



WEB COPY



W.P.No. 7539 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2024

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.7539 of 2024

A.Anandaraj

....

Petitioner

Vs

1.District Collector,
Tirupur District,
Tirupur – 641 604.

2.Commissioner,
Gudimangalam Panchayat Union,
Pedappampatti Post,
Tirupur District.

3.Commissioner,
Kundadam Panchayat,
Tirupur District.

....

Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the orders passed by the first respondent in Na.Ka.No.1583/2022/A1, dated 30.01.2024, quash the same and direct the first respondent to pay the subsistence allowance and to regularise the period of suspension from 02.11.2010 to 01.07.2019 and to pay the arrears of salary payable during the period of suspension along with the monetary and other attendant benefits till the date of retirement.



WEB COPY



W.P.No. 7539 of 2024

For Petitioner : Mr.R.N.Amarnath
For R1 : Mr.R.Vigneswaran
Government Advocate
For R2 & R3 : Mr.R.P.Murugan Raja.
Government Advocate

ORDER

This Writ Petition has been filed challenging the order dated 30.01.2024 in Na.Ka.No.1583/2022/A1 passed by the first respondent, thereby denied the request made by the petitioner seeking subsistence allowance for the period from 02.11.2010 to 01.07.2019.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioner was appointed as a Noon Meal Organizer on temporary basis in the Poollavadi Noon Meal Centre at Gudimangalam Panchayat Union. Subsequently, he was transferred to Government High School, Velur. While being so, on the complaint lodged by his neighbour, due to land dispute, an FIR was registered in Crime No.17 of 2010. Pursuant to the same, the petitioner was arrested and remanded to judicial custody. Therefore, the petitioner was deemed to be suspended



W.P.No. 7539 of 2024

by an order dated 02.11.2010. In the criminal case culminated in trial in

C.C.No.285 of 2012 on the file of the Judicial Magistrate, Udumalpet, it was ended with acquittal of the petitioner. Thereafter, the petitioner submitted a representation to reinstate him into service. It was not considered and as such, the petitioner filed a writ petition before this Court in W.P.No.31144 of 2018. This Court, by an order dated 26.11.2018, directed the respondents to pass orders on the representation submitted by the petitioner.

4. Pursuant to the said direction, the first respondent reinstated the petitioner into service by an order dated 17.06.2019. Though the petitioner was reinstated into service, he was not paid any subsistence allowance for the period of suspension. Therefore, the petitioner submitted a representation for regularisation of the said period with other monetary benefits and the same was not considered. Hence, once again the petitioner filed a writ petition before this Court in W.P.No.11019 of 2020 and this Court directed the respondent to consider the representation and pass orders. However, the request made by the petitioner was rejected by an order dated 30.01.2024.



W.P.No. 7539 of 2024

5. As per G.O.Ms.No.151/Social Welfare and Noon Meal Programme (SWDI) Department-1/2003-1, dated 11.08.2003, the Anganwadi worker was also entitled for subsistence allowance. Based on the said order, the Hon'ble Madurai Bench of this Court had also passed an order in W.P.(MD) No.1737 of 2022, dated 31.01.2022. The relevant portion of the order is extracted hereunder :

“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.No151/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.*



W.P.No. 7539 of 2024

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 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 remover them



WEB COPY



W.P.No. 7539 of 2024

from service. It has been instructed as per reference 2, the individual given explanation take action within 21 dys 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:-

"As per para 1, if organizers, Angamwadi 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



W.P.No. 7539 of 2024

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."

6. A perusal of the impugned order reveals that the request made by the petitioner was rejected on the ground that the petitioner was working as a part time Noon Meal Organizer. Further, the petitioner was suspended due to private issues and he was not suspended due to any department related charges. In view of the Government order, the right of subsistence allowance claimed by the employee is a fundamental right and it cannot be denied by the employer. Therefore, the impugned order



W.P.No. 7539 of 2024

cannot be sustained and it is liable to be quashed.

WEB COPY

7. Accordingly, the impugned order dated 30.01.2024 in Na.Ka.No.1583/2022/A1 passed by the first respondent, is hereby quashed. The first respondent is directed to pass orders to disburse the subsistence allowance and other benefits during the period of suspension of the petitioner from 02.11.2010 to 01.07.2019, if any, within a period of four weeks from the date of receipt of a copy of this order.

8. In the result, this Writ Petition stands allowed. No costs.

21.03.2024

Index:Yes/No
Speaking /Non Speaking Order
Neutral Citation : Yes/No
Lpp
To

1.District Collector,
Tirupur District,
Tirupur – 641 604.

2.Commissioner,
Gudimangalam Panchayat Union,
Pedappampatti Post,
Tirupur District.

3.Commissioner,
Kundadam Panchayat,
Tirupur District.



WEB COPY



W.P.No. 7539 of 2024

G.K.ILANTHIRAIYAN, J.

Lpp

W.P.No.7539 of 2024

21.03.2024