



WP(MD)No.17035 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.08.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD)No.17035 of 2022
and
W.M.P.(MD)Nos.12425 to 12427 of 2022

K.Pandeeswari

... Petitioner

/vs./

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Child Development Project Officer,
District Collectorate Campus,
Virudhunagar District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order of suspension passed by the 1st respondent in his proceedings in So.Mu.Na.Ka.No.1870/A1/2021 dated 13.08.2021 and the consequential order passed by the 2nd respondent in Na.Ka.No.339/2021 dated 05.07.2022 and quash the same as illegal and consequently direct the 1st respondent to consider the petitioner's representation dated 26.06.2022 and pass appropriate orders to revoke the petitioners suspension within a time stipulated by this Court.



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For Petitioner : Mr.E.Marees Kumar
For Respondents : Mr.A.Sivanupandian
Government Advocate

ORDER

The petitioner herein, who was working as an Anganwadi Assistant under the second respondent herein, was placed under suspension on 13.08.2021, on the ground that she was implicated in a criminal case in FIR No.63 of 2021.

2.It is the case of the petitioner that during the period of suspension, she was not paid subsistence allowance. The petitioner now challenges the order of suspension and seeks for consequential direction to the first respondent herein for payment of her subsistence allowance.

3.The Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary vs. Union of India, Through its Secretary and another** reported in **2015 (7) SCC 291** has held that the order of suspension beyond the period of three months without service of a charge memo should be interfered with by the High Court



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and even when the charge memo is served to them, within three months period, a reasoned order of extending suspension period should be passed.

4.The decision of the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (supra) came up for consideration before the Full Bench of this Court, in the case of **P.Kannan vs. The Commissioner for Municipal Administration, Municipal Administration Commission, Ezhilagam Annexure - 6th Floor, Chepauk, Chennai - 5 and others** in **WP.Nos.2165 of 2015 and 21628 of 2018** dated **15.03.2022** and the Hon'ble Full Bench of this Court had held that the decision in **Ajay Kumar Choudhary's** case (supra) should be analyzed on facts of each case considering the gravity of the charges and rules applicable.

5.Admittedly, no charge memo has been issued to the petitioner herein and since almost one year has lapsed from the date, on which the petitioner was suspended, the guidelines imposed in **Ajay Kumar Choudhary's** case (supra) have been violated. In this background, order of suspension requires to be revoked.



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6. Insofar as the payment of subsistence allowance is concerned, FR 53(1) of the Fundamental Rules provides for payment of subsistence allowance to a Government Servant, who has been placed under suspension. The respondents seem to have placed reliance on a Government Letter, dated 04.08.2015, which states that when the Government Employee faces criminal proceedings and such criminal proceedings have not been concluded in his favour, he would not be entitled for subsistence allowance on the ground of 'No work No pay'.

7. Apparently, Government Letter dated 04.08.2015 is in violation of the FR53(1) of the Fundamental Rules. If such a Government Letter, by way of instructions is in violation of such Acts / Rules, the same are deemed to be “*ab initio void*”. Thus, the impugned order placing reliance on this Government Letter dated 04.08.2015 and denying the subsistence allowance to the petitioner herein cannot be sustained.

8. In the result, there shall be a direction to the first respondent herein to forthwith pass orders, revoking the suspension order in So.Mu.Na.Ka.No.



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1870/A1/2021 dated 13.08.2021, with consequential orders for payment of arrears of subsistence allowance from the date of suspension, with effect from 13.08.2021. The first respondent herein shall pass such orders, atleast within a period of six (6) weeks from the date of receipt of a copy of this order.

9. Accordingly, this Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

08.08.2022

Index : Yes / No
Internet : Yes / No
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TO:

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Virudhunagar District,
Virudhunagar.
2. The Child Development Project Officer,
District Collectorate Campus,
Virudhunagar District.



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M.S.RAMESH, J.

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Order made in
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