



W.P.(MD) No.17986 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.02.2024

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THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.17986 of 2020

P.Sulochana

... Petitioner

Vs.

1.The Director of Municipal Administration
Ezhilagam, Chepauk
Chennai-600 009

2.The Commissioner
Madurai Municipal Corporation
Madurai-625 002

3.Subbulakshmi

... 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 pertains to the proceedings of the 2nd respondent in No.Ma.Ni. 17/10732/2016 dated 16/08/2016 in so far in not paying the allowances of the suspension period of the petitioners husband from 07/09/2007 to 07/03/2010 and treating the same as no work no pay and quash the same as illegal and



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consequently direct the 2nd respondent to disburse pay and allowances payable to the petitioners late Husband namely Paulraj for the period 07/09/2007 to 07/03/2010 by treating the period as duty for all considering the petitioners representation dated 17/07/2019.

For Petitioner : Mr.Pon Karthikeyan

For Respondents : Mr.S.Vinayak, Standing Counsel
for R1 and 2.

ORDER

This Writ Petition is filed seeking to issue a Writ of Certiorarified Mandamus to call for the records pertains to the proceedings of the 2nd respondent in No.Ma.Ni.17/10732/2016 dated 16/08/2016 in so far in not paying the allowances of the suspension period of the petitioners husband from 07/09/2007 to 07/03/2010 and treating the same as no work no pay and quash the same as illegal and consequently direct the 2nd respondent to disburse pay and allowances payable to the petitioners late Husband namely Paulraj for the period 07/09/2007 to 07/03/2010 by treating the period as duty for all considering the petitioners representation dated 17/07/2019.



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2. The husband of the petitioner while working as watchman in overhead tank was subjected to disciplinary proceedings by placing him under suspension with effect from 07.09.2007. During the pendency of the disciplinary proceedings initiated against the husband of the petitioner, he passed away on 07.03.2010. Consequently, the respondents 1 and 2 terminated the disciplinary proceedings against the husband of the petitioner and by proceedings No.Ma.Ni.17/10732/2016 dated 16.08.2016 all the terminal benefits that were payable in favour of the petitioner were paid in terms of the said proceedings. However, in the said proceedings, no amount is paid towards the period of suspension from 07.09.2007 to 07.03.2010 i.e., till the date of death of petitioner's husband. On the other hand, it is stated that the petitioner is not entitled to any amounts for the period on the principle of “no work no pay”. It is aggrieved by the said action of the respondent in refusing to pay any amount for the suspension period, the petitioner approached this Court by filing the present Writ Petition.

3. In terms of Sec. 3 of the Tamil Nadu Payment of Subsistence Allowance Act, 1981, any employee, who is placed under suspension is



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entitled for payment of 50% of basic wages as subsistence allowance for the first 90 days and thereafter at the rate of 75% was payable to the delinquent employee under suspension. Admittedly, the husband of the petitioner was not paid any subsistence allowance during his life time.

4. As already noted above, the disciplinary proceedings have been terminated consequent upon the death of the husband of the petitioner. In such case, according to the learned counsel for the petitioner Fundamental Rules 54-B-1(2) the petitioner shall be paid full pay and allowances for the period of suspension at the rate to which the deceased employee would have been entitled had he not been suspended.

5. Sub-Rule (2) F.R.54-B reads as under:

“

(2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or court proceedings instituted against him are concluded, the period between the date of suspension and date of death shall be treated as duty for all purposes and his



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family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.”

6. From the perusal of the above, it is evident that in case if an employee is placed under suspension dies before the conclusion of the disciplinary or Court proceedings initiated against him, the period between the date of suspension and the date of death shall be treated as duty for all purposes and the family shall be paid the full allowances for the period for which he would have been entitled had he not been suspended. However, subject to adjustment of subsistence allowance if any paid. The language used in Sub-Rule 2 of F.R.54-B is very clear and same has direct application to the facts of the case on hand. As already noted above, the husband of the petitioner was not paid any subsistence allowance during his life time.

7. However, it is contended by the learned counsel for the respondents 1 and 2 that the very order of suspension itself mandates that the petitioner shall not leave the head quarters and also further contended that



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only on production of a certificate certifying that the petitioner has not elsewhere gainfully employed during the period of suspension then only he is entitled for payment of subsistence allowance.

8. Such a contention in the considered view of this Court is absurd. The petitioner herein is not claiming for any backwages. Her claim is based on Sub-Rule (2) of F.R.54-B. Further, the right to claim subsistence allowance is not depending upon any other factor. The very fact that an employee is kept under suspension by itself entitles him to draw subsistence allowance as per Sec. 3 of the Tamil Nadu Payment of Subsistence Allowance Act, 1981.

9. In the light of the above, this Court does not see any justification for the respondents 1 and 2 in not making any payment for the period of suspension i.e., from 07.09.2007 to 07.03.2010 on the principle of 'no work no pay' and thereby denying the payments for which the petitioner herein otherwise is entitled under law is wholly illegal and arbitrary and the impugned proceedings denying payment of allowance for the period of



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suspension is liable to be declared as arbitrary and illegal and accordingly the same is declared as illegal and violative of Art.14 and 21 of the Constitution of India.

10. Accordingly, the Writ Petition is allowed directing the respondents 1 and 2 to pay the entire pay and allowances for the period from 07.09.2007 to 07.03.2010 in terms of Sub-Rule (2) of F.R.54-B to the petitioner as expeditiously as possible at any rate within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

20.02.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

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