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W.P.No.26279 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.P.No.26279 of 2023

K.Lalitha

... Petitioner

Vs.

1.The District Collector,
District Collector Office,
Ariyalur District.

2.The Project Officer (ICDS)
The Project Office (ICDS)
Ariyalur District.

3.The Child Development Project Officer,
Child Development Project Office,
Sendhurai,
Ariyalur District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondents to consider the petitioner's representation, dated 24.07.2023, and direct the respondents to provide Subsistence Allowance for the suspension period and take proper action within a stipulated time.

For Petitioner : Mr.K.Kathiresan

For Respondents : Mr.P.Baladhandayutham
Special Government Pleader



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ORDER

This writ petition has been filed to direct the respondents to consider the petitioner's representation, dated 24.07.2023, and direct the respondents to provide Subsistence Allowance for the suspension period and take proper action within a stipulated time.

2.It is the case of the petitioner that she is working as Anganwadi Worker in Irungalakurichi, Manakudaiyan Post, Sendurai Taluk, Ariyalur District and she was served with a show cause notice, dated 25.01.2023, for certain deficiency in the work. It is the grievance of the petitioner that, even before submission of reply by the petitioner, within two days, the petitioner was placed under suspension by order dated 27.01.2023 stating reasons beyond the ones stated in the show cause notice. It is the further grievance of the petitioner that she has not been paid Subsistence Allowance so far. In this regard, the petitioner has submitted her representation dated 24.07.2023. Since the same was not considered, the present writ petition has been filed.



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3.Heard the learned counsel for the petitioner and

Mr.P.Baladhandayutham, learned Special Government Pleader, who takes notice for the respondents.

4.It is the contention of the learned counsel for the petitioner that the Anganwadi workers are also eligible to get Subsistence Allowance during the period of suspension. The learned counsel also produced the judgment of this Court in a similar case in ***W.P.(MD).No.1737 of 2022 [P.Jeyalakshmi v. Government of Tamil Nadu, Represented by its Secretary, Department of Social Welfare and Nutritious Meal Programme (ICDS) and others]***, dated 31.01.2022, wherein, this Court, while dealing with the issue as to whether the Anganwadi workers are entitled to Subsistence Allowance, has held as follows :

“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:-



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“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,
Works 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



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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 part time or permanent are eligible to get.

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



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“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 allowed. No costs.”

5. In view of the judgment extracted *supra*, the petitioner is also entitled to Subsistence Allowance during the period of suspension. Therefore, there shall be a direction to the respondents to pay Subsistence Allowance to the petitioner as per Rules.

6. With the above direction, this writ petition is disposed of. No costs.

08.09.2023

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Internet : Yes
Index : Yes / No
Neutral citation : Yes / No
Speaking order / Nonspeaking order

To

1. The District Collector,
District Collector Office,
Ariyalur District.
2. The Project Officer (ICDS)
The Project Office (ICDS)
Ariyalur District.



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3.The Child Development Project Officer,
Child Development Project Office,
Sendhurai,
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