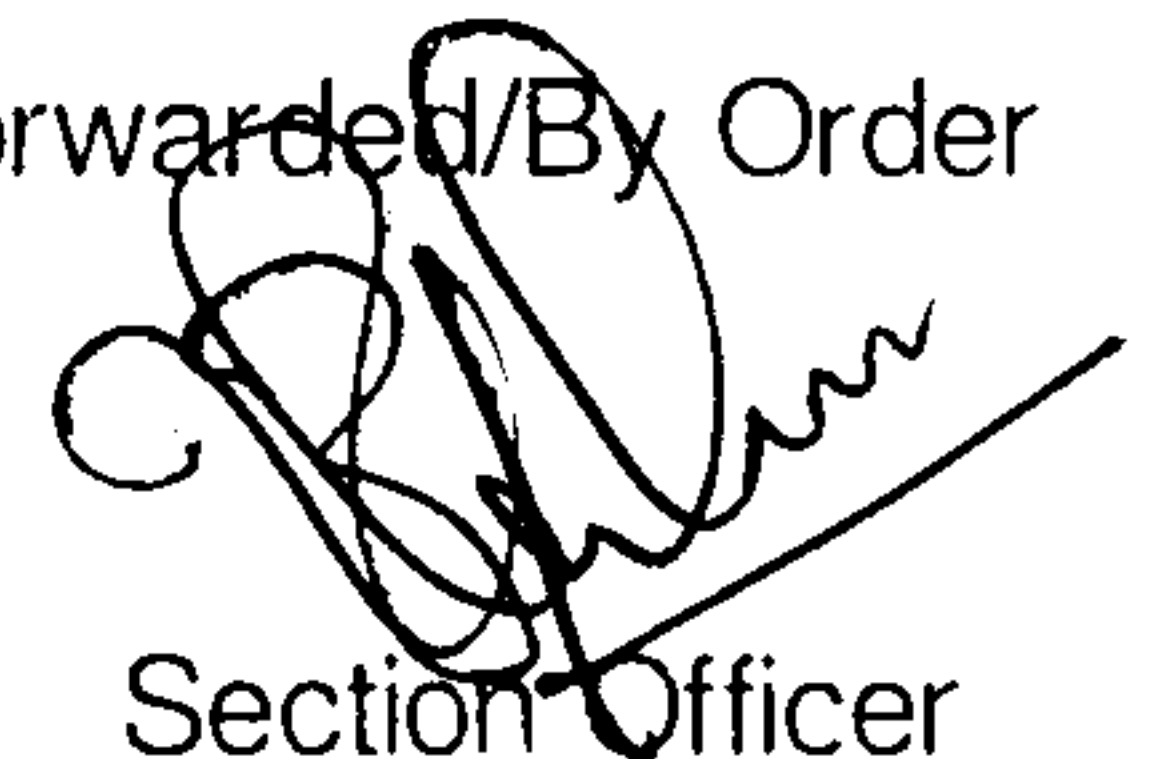
JAYASREE.M

UNDER SECRETARY

To

- 1) Sri.K.V. Sebastian, Joint Block Development Officer(Rtd.), Kalpetta Block Panchayat, Wayanad,
- 2) The Rural Development Commissioner, Thiruvananthapuram.
- 3) The Advocate General, Kerala, Thiruvananthapuram (with covering letter)
- 4) The Local Self Government (ERA) Department
- 5) The Principal Account General, (A&E), Kerala, Ernakulam.
- 6) ✓ The Information Kerala Mission, Thiruvananthapuram.
- 7) The Public relation and information (Web & New media) (for publishing in government site)
- 8) Stock file/ Office copy.

Forwarded/By Order



Section Officer