



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

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THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO. 6498 OF 2011

P.Balakrishnan

..Petitioner

Vs

1. The Collector,
Villupuram, Villupuram District.

2.The Commissioner,
Mugaiyur Panchayat Union,
Mugaiyur, Villupuram District.

..Respondents

Prayer: writ petition is filed under Article 226 of Constitution of India for Writ of Certiorarified Mandamus, calling for records relating to the impugned order of the first respondent in Na.Ka.No.Pa.E4/11079/2010, dated 04.10.2010 and quash the same and direct the first respondent to treat the period of suspension from 31.07.2000 to 30.01.2003 as duty period and pay full salary and other allowance for the said period.

For Petitioner : Mr.P.Manoj Kumar

For Respondent : Mr.J.C.Durairaj, AGP - R1
Mr.T.Sampath Kumar, GA - R2

O R D E R

The prayer sought for in the writ petition is to call for records relating to the impugned order of the first respondent in Na.Ka.No.Pa.E4/11079/2010, dated 04.10.2010 and quash the same and direct the first respondent to treat the period of suspension from 31.07.2000 to 30.01.2003 as duty period and pay full salary and other allowance for the said period.



2. The writ petition is of the year 2011, but no counter affidavit has been filed by the respondents till date, despite several opportunities granted by this Court. Hence based on the available materials, this writ petition is disposed of.

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3. It is the specific case of the petitioner that the writ petitioner was placed under Suspension by proceedings of the Commissioner/2nd respondent in Na.Ka.No.A6/3418/2000 dated 21.07.2000. The respondent has levelled six charges against the petitioner. A criminal case was also registered against the petitioner in C.C.No. 59 of 2002 before the Judicial Magistrate Court, Thirukoilur. Subsequently, the said criminal case was ended in acquittal. Insofar as the Disciplinary Proceedings is concerned, charges are still pending and no final order has been passed. Based on the said acquittal in criminal case, the petitioner was reinstated into service by proceedings of the 2nd respondent dated 25.04.2005 and subsequently, he was allowed to retire from service on superannuation.

4. According to the learned counsel for the petitioner without passing any final orders on the representation made by the petitioner, he was allowed to retire from service, therefore, the petitioner is entitle for benefit of treating suspension period as duty period and consequently entire arrears are to be paid to the petitioner.

5. On the other hand, the learned Additional Government Pleader has submitted that the petitioner was worked as Noon Meal Organiser in Panchayat Union School and there is no provision for granting subsistence allowance as per the existing rules being followed by the respondents. Hence, the respondents had not consider the claim made by the petitioner and allowed him to retire from service on superannuation.

6. The short point involved in the present writ petition is whether the petitioner herein is eligible for grant of subsistence allowance for the suspension period as claimed by him.

7. The main contention put forth by the learned Government Pleader is that the petitioner was worked as non meal organiser in the Panchayat Union School, therefore he is not entitle for subsistence allowance. As per General Principles, any employee who appointed either regular pay or consolidated pay, he/she is entitle for subsistence allowance. The learned counsel for the petitioner has also relied upon the unreported decision of this Court made in W.P.No.17515 of 2009 dated 23.10.2009 wherein this Court relying upon the decision of the Hon'ble Supreme Court in the case of Balvantrai Ratilal Patel Vs.State of



Maharashtra reported in AIR 1968 SC 800 has held as follows;

"6. While this Court is not inclined to interfere with the order of the suspension pending further enquiry into the charges, at the same time it cannot be said that the petitioner is not entitled for subsistence allowance for the reason that there is no provision for providing subsistence allowance. The supreme Court vide its Judgment in Balvantrai Ratilal Patel v. State of Maharashtra reported in AIR 1968 SC 800 has held that in the absence of any Rule, an employee is entitled for full wages. The following passage found in paragraph 4 may be usefully extracted below:

"4. The general principle therefore is that an employer can suspend an employee pending an inquiry into his misconduct and the only question that can arise in such suspension will relate to payment during the period of such suspension. If there is no express term relating to payment during such suspension or if there is no statutory provision in any enactment or rule the employee is entitled to his full remuneration for the period of his interim suspension. On the other hand, if there is a term in this respect in the contract of employment or if there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension the payment will be made in accordance therewith. This principle applies with equal force in a case where the Government is an employer and a public servant is an employee with this qualification that in view of the peculiar structural hierarchy of Government administration, the employer in the case of employment by Government must be held to be the authority which has the power to appoint the public servant concerned. It follows therefore that the authority entitled to appoint the public servant is entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or statutory rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such



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provision, the public servant will be entitled to his full emoluments during the period of suspension. On general principles therefore the Government, like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. The Government may also proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty. As we have already pointed out, the question as to what amount should be paid to the public servant during the period of interim suspension or suspension as a punishment will depend upon the provisions of the statute or statutory rules made in that connection."

7. Therefore, the writ petition stands dismissed in so far as the order of suspension is concerned. However, a direction is issued to the respondents to pay subsistence allowance to the petitioner as stipulated by the Supreme Court referred to above. No costs. Consequently, connected miscellaneous petition is closed."

8. The facts involved in the case on hand is also identical to the facts of the case cited supra. The petitioner herein also worked as Noon Meal Organiser in a Panchayat Union School. He was placed under suspension and subsequently based on the outcome of criminal case registered against him, he was reinstated into service and allowed to retire from service on superannuation.

9. In view of the aforesaid facts and circumstances of the case and by relying upon the decision of this Court cited supra, this Court is of the view that the petitioner cannot be deprived of monetary benefit which he is actually entitled to, citing absence of rule provisions. This Court is of the opinion that the petitioner herein is entitled for subsistence allowance for the period from 31.07.2000 to 30.01.2003 i.e for the period which he was placed under suspension.

10. Accordingly, the 1st respondent is directed to pay the subsistence allowance to the petitioner for the period from 31.07.2000 to 30.01.2003, within a period of four (4) months from the date of receipt of a copy of this Order.



11. In view of non filing of counter affidavit for 10 years on behalf of the respondents, the District Collector/1st respondent is directed to call for explanation from the officers concerned for such lapses.

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12. With the above observations and directions, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Collector,
Villupuram, Villupuram District.

2. The Commissioner,
Mugaiyur Panchayat Union,
Mugaiyur, Villupuram District.

+1cc to Mr.P.Rajendran, Advocate, S.R.No.64275

+1cc to the Government Pleader, S.R.No.64845

W.P.No.6498 of 2011

UM(CO)

RLP(27/01/2022)