



W.P(MD).Nos.6293 to 9297 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 11.12.2024

ORDER PRONOUNCED ON : 13.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).Nos.6293, 6294, 6295, 6296 and 6297 of 2024
and WMP(MD).Nos.5894, 5895, 5897, 5898, 5899, 13094, 13048, 13060,
13079 and 13165 of 2024**

1.V.Venkatesan	Petitioner in WP.No.6293 of 2024
2.A.Vasudevan	Petitioner in WP.No.6294 of 2024
3.P.Vadivel	Petitioner in WP.No.6295 of 2024
4.T.Chandrabalu	Petitioner in WP.No.6296 of 2024
5.M.Srinivasan	Petitioner in WP.No.6297 of 2024

Vs

The District Manager (In-charge)
Tamil Nadu State Marketing Corporation Ltd.,
Trichy District
Trichy

....Respondent in all the petitions

Common Prayer : These Petitions have been filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order in Na.Ka.No.CV2/1487/2022 dated 16.02.2024 issued by the respondent and quash the same as illegal.



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filed WP(MD).Nos.30049 to 30051 of 2023 seeking a mandamus directing the respondents not to proceed with the departmental enquiry for non-payment of subsistence allowance for the suspension period. This Court by a common order dated 19.12.2023 had directed the respondents to pay the subsistence allowance to the petitioners therein within a period of two weeks from the date of receipt of a copy of the order. This Court had also made it clear that only after payment of subsistence allowance, the authorities are permitted to pass final orders.

3.The subsistence allowance was paid to the petitioners Venkatesan, Vasudevan and Vadivel on 15.02.2024 and on 16.02.2024, the impugned order of removal from service has been issued. As far as the petitioners Chandrabalu and Srinivasan are concerned, removal from service orders have been issued on 16.02.2024, but the subsistence allowance was paid only on 07.06.2024. Challenging the order of removal from service, the present writ petitions have been filed.

4.According to the learned counsel for the writ petitioners, though all of them were suspended in November 2022, till the final orders were passed in the disciplinary proceedings, the subsistence allowance was not paid. Even though the Court had directed the authorities to pay subsistence allowance,



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only one day prior to the passing of the impugned order, the subsistence allowance have been paid. With regard to two of the petitioners, four months after the impugned order, the subsistence allowance has been paid. The petitioners are belong to Group-D category of employees in the Corporation and therefore, the non-payment of subsistence allowance during the enquiry period has created great hardship to them which prevented them from properly defending the enquiry proceedings. Therefore, they have prayed for setting aside the order of punishment and to reinstate them.

5.The learned counsel for the petitioners had relied upon the judgment of the Hon'ble Supreme Court reported in **2000 (7) 5 SCC 90 (Jagdamba Prasad Shukla Vs State of Uttar Pradesh and others)** and the judgment of the Hon'ble Supreme Court in **Union of Jammu and Kashmir and others Vs. Fayaz Ahmad Lone dated 22.10.2024 in Civil Appeal No.2150 of 2024** had contended that in case of non payment of subsistence allowance, the entire enquiry will get vitiated.

6.Per contra, the learned Standing Counsel appearing for the respondent Corporation had contended that there was no request from the writ petitioners at any point of time seeking payment of subsistence allowance. For disbursement of subsistence allowance, the petitioners have to submit a certificate with regard to their residence and another certificate to



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the effect that they are not gainfully employed elsewhere during the period of suspension. That apart, as per orders of this Court, the subsistence allowance was paid to three of the writ petitioners before passing the final orders. Unless the non-payment of subsistence allowance has caused great prejudice to them, the petitioners cannot contend that the enquiry proceedings had got vitiated.

7.The learned counsel had further contended that as against the order of the respondent, an appeal lies to the Senior Regional Manager, Trichy. Without filing an appeal, the present writ petitions have been filed. He had further contended that some of the deficit amount has been redeposited by the petitioners admitting the delinquency. In such circumstances, the order of removal from service is proportionate to proved the charges. Hence, he prayed for dismissal of the writ petitions.

8.I have considered the submissions made on either side and perused the material records.

9.A perusal of the records reveal that the petitioners have been imposed with a punishment of removal from service on the ground that they are responsible for shortage of stock to a tune of Rs.33,83,410/- on the date of inspection namely 25.11.2022. In the separate representations submitted by the petitioners, it is stated that they are not responsible for the shortage of stocks and one Jeyakumar was responsible for the same. They have further



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contended that they have remitted the entire deposit of Rs.33,83,410/- by borrowing loan from the third parties. Unless they are reinstated in services, they will not be in a position to repay the said amount.

10.The orders impugned in the writ petitions reveal that they have been passed by the sole respondent in the writ petitions and an appeal lies to the Senior Regional Manager, Trichy. The petitioners herein have filed these writ petitions invoking Article 226 of Constitution of India only on the ground that they have not been paid subsistence allowance during the suspension period and therefore, the enquiry got vitiated. The petitioners were suspended on 25.11.2022 and they were removed from service on 16.02.2024. In between this period, no request has emanated from any one of the petitioners seeking subsistence allowance. There are no records to indicate that the petitioners have submitted their certificates relating to their residence at their head-quarters or about their non-employment.

11.Three of the petitioners have filed a writ petition in WP(MD).Nos. 30049 to 30051 of 2023 on 12.12.2023 after the receipt of second show cause notice, seeking a mandamus directing the corporation not to proceed with the departmental enquiry for non-payment of the subsistence allowance. Even before filing of the said writ petitions, no representation was addressed by the petitioners seeking subsistence allowance. This Court by an order dated 19.12.2023 had directed the respondents to disburse the subsistence



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allowance before passing the final orders.

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12. In compliance with the order of this Court, the subsistence allowance was paid to three writ petitioners who had earlier filed the writ petitions. As far as two petitioners who had never filed a writ petition, the subsistence allowance has been paid four months after the date of the impugned order.

13. The Hon'ble Supreme Court in a judgment reported in **(2005) 8 SCC 211 (Uttar Pradesh State Textile Corporation Limited Vs. P.C. Chaturvedi and others)** in Paragraph Nos. 12, 13 and 14 has held as follows:

“12. So far as the effect of not paying the subsistence allowance is concerned, before the authorities no stand was taken by the respondent No. 1-employee that because of non-payment of subsistence allowance, he was not in a position to participate in the proceedings, or that any other prejudice in effectively defending the proceedings was caused to him. He did not plead or substantiate also that the non-payment was either deliberate or to spite him. It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employee is handicapped because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as an absolute position in



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law that non-payment of subsistence allowance amounts to denial of opportunity and vitiates departmental proceedings.

13.The above position was highlighted in *Indra Bhanu Gaur Vs. Committee, M.M.Degree College.*

14.It is to be noted that no grievance was made at any time during the pendency of the proceedings that the respondent 1-employee was being prejudiced on account of non-payment of subsistence allowance. In fact, for the first time the request was made for payment of subsistence allowance on 5.1.1993 i.e. after completion of the enquiry. The ratio in *Indrabhanu's case (supra)* is clearly applicable to the facts of the present case.”

14.In view of the judgement of the Hon'ble Supreme Court, it is clear that unless prejudice is pleaded and established, the question of setting aside the order of punishment on the ground that it is vitiated could not arise. In the present case, writ petitions were filed seeking a mandamus for payment of subsistence allowance only after the second show cause notice was issued. Till such time, no request had emanated from the writ petitioners. In such circumstances, this Court is of the considered opinion that this Court cannot invoke Article 226 of Constitution of India to set aside the order of punishment of removal from service when a departmental appeal is available to the writ petitioners.



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15.In view of the above said deliberations, these writ petitions are disposed of with liberty to the writ petitioners to file an appeal before the appropriate Appellate Authority. If any such appeal is presented within a period of four weeks from the date of receipt of a copy of this order, the same shall be entertained without any reference to the period of limitation and it may be disposed of on merits and in accordance with law, after giving due opportunity to the writ petitioners. No costs. Consequently, connected miscellaneous petitions are closed.

13.12.2024.

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R.VIJAYAKUMAR, J.

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Pre-delivery common order made in

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