



W.P(MD)No.18388 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.18388 of 2022

S.Vijayalakshmi

... Petitioner

Vs.

1.The District Collector,
Madurai District,
Madurai.

2.The Personal Assistant (Development) to the Collector,
Madurai District, Madurai.

3.The Assistant Director of Panchayat,
Madurai District, Madurai.

4.The Block Development Officer, (Village Panchayat),
Usilampatti Union,
Madurai District, Madurai.

5.The Special Officer / The Block Development Officer
(Village Panchayat),
Potthampatti Panchayat,
Usilampatti Panchayat Union,
Madurai District, Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to pay the subsistence allowance to the petitioner from the date of her suspension



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order passed by the 1st respondent in Na.Ka.No.59773/2012/Oo.Va.6 dated 26.10.2012 till the date of her reinstatement into service as per Rule 17 (4) of the Tamilnadu Village Panchayat Secretariats (Conditions of Service) Rules, 2013.

For Petitioner : Mr.P.R.Prithviraj

For Respondents : Mr.A.K.Manikkam,
Spl. Government Pleader for R1 to R4.
Mr.T.Villavankothai for R5.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner was appointed as Panchayat Secretary in Potthampatti Panchayat in the year 2011. The petitioner was suspended from service on 26.10.2012 by the District Collector, Madurai. Contending that she deserves to be reinstated, she filed W.P.(MD)No.18213 of 2019. The said writ petition was allowed on 08.02.2022 and the respondents were directed to reinstate the writ petitioner. Questioning the same, the Panchayat had filed W.A.(MD)No.908 of 2022. However, no interim order has been granted by the Hon'ble Division Bench. In the meanwhile the present writ petition came to be filed to direct the respondents to pay her subsistence allowance.



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3. When the matter was taken up for hearing, the learned counsel for Panchayat submitted that the earlier order passed by this Court proceeded on a misconception. According to the learned counsel for Panchayat, the writ petitioner was dismissed from service as early as on 22.10.2012 and that therefore, the question of paying subsistence allowance does not arise. Thereupon, I called upon the learned counsel for Panchayat to produce proof of service of the dismissal order on the writ petitioner. I also called upon him to produce copy of the dismissal order. Today a typed set of papers has been filed and a copy of the order dated 22.10.2012 passed by the Panchayat President has been enclosed. It purports to be the proceedings issued by the President of Potthampatti Panchayat. From a reading of the same, there is nothing on record to show that any enquiry was held. As per G.O.(Ms) No.175, Rural Development and Panchayat Raj (E5) Department, dated 05.12.2006, before dismissing a Panchayat Secretary from service, personal enquiry must be held. In this case, there is nothing on record to show that such an enquiry was ever conducted. No communication summoning the petitioner to attend the enquiry has been enclosed. I am more than convinced that the order dated 22.10.2012 suffers from a clear of violation of principles of natural justice.



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4.The learned counsel for the petitioner would add that this order has been backdated. While I am not in a position to render any positive finding on this allegation, there is nothing on record to show that this order was ever communicated to the writ petitioner. It is well settled that an order merely kept in the file and which has not been communicated to the party concerned is a nullity in law and cannot have any legal consequence. If really an order of dismissal had been passed by the Panchayat President on 22.10.2012, the District Collector would not have passed an order of suspension on 26.10.2012. The order passed by the Inspector of Panchayats is subsequent in point of time. The proceedings dated 22.10.2012 indicates that copies were marked to various official authorities. But none of the authorities including the District Collector have confirmed receipt of the said order dated 22.10.2012. I am, therefore, satisfied that the claim of the Panchayat President that the dismissal order was passed against the writ petitioner has not been substantiated. I have also held that even if such an order has been passed, it would suffer from violation of principles of natural justice, since no personal enquiry was held. Even assuming the worst against the writ petitioner, in view of its non-communication to the writ petitioner, it is nullity in law. More than anything else, a learned Judge of this Court vide order dated 08.02.2022 in W.P.(MD)No. 18213 of 2019 had directed reinstatement of the writ petitioner. Though the



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said order is put to challenge before the Hon'ble Division Bench, it has not been stayed by the Hon'ble Division Bench till date. Therefore, I have to necessarily proceed on the premise that the writ petitioner was suspended on 26.10.2012 and that she is yet to be reinstated. A suspended employee is entitled to subsistence allowance. The fifth respondent is directed to pay the arrears of subsistence allowance payable to the writ petitioner. The said amount will not carry interest for the simple reason that the writ petitioner kept quiet for ten long years and chose to move this Court only in the year 2022. Since the suspension order has been revoked by this Court, the petitioner can no longer be treated as suspended employee. The subsistence allowance is payable to the writ petitioner for the period commencing from 22.06.2012 till 08.02.2022.

5.The writ petition is allowed on these terms. No costs.

27.10.2022

Index : Yes / No
Internet : Yes/ No
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To:-

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G.R.SWAMINATHAN, J.

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