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W.P.No.16997 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.16997 of 2023
and
WMP Nos.16201 & 16202 of 2023

R.Rajendran

... Petitioner

-Vs-

1.The District Collector
Collectorate Building
Ariyalur District 621 704.

2.The Assistant Director of Panchayath
Collectorate Building
Ariyalur District 621 704.

3.Block Development Officer (Village Panchayat)
Panchayath Union Office
Sendurai Union
Ariyalur District-621 714.

4.The President
Ponparappi Panchayat Board
Ponparappi Village
Sendurai Taluk
Ariyalur District-621 710.

... Respondents



W.P.No.16997 of 2023

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records from the 1st respondent dated 27.01.2023 in ref.No.O.M.4076/2021/Vu.Va8 and quash the same as illegal, arbitrary, without jurisdiction and consequently direct the 1st respondent to regularize the service of the petitioner from 23.04.2010 to 09.02.2022 and pay the wages said period and all other attendant benefits.

For Petitioner : Mr.V.Stalin

For Respondents : Mr.P.Balathandayutham
Special Government Pleader
for R1 & R2

Mr.N.Naveen Kumar
Government Advocate
for R3 & R4

ORDER

This writ petition has been filed challenging the proceedings of the 1st respondent in ref.No.O.M.4076/2021/Vu.Va8, dated 27.01.2023 and for a consequential direction to the 1st respondent to regularize the service of the petitioner from 23.04.2010 to 09.02.2022 and to pay the wages for the said period and all other attendant benefits.

2.Heard Mr.V.Stalin, learned counsel for the petitioner,
Mr.P.Balathandayutham, learned Special Government Pleader for R1 & R2 and
Mr.N.Naveen Kumar, learned Government Advocate for R3 & R4.



W.P.No.16997 of 2023

WEB COPY

3.The case of the petitioner is that he was appointed as a part time clerk in the 4th respondent Panchayat in the year 2000. On 01.09.2006, he was given special time scale of pay and he was appointed as a Village Assistant. On 30.11.2018, he was re-designated as the Secretary and given time scale of pay.

4.The further case of the petitioner is that during the year 2010, his wife committed suicide and as a result, the criminal case came to be registered and the petitioner was arrested and detained in custody. In view of the same, he was suspended from service. Ultimately, the Trial Court by judgment dated 05.08.2021, acquitted the petitioner from all charges. In the light of the judgment of the Trial Court, the petitioner was reinstated into service on 09.12.2022.

5.The grievance of the petitioner is that for the period from 23.04.2010 to 09.02.2022, his service was not regularized and he was not paid any wages during that period along with other attendant benefits. The further grievance of the petitioner was that during the suspension period, he was not paid the subsistence allowance. Therefore, the petitioner made detailed representation. The 1st respondent through proceedings dated 27.01.2023, has rejected the claim made by the petitioner. The same has been made as a subject matter of challenge in the present writ petition.



W.P.No.16997 of 2023

6. When the matter came up for hearing on 21.11.2023, this Court passed the following order:

Admittedly, the petitioner was placed under suspension for the period from 23.04.2010 to 09.02.2022 and has not been paid subsistence allowance. Later, he has also been reinstated back into service in view of the criminal case ended in acquittal. It is needless to point out that when a Government servant was placed under suspension, he is entitled to receive the subsistence allowance. Therefore, it is legally bounden duty on the part of the fourth respondent to pay the subsistence allowance at the relevant point of time itself.

2. The learned Additional Government Pleader seeks time. 3. Post on 13.12.2023, on which date, the fourth respondent herein shall report that they had paid the subsistence allowance to the writ petitioner for the aforesaid period before this Court, failing which, the respondents 2 and 4 shall be physically present before this Court. In case, the subsistence allowance is paid, the physical presence of both the respondents 2 and 4 on the next hearing date shall be dispensed with.

7. The case was thereafter listed for hearing on 13.12.2023 and the following order was passed.

In continuation of the earlier order of this Court dated 21.11.2023, the 4th respondent is physically present before this Court and his future appearances are dispense with.



W.P.No.16997 of 2023

2. According to the learned Additional Advocate General appearing on behalf of the respondents 1 and 2, the petitioner herein has not contacted the 4th respondent seeking for subsistence allowance and has also not submitted the requisite undertakings / letters for receiving the subsistence allowance.

3. When it was pointed out by the learned Additional Advocate General that such a requirement is not backed by any regulation and that the Fundamental Rules governing the Government Servants mandates the payment of subsistence allowance to the suspended employee, he submitted that the necessary requisition has already been sent to the District Collector on 05.12.2023 and the same is pending consideration. It is also submitted that as soon as the requisition is approved, they will disburse the subsistence allowance.

4. Post the matter on 21.12.2023, under the caption “For Recording Compliance”.

8. The matter was once again listed for hearing on 12.12.2023 and this Court passed the following order:

In view of the pendency of the criminal case, the petitioner herein was placed under suspension on 23.04.2010 and ultimately, when the criminal court acquitted the petitioner from all the charges, he was reinstated back into service on 09.02.2022. When he sought for regularisation for the period of suspension, the same was refused through the impugned order 27.01.2023, which is challenged in the present writ petition.



W.P.No.16997 of 2023

WEB COPY

2. Learned counsel for the petitioner submitted that during the period of suspension, he was not paid subsistence allowance. Accordingly, an interim order was issued on 13.12.2023 by recording the submission of the respondents herein that the requisition has already been sent to the District Collector for disbursement of subsistence allowance. Thereafter, it is seen that the District Collector has also sent necessary recommendation to the Block Development Officer for disbursal of subsistence allowance to the petitioner.

3. In this background, the respondents are called upon to file counter.

Post on 31.01.2024 under the caption “For Recording Compliance”.

9. When the matter was taken up for hearing today, the learned Government Advocate appearing on behalf of the 3rd and 4th respondents submitted that the Panchayat is facing serious financial problems and therefore, they are not in a position to settle the entire amount that is due and payable towards subsistence allowance. The learned counsel submitted that a total sum of Rs.3,67,382/- is due and payable as subsistence allowance. Out of this amount, a sum of Rs.52,995/- has been paid to the petitioner in three installments. There is a balance amount of Rs.3,14,387/- that has to be paid to the petitioner. The learned counsel submitted that due to the financial constraints, the 4th respondent Panchayat is not in a position to pay this amount in one lump sum.



W.P.No.16997 of 2023

WEB COPY

10. The impugned order passed by the 1st respondent to the effect that the period of 11 years, 9 months and 17 days cannot be regularized, is unsustainable in law. The petitioner was placed under suspension only based on the criminal case that was pending against him. Once the criminal case has ended in acquittal and the petitioner has been reinstated into service, the entire suspension period has to be regularized. In view of the same, the stand taken by the 1st respondent as if, the wages and attendant benefits has to be paid to the petitioner only by the 4th respondent and that there is no financial wherewithal for the 4th respondent to pay and therefore the service of the petitioner cannot be regularized, is unsustainable and the same requires the interference of this Court.

11. In the light of the above discussion, the impugned proceedings of the 1st respondent in ref.No.O.M.4076/2021/Vu.Va8, dated 27.01.2023, is hereby set aside and the following directions are issued:

(a) The 4th respondent is directed to settle the balance amount of Rs.3,14,387/- towards subsistence allowance to the petitioner within a period of four months from the date of receipt of copy of the order.

(b) The 1st respondent is directed to pass an order regularizing the services of the petitioner from 23.04.2010 to 09.02.2022 and pay the attendant benefits to the petitioner, within a reasonable time.



W.P.No.16997 of 2023

12.In the result, this writ petition is allowed in the above terms. No costs.

Consequently, connected miscellaneous petitions are closed.

12.08.2024

KP

Internet: Yes

Index: Yes/No



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W.P.No.16997 of 2023

To

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- 2.The Assistant Director of Panchayath
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W.P.No.16997 of 2023

N.ANAND VENKATESH. J.,

KP

W.P.No.16997 of 2023

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