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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.2187 of 2022

P.Sinipriya

...Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep by its Secretary,
Department of Social Welfare and Nutritious Meal
Programme (ICDS),
Fort St.George, Chennai - 600 009.

2.The District Collector,
Theni District.

3.The District Project Officer (ICDS),
Theni District.

4.The District Child Development Project Officer,
Theni District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the second respondent to pay subsistence allowance to the petitioner, every month along with the arrears from her date of suspension 26.05.2020 until revocation, as per G.O.Ms.No.151/Social Welfare and Noon Meal Programme (SWDI) Department-1/2003-1, dated 11/08/2003, within a stipulated time.

For Petitioner

:Mr.N.Karthik Kanna

For Respondents

:Mr.V.Nirmal Kumar
Government Advocate

O R D E R

This writ petition is filed for a Mandamus, directing the respondents to pay the subsistence allowance to the petitioner from her date of suspension 26.05.2020 until its revocation, as per



Letter in G.O.Ms.No.151/Social Welfare and Noon Meal : ne
(SWDI) Department-1/2003-1, dated 11.08.2003.

2.The case of the petitioner is that she is working as Anganwadi worker and facing a criminal case in Crime No.472 of 2020 for the offence under Child Marriage Restraint Act, 1929, on the file of Veerapandi Police Station, dated 11.05.2020 that she is attempting to perform her daughter's marriage while she was a minor and pursuant to which, she was placed under suspension on 26.05.2020. Hence, the petitioner filed W.P(MD) No.14352 of 2021 seeking quashment of suspension and this Court disposed of the writ petition to the concerned respondent to consider the representation of the petitioner within three months. The grievance of the petitioner is that though she was placed under suspension on 26.05.2020, the respondent has not proceeded with the enquiry and no subsistence allowance has been paid till date.

3.The learned counsel appearing for the petitioner by relying upon the letter issued in G.O.Ms.No.151/Social Welfare and Noon Meal Programme (SWDI) Department-1/2003-1, dated 11.08.2003 submits that the petitioner, who is working as Anganwadi worker is entitled for subsistence allowance as per the above Government order. However, according to the petitioner, she was not paid with the subsistence allowance. Hence, this petition.

4.Mr.Nirmal Kumar, learned Government Advocate, who takes notice for the respondents submits that the petitioner is facing a criminal case and therefore, she was placed under suspension. The learned Government Advocate by referring the letter in Na.Ka.No.17077/E3-2/2013, dated 14.10.2015 submits that the persons, who are working in Anganwadi, are not entitled for any subsistence allowance and to that effect, a circular has also been issued by the Director of Social Welfare Department to all the District Collectors. In view of the above circular, the petitioner, being an Anganwadi worker is not entitled for subsistence allowance.

5.This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

6.Considering the limited scope involved in this writ petition, and considering the Letter in G.O.Ms.No.151/Social Welfare and Noon Meal Programme (SWDI) Department-1/2003-1, dated 11.08.2003, the petitioner is entitled for subsistence allowance, this Court is inclined to allow this writ petition. For better appreciation, the aforesaid Government letter is extracted in full:-

**"SOCIAL WELFARE AND NOON MEAL PROGRAMME (SWDI) DEPARTMENT
(G.O.Ms.No.151/SWD-1/2003-1, dated 11/08/2003)**



From

Tmt.C.K.Kariyali, I.A.S,
Government Secretary.

To

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All District Collectors,
Rural Development Director /Municipality Administrative
Commissioner,
Project Coordinator,
World Bank Assisted Integrated Child Development Service Scheme - 3,
Chennai - 113.

Sir,

Sub:Social Welfare and Noon Meal Programme - Puratchi
Thalaivar M.G.R.Noon Meal Scheme - World Bank Assisted
Integrated Child Development Service Scheme -
Organizer, Anganwadi worker, cook and helper -
irregularity in service - suspension -
charges frame - advice-regarding.

Ref:1.G.O.(MS.No.370 Social Welfare and Noon Meal
Programme, dated 16.04.1989.

2.Government letter No.16 Social Welfare and Noon Meal
Programme dated 14.01.1992.

Your attention is required as per Government Order and letter
cited above.

2.Anganwadi worker, Anganwadi helper, Dais and Community
Nutrition worker, who work under Puratchi Thalaivar M.G.R.Noon Meal
Scheme, World Bank Assisted Integrated Child Development service
scheme -3 and Integrated Child Development Service as per G.O.1
cited above cum under part time permanent employees no government
rules have been framed for these categories. They are administrated
only by order which is released now and then. But they are suspended
and disciplinary action take due to their irregularities by District
Collector like giving food in an unprotected manner, preparing
insufficient food, insufficient stock in centres, call for
explanation to Anganwadi worker for irregularities within 21 days as
per reference 2 cited. If explanation is not submitted treat them as
they have accepted their fault and remove them from service. It has
been instructed as per reference 2, the individual given explanation
take action within 21 days and place final orders. But the
instruction is not carried out properly nowadays and it has been
brought to government notice. Because of this reason, the workers
kept under suspension go to tribunal, sub Court and Hon'ble High
Court, Chennai and ask for subsistence allowance and ask for
reinstatement into duty and it is increased in practice among workers.



Tamil Nadu Tribunal and High Court place orders to pay subsistence allowance for workers, who are under suspension, the High Court ordered in one case as follows:-

"The right of an employee to claim subsistence is a fundamental and it cannot be denied by any employer. Therefore, notwithstanding the fact that the TNCS (D &A) Rules are not strictly applicable to the appellant, he is entitled to subsistence allowance, because he is still retained in service and his services have not been terminated."

In some cases, Supreme Court ordered and opinion given that if fundamental rule does not apply the workers who are under suspension are eligible for full salary. Fundamental rule apply for workers who are part time or permanent are eligible to get.

Hence, to avoid this unnecessary circumstances, instructions are given as follows:-

"As per para 1, if organizers, Anganwadi workers, cook assistants, if suspended, take disciplinary action and 17A, B, E charges to not apply to these employees.

If explanation is received, take speedy action with relevant records, enquiry conducted by giving punishment like stoppage of increment, censure, recovery amount from salary, transfer to far of place or other District, or permanent removal from service any one above punishment within 6 weeks. If action taken within 6 weeks, workers going to Tribunal or High Court can be prevented. If Government instructions not followed within specified time, the worker suspended, to go to Tribunal for getting subsistence allowance and in that case, if not taken action within time, the concerned officers are District Collectors are responsible to pay subsistence allowance. Hence, all District Collectors are instructed to follow instructions.

Kindly acknowledge the letter received immediately.

-Sd-"

7. Since the Government has issued necessary instructions to all the District Collectors, who are the competent authority, to sanction subsistence allowance, during the suspension period, including the anganwadi workers, the same cannot be denied to the petitioner. Therefore, there shall be a direction to the respondents to pay the subsistence allowance to the petitioner from the date of her suspension till its revocation.



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8. With the above direction, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/12/2022

Sub Assistant Registrar (CS)

vrn

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Secretary, Government of Tamil Nadu,
Department of Social Welfare and Nutritious Meal
Programme (ICDS),
Fort St. George, Chennai - 600 009.
2. The District Collector,
Theni District.
3. The District Project Officer (ICDS),
Theni District.
4. The District Child Development Project Officer,
Theni District.

+1 CC to M/s.SPL.GP (SR-4195[F] dated 04/02/2022)

W.P (MD) No. 2187 of 2022

03.02.2022

RD(26/12/2022) 5P 6C