



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.01.2022**

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.1737 of 2022

P.Jeyalakshmi

...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 Child Development Project Officer,
Periyakulam,
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 on 05.08.2019 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 on 05.08.2019 until its revocation, as per Letter in G.O.Ms.No.151/Social Welfare and Noon Meal Programme (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, on account of the complaint lodged by her daughter-in-law, pursuant to which, she was



placed under suspension on 05.08.2019. The grievance of the petitioner is that though she was placed under suspension for the past 29 months, the respondent has not proceeded with the enquiry.

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 involved in 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

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

<https://hcservices.ecourts.gov.in/hcservices/>



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.

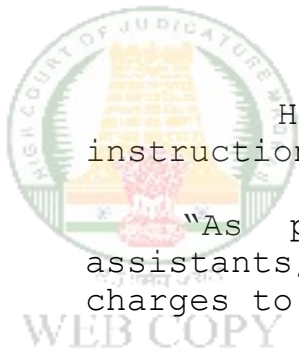
2. Government letter No.16 Social Welfare and Noon Meal Programme dated 14.01.1992.

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 reinstate 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 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.

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

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /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,
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.

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Periyakulam,
Theni District.

+1 CC to M/s.SPL.GP (SR-3334[F] dated 01/02/2022)

W.P (MD) No.1737 of 2022
31.01.2022

IMS (CO)
KB(17.03.2022) 5P 6C