



W.P.No.33194 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI, J.

W.P.No.33194 of 2012

A.Samboornam

... Petitioner

..Vs..

1.The District Collector,
Erode District, Erode.

2.The Block Development Officer,
Erode Panchayat Union, Erode.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in Na.Ka.No.15051/2012/PA5, dt 21.04.2012, quash the same and consequently direct the 1st respondent to disburse the subsistence allowance amounts due to the petitioner within a stipulated time.

For Petitioner : Mr. M. Jaisingh
For Mr.A.Sivaji

For R1 : Mr.S.Rajesh,
Government Advocate

For R2 : No appearance



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ORDER

The order in Na.Ka.No.15051/2012/PA5, dated 21.04.2012, issued by the first respondent/District Collector, Erode is under challenge and a direction is sought for, to disburse the subsistence allowance due to the petitioner, within a stipulated time.

2. Heard Mr.M.Jaisingh, learned counsel representing the counsel for the petitioner and Mr.S.Rajesh, learned Government Advocate for the first respondent.

3. The facts led to the filing of this Writ Petition is set out hereunder:

The petitioner was appointed as noon meal cook on 10.09.1990 at Veerapanchatram Center and later she was transferred to Muthampalayam Housing Unit Center and thereafter to Sengodampalayam. While so, the second respondent passed an order of suspension on 26.07.2010. She moved Writ Petition in W.P.No.19819 of 2010 challenging the suspension order. The said Writ Petition was



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disposed of by an order dated 25.01.2012, directing the second respondent to consider the request made by the petitioner. Based on the above said order passed by this Court, she gave representations to the second respondent and the impugned order came to be passed. Hence, this Writ Petition.

4. Mr.M.Jaisingh, learned counsel representing the counsel for the petitioner argued that the petitioner who is employed as noon meal cook was kept under suspension. Therefore, she is entitled to be paid subsistence allowance for the relevant period.

5. Per Contra, Mr.S.Rajesh, learned Government Advocate for the first respondent would contend that the petitioner being a noon meal staff, as a part time employee and she is not eligible to be paid subsistence allowance as per G.O.Ms.No.2, dated 03.01.1996. He would further submit that considering the Government Order as mentioned supra, she is not entitled to claim subsistence allowance.



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6. The petitioner was appointed as noon meal worker on 10.09.1990. She was suspended on 26.07.2010. It is stated by Mr.S.Rajesh, learned Government Advocate (Crl.Side) that the order of suspension is revoked on 21.04.2012 and that she continues to work as noon meal worker till date.

7. Mr.S.Rajesh, learned Government Advocate (Crl.Side) referred G.O.Ms.No.151, dated 11.08.2003 and contended that as per the said G.O., the petitioner is not entitled to claim subsistence allowance. In the said G.O., in case of suspension of Anganvadi workers and Anganvadi helpers and other related workers in case of suspension of employee further instructions have been issued how it is to be proceeded with.

8. The object behind the payment of subsistence allowance is to provide the bare minimum expenses for subsistence. The subsistence allowance is a perk that provides immediate financial support to the suspended employee in order to ensure that the suspended employees livelihood can continue without any interruption. The relevant G.O., in



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respect of grant of subsistence allowance for Organizer, Anganwadi worker, Cook, Helper, the below mentioned G.O., would govern the issue.

The said G.O., is extracted hereunder:

*“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,
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.*



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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 administered 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.”



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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 take 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 or District Collectors are responsible to pay subsistence allowance. Hence, all District Collectors are instructed to follow instructions.

Kindly acknowledge the letter received immediately.

-Sd-”

The petitioner was appointed as noon meal cook. Therefore, this G.O., is squarely applicable to the petitioner.



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9. Whether the Government has issued directions to all the District Collectors, Rural Development Directors, Municipality Administrative Commissioner, Project Coordinator of World Bank Assisted Integrated Child Development Service Scheme to pay subsistence allowance in case of Anganwadi worker, Helper, Community Nutrition Worker and others subsistence allowance during the suspension period. Therefore, the petitioner is entitled to be paid subsistence allowance for the period of suspension.

10. With these observations, the Writ Petition is allowed with a direction to the respondents to pay the subsistence allowance at an amount equal to 50% of the pay last drawn by the petitioner on the date of suspension within a period of twelve weeks from the date of receipt of a copy of this order. The period of suspension is 26.07.2010 to 21.04.2012.

(i) The petitioner may give a representation in this regard within a period of three weeks from the date of receipt of a copy of this order.



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(ii) On receipt of such representation of the petitioner, the respondents shall pay the subsistence allowance at an amount equal to 50% of the pay last drawn by the petitioner.

(iii) There is no order as to costs.

(iv) Consequently, the connected miscellaneous petition stands closed.

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Index : Yes

Internet : Yes

Neutral Citation Case: Yes/No

To:

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Erode District, Erode.

2.The Block Development Officer,
Erode Panchayat Union,
Erode.



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