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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2021

CORAM:

THE HONOURABLE Mr.JUSTICE S.S.SUNDAR

W.P.No.3432 of 2021

R.Swaminathan

.. Petitioner

Versus

1. The District Collector,
Chennai District.

2. The District Collector,
Kancheepuram District.

3. The Personal Assistant to
The District Collector Kancheepuram,
Social Nutritious Meal Programme,
Kancheepuram District.

4. The Commissioner,
Department of Social Welfare &
Nutritious Meal Programme,
Chepauk, Chennai - 600 005.

5. The Zonal Officer,
Zone 12, Corporation of Chennai,
No.1, New Street, Alandur,
Chennai.

.. 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 entire records connected with the proceedings of the 2nd respondent in Na.Ka.No.7446/12/SaVuThi/PaOE1 dated 21.05.2020 and quash the same as illegal, incompetent, without jurisdiction and further direct the respondents to regularize the period of suspension of the petitioner from 01.08.2012, till the date of superannuation into service as duty period with all service as well as monetary benefits within a period fixed by this Court.

For Petitioner : Mr.M.Muruganantham

For Respondents : Mr.C.Kathiravan
Government Advocate for R1 to R4

Mr.M.Ganesan for R5



O R D E R

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus calling for the records connected with the proceedings of the 2nd respondent in Na.Ka.No.7446.12/SaVuThi/PaOE1 dated 21.05.2020 and quash the same as illegal, incompetent, without jurisdiction and further direct the respondents to regularize the period of suspension of the petitioner from 01.08.2012, till the date of reinstatement into service as duty period with all service as well as monetary benefits within a period fixed by this Court.

2. The petitioner joined in service as Noon meal organiser in Government High School, Alanthur Municipality, Kancheepuram District in the year 1991. A criminal case was registered against the petitioner in the year 2012. The petitioner was arrested by the Inspector of Police, CSCID, Chennai, for offences under Section 6(4) of Tamil Nadu Scheduled Commodities (Regularization of Distribution by Card System) Order 1982 r/w 7 (1) a(ii) of Essential Commodities Act 1955 and 248(1) of Cr.P.C., 1972. Pursuant to the registration of criminal case, the petitioner was suspended from service by an order of the 2nd respondent w.e.f. 01.08.2012. The order was also subsequently extended by the 2nd respondent.

3. It is admitted that the criminal case registered against the petitioner ended in acquittal by judgment in C.C.No.137 of 2018 by the learned Judicial Magistrate No.1, Kanchipuram, dated 31.05.2018. Even after the order in criminal case, acquitting the petitioner from the criminal charges, the petitioner was not reinstated despite several representations having been made by the petitioner. Hence, a writ petition in W.P.No.7022 of 2019 was filed before this Court for issuance of a Writ of Mandamus directing the 2nd respondent to consider the representation of the petitioner and to review the order of suspension. This Court after hearing the case, passed the following order:

8. In the case on hand, the order of suspension was issued long back and the writ petitioner is under continuous suspension without any progress in the departmental disciplinary proceedings as well as the criminal case. This being the factum of the case, this Court is of an opinion that there is no useful purpose would be served in keeping the writ petitioner under suspension for further period and accordingly the following orders are passed:

- (i) The impugned order of suspension passed by the second respondent in proceedings Na.Ka.No.7446/12/rcjp/gx1, dated 1.8.2012 is quashed.



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- (ii) The respondents are directed to reinstate the petitioner in service.
- (iii) The respondents are directed to post the writ petitioner in any one of the non-sensitive post till the conclusion of the departmental disciplinary proceedings as well as the criminal case registered against the writ petitioner.

4. Thereafter, the petitioner's representation was considered in the light of the judgement of this Court in W.P.No.7022 of 2019, dated 27.03.2019 and the order of suspension was withdrawn by proceedings dated 27.05.2019.

5. After revocation of order of suspension, the petitioner submitted a representation dated 13.07.2019 to pay salary for the period during which he was suspended, i.e., from 12.07.2012 to 29.05.2019. Thereafter, the writ petitioner was constrained to file a writ petition in W.P.No.31542 of 2019 to issue a direction to the 5th respondent therein to consider the representation of the petitioner. This Court by an order dated 11.11.2019 disposed of the writ petition with a direction to the 5th respondent to consider the representation dated 13.07.2019, submitted by the petitioner and pass appropriate orders on merits, within a period of three months from the date of receipt of a copy of the order. Thereafter, the 2nd respondent passed the impugned order dated 21.05.2020, rejecting the representation of the petitioner on the ground that the petitioner is not entitled to get salary for the period during which he did not do any work. However, the period of suspension was regularized to be treated as leave without salary.

6. The respondents did not file any counter. Going by the sequence of events, the petitioner was suspended only due to the pendency of a criminal complaint against him. He was acquitted in the criminal case by a judgement dated 31.05.2018. Though, it is possible for the respondents to initiate disciplinary proceedings independently despite the verdict of the criminal court, they have not done that. The order of suspension was thereafter revoked by the 2nd respondent and the petitioner was reinstated into service w.e.f. 27.05.2019. After reinstatement, the petitioner submitted the representation to the 5th respondent for disbursement of salary for the period of suspension. That representation was rejected by the impugned order only on the ground that the petitioner is not entitled to get salary for the period he did not work. When the petitioner was placed under suspension only in contemplation of disciplinary proceedings or pendency of criminal proceedings, the order of suspension is legitimate unless the order of suspension is quashed as unwarranted. If no proceedings are initiated departmentally after placing an employee under suspension, the order of



suspension will be considered invalid and it cannot be treated as one to have any legal consequences affecting the right of employee. On the basis of an order of suspension, the petitioner was never allowed to work. For the period when the petitioner was forced to be away from work by the respondents, the petitioner cannot be denied salary on any principle. Though the petitioner did not work during the period of suspension, the situation was brought and he was compelled not to work by an act which became illegal after the verdict of criminal court. When the criminal case ended in acquittal, the respondents did not initiate fresh proceedings departmentally. In such circumstances, this Court is of the view that the petitioner is entitled to get salary for the period during which he was placed under suspension in equity. The judgement in C.C.No.137 of 2018 on the file of learned Judicial Magistrate No.1, Kanchipuram indicates that its not an honourable acquittal. For want of proof by the prosecution, the charge against the petitioner was held not proved. The delay in disposal of the criminal case also may be a reason for the verdict being given in favour of the petitioner. The sequence of events indicates that it cannot be ruled out that the petitioner was falsely implicated in the criminal case. However, there is no evidence or allegations of malafides. In such circumstances, this Court is of the view that some deduction should be made while directing disbursement of salary to the petitioner for the period during which he was placed under suspension.

7. This Court is of the view that 75% of the salary for the period of suspension will be appropriate. Hence the impugned order passed by the 2nd respondent dated 21.05.2020 is quashed. The petitioner is entitled to 75% of the salary which the petitioner would have received for the period from 12.07.2012 to 29.05.2019. The respondent shall disburse 75% of the regular salary payable for the period to the petitioner, within a period of twelve weeks from the date of receipt of a copy of this order. In case, the 2nd respondent does not pay salary within a period of one month, the respondent is liable to be pay interest at 6% for the delayed payment.

8. This writ petition is disposed of with the above directions. No Costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssr



To

1. The District Collector,
Chennai District.

2. The District Collector,
Kancheepuram District.

3. The Personal Assistant to
The District Collector Kancheepuram,
Social Nutritious Meal Programme,
Kancheepuram District.

4. The Commissioner,
Department of Social Welfare &
Nutritious Meal Programme,
Chepauk, Chennai - 600 005.

5. The Zonal Officer,
Zone 12, Corporation of Chennai,
No.1, New Street, Alandur,
Chennai.

+1cc to Mr.M.Muruganantham, Advocate, S.R.No.34889

+1cc to Mr.M.Ganesan, Advocate, S.R.No.35270

+1cc to the Government Pleader, S.R.No.35318

W.P.No.3432 of 2021

NMI (CO)
HS (26/08/2021)