



Writ Appeal No.880 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.01.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.880 of 2020
and
C.M.P.No.10943 of 2020**

1. The Government of Tamil Nadu,
rep. By its Secretary,
Department of Social Welfare and
Nutritious Meal Programme,
(Integrated Child Development Service)
Fort St. George, Chennai – 600 009.
 2. The District Collector,
The Nilgiris District, Udhagamandalam.
 3. The District Child Development Project Officer,
The Nilgiris,
Udhagamandalam.
- ... Appellants

Vs.

Mrs.Ramadevi,
W/o.Prakash

.. Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order passed in W.P.No.22156 of 2019 dated 29.07.2019.

For Appellant : Mr.P.Muthukumar



Writ Appeal No.880 of 2020

Additional Advocate General
assisted by Mr.R.Kumaravel
Additional Government Pleader

For Respondents : Ms.Thangavadhana Balakrishnan

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This writ appeal has been directed against the order passed by the Writ Court dated 29.07.2019 made in W.P.No.22156 of 2019.

2. That the respondent was working as an Anganwadi Worker at the appellant Department, where it was found that certain food items and the goods supplied to the Anganwadi Worker, in turn for supply to the children, have been allegedly misappropriated by her and therefore, by order dated 22.01.2019 she was suspended. Thereafter, by order dated 19.07.2019 the suspension was revoked and she has been reinstated and had been continuously working.

3. However during the period of suspension i.e., 22.01.2019 to 19.07.2019, no subsistence allowance had been paid and no salary had been paid even after the reinstatement, therefore for seeking such a



benefit, the Anganwadi worker had approached the appellant Department and ultimately she had come to the Writ Court by filing the said writ petition to call for the records of the suspension order dated 22.01.2019 and to quash the same and to direct the appellant Department to pay the subsistence allowance to the employee.

4. The learned Judge, who heard the writ petition while passing the order dated 29.07.2019 had allowed the writ petition, where the learned Judge has held as follows:

4. The learned counsel for the petitioner would contend that the order of suspension was revoked on 19.07.2019, thereby, she is entitled to full subsistence allowance from the date of suspension till the date of revocation.

5. The learned Government Advocate appearing for the respondents has not disputed the fact, however, contended that the petitioner being a temporary worker would not be entitled for the balance of subsistence allowance, and also contended that they have not reserved any right to pay the subsistence allowance for the period of suspension after any departmental proceedings is initiated and completed.

6. In view of the above, I am not able to accept the contention of the learned Government Advocate, and once



the suspension order is revoked, the petitioner is entitled to all the benefits as if the petitioner has not been suspended. Hence, this Writ Petition is allowed. However, request for interest for delayed payment is rejected. No costs.

5. Assailing the said order, Mr.P.Muthukumar, learned Additional Advocate General appearing for the appellant would contend that, the respondent was suspended for a serious charge, which in fact has been noted in the order of suspension itself, according to which, the goods supplied for the children between the age of 1 and 2 had not been supplied to the children and as per the schedule, the food has not been prepared and supplied to them and also the registers were not properly maintained and certain materials like soaps, towels etc., supplied for the purpose of distribution to the children had been misappropriated as those goods were not found available at the time of inspection in the Anganwadi centre, therefore, when such a serious lapses had been reported against the respondent/employee, the District Collector had proceeded to suspend her by order dated 22.01.2019. Thereafter, because of the family condition of the respondent/employee as she requested by giving a letter dated 27.02.2019, it was considered and she was reinstated.



6. The learned Additional Advocate General would also submit that, though in her letter dated 27.02.2019, the respondent/employee had accepted her violation and also assured that, in future she would be careful in discharging duties and further, she had given an undertaking that, if she is reinstated she would not claim any monetary benefits during the period of suspension and revocation.

7. Relying upon these materials, the learned Additional Advocate General would contend that, even though some serious charges had been there for taking disciplinary action against the respondent/employee, the Department had decided to revoke the suspension because of the stand taken by her by giving such a letter dated 27.02.2019, where the employee had given an undertaking that she would not claim any backwages or monetary benefits during the period of suspension.

8. When that being the position, since the lenient view has been taken by the appellant Department that cannot be taken as an advantage by the employee, thereby since she had approached the Writ Court, the learned Judge, who disposed the writ petition has not considered all these aspects in proper perspective, therefore, the learned Additional Advocate



Writ Appeal No.880 of 2020

General seeks indulgence of this Court against the impugned order.

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9. However, Ms.Thangavadhana Balakrishnan, learned counsel appearing for the respondent would contend that, the period of suspension should be treated only as duty period, because, without any reason since she has been suspended, as the appellant Department itself had come forward to revoke the suspension, the period of suspension shall only be treated as duty period, therefore, the employee is entitled to get all the monetary benefits, which had been confirmed by the learned Judge in the order impugned, therefore the learned counsel would contend that the said order does not warrant any interference at the hands of the Division Bench.

10. We have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

11. As has been rightly pointed out by the learned Additional Advocate General appearing for the appellant Department that though there had been serious charges, which should have been proceeded by



Writ Appeal No.880 of 2020

way of disciplinary proceedings, the appellant Department had taken a lenient view, because on 27.02.2019 i.e., within one month of the suspension order, the employee had come forward to give a letter dated 27.02.2019, where *inter alia* the following has been stated by the respondent/employee:

"பணிவழங்கும் பட்சத்தில் பணிநீக்க
காலத்திற்கான பணப்பயன்கள் ஏதேனும்
கோரமாட்டேன் என பணிவன்புடன் தெரிவித்து
கொள்கிறேன்."

12. Therefore, considering the factual circumstances, the Department had decided to take a lenient view, hence the suspension was revoked and she was reinstated of-course without any monetary benefits or backwages as the same had been diligently given up by the employee in her letter dated 27.02.2019.

13. In this context, it is to be noted that even though the learned Judge in paragraph 6 of the impugned order has held that, once the suspension has been revoked by the Government or by the Department concerned, the employee is entitled to all the backwages as if that she was not suspended, the said view taken by the learned Judge even though legally correct, the factual matrix in this case, where the employee herself



Writ Appeal No.880 of 2020

had come forward to give up the monetary benefits or salary for the suspension period, has not been considered by the learned Judge.

14. It is also doubtful that, whether the said letter dated 27.02.2019 of the employee was brought to the notice of the learned Judge by either of the parties. When that being so, for such a conclusion arrived at by the learned Judge in paragraph 6 of the impugned order cannot be found fault with.

15. However, since this is a factual matrix, which had happened well prior to the revocation of suspension order, where by the letter dated 27.02.2019, the employee had given up the monetary benefits for the suspension period, the same cannot once again be asked for and for such purpose, since the employee had approached the Writ Court, the order passed by the learned Judge in view of the peculiar facts and circumstances, which had been brought before this Court, is liable to be interfered with.

16. Resultantly, the following orders are passed in this writ appeal:

- ◆ That the order passed by the learned Judge, which is impugned



Writ Appeal No.880 of 2020

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herein is set aside. As a sequel, there shall be a direction to the appellant Department not to proceed against the respondent/employee pursuant to alleged misconduct, which has been mentioned in the order of suspension dated 22.01.2019.

- ◆ Insofar as the respondent/employee is concerned, even though she is otherwise entitled to get the monetary benefits during the suspension period, as she has specifically given up the said monetary benefits during the suspension period by her letter dated 27.02.2019, she cannot go back from the said undertaking as that was the main basis for the appellant Department to come to a decision to revoke the suspension and reinstate the employee without going for any disciplinary proceedings, therefore, such a benefits cannot be asked for by the employee.

R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

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With all these directions, this writ appeal is ordered accordingly.

No costs. Connected miscellaneous petition is closed.



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Writ Appeal No.880 of 2020

(R.S.K.,J.)

(K.B., J.)

29.01.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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Writ Appeal No.880 of 2020