



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.P.SAHI, CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A. [MD]No.503 of 2012
and M.P. No.1 of 2012

- 1.The Director of School Education,
College Road,
Chennai.
 - 2.The Chief Educational Officer,
Ramanathapuram
 - 3.The District Educational Officer,
Paramakudi
Ramanathapuram District.
- : Appellants

Vs.

P.Shanthi : Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 03.08.2011 passed in W.P(MD)No.13999 of 2009.

Prayer in WP(MD)No.13999 of 2009

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus directing the respondents to disburse the salary to the petitioner from September 2000 onwards with interest at 18% p.a. till date of payment.

For Appellants	: Mrs.S.Srimathy
	Special Government Pleader
For Respondent	: Mr.A.Thirumurthy

JUDGMENT

[Judgment of the Court was delivered by

The Hon'ble Chief Justice]

This writ appeal has been preferred by the Director of School Education questioning the order of the learned Single Judge dated 3.8.2011, whereby the appellants were granted a month's time to ensure payment of subsistence allowance to the respondent petitioner, which she was entitled to receive prior to her removal from service.

2. Learned counsel for the appellants contends that the respondent petitioner having been removed on serious charges and her removal order being still *sub judice* in an appeal, there is no occasion to make any further payment and further the respondent petitioner should be called upon to give an undertaking to the effect that in the event the appeal against her removal is dismissed, she would refund the amount that is to be paid to her.



3. We have considered the submissions raised and heard learned counsel for the respondent.

4. The arguments raised on behalf of the State is absolutely unacceptable, inasmuch as the claim of the respondent petitioner is only in respect of subsistence allowance that was admissible and payable prior to her removal dated 17.09.2012. It is stated by the respondent petitioner that from October 2011 till her removal, no subsistence allowance was paid and therefore, this amount cannot be in any way withheld by the appellants. From a perusal of the dates and events, it appears that the respondent petitioner was suspended on 29.03.2010 and it is not disputed that she has received the subsistence allowance till October 2011.

5. We find that there is no justification for withholding the subsistence allowance, which is admissible and payable to the respondent petitioner for the balance of the period till she was removed. Inasmuch as there is no termination of service till the date of removal, i.e., 17.9.2012, her services did not finally disrupt until the removal order was passed. The pendency of an appeal filed by the respondent petitioner against her removal will not work as a disadvantage for receiving subsistence allowance during the period of suspension, inasmuch as undisputedly the removal order dated 17.9.2012 does not envisage any such deduction.

6. The learned Single Judge, therefore, was justified in issuing the mandamus as prayed for. There is no merit in the appeal. It is, accordingly, rejected and further clarified that the period of one month, provided by the learned Single Judge, shall still be available to the appellants to comply with the order. However, there is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

RR

To

- 1.The Director of School Education,College Road, Chennai.
- 2.The Chief Educational Officer,Ramanathapuram
- 3.The District Educational Officer,Paramakudi, Ramanathapuram DT
- +1 CC to M/s.M/S.A.THIRUMURTHY, Advocate (SR-105174[F]
- +1 CC to M/s.SPL.GP (SR-105338[F] dated 17/12/2019)

JUDGMENT MADE IN

W.A.[MD]No.503 of 2012

and M.P.No.1 of 2012

16.12.2019