



W.P.(MD).No.21917 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.21917 of 2024

and

W.M.P(MD).Nos.18566 & 18567 of 2024

S.Gunasekaran

... Petitioner

VS

1.The Inspector of Panchayats- cum
The District Collector,
Theni District.

2. The Block Development Officer,
Block Development Office,
Andipatti.

3.The President,
Rengasamuthiram Village Panchayat,
Andipatti Taluk,
Theni District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.3718/2021/B6 dated 05.07.2022 on the file of the Respondent No.2 and quash the same as illegal and consequently direct the respondents to provide the subsistence allowance or reinstatement in service with all service benefits within the time stipulated by this Hon'ble Court.



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For Petitioner : Mr.S.Louis
For Respondent No.1 : Mr.S.Shanmugavel
Additional Government Pleader
For Respondent Nos.2 & 3 : Mr.M.Muthumanikkam
Government Advocate

ORDER

The instant writ petition has been filed by a Panchayat Secretary challenging an order passed by the 2nd respondent herein, wherein, his request for payment of subsistence allowance has been rejected on the ground that the petitioner's termination order has not been set aside by the High Court.

2. The petitioner herein was initially suspended on 21.09.2011. Thereafter, by way of an order dated 11.04.2012, the petitioner was terminated from service. The petitioner has challenged the order passed by the appellate authority confirming the order of termination dated 18.12.2015 in W.P.(MD).No.3377 of 2016. This Court by an order dated 26.06.2019 has allowed the writ petition and set aside the order of termination and granted liberty to the authorities to initiate fresh action in accordance with law and to pass appropriate orders as expeditiously as possible.



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3. Therefore, in view of the order of this Court dated 26.06.2019, it is clear that the order of termination as against the writ petitioner has already been set aside by this Court. However, the order of suspension has not been revoked by the authorities and the petitioner is kept under suspension as on today. Therefore, the petitioner has approached the authorities by way of a representation for payment of subsistence allowance. This request has been rejected by way of the impugned order dated 05.07.2022 on an erroneous reading of the order of the High Court that, termination order has not been set aside by the High Court.

4. The learned Government Pleader appearing for the Respondents herein had contended that the petitioner is not entitled to receive any subsistence allowance, because there is no provision under the service rules.

5. While the petitioner was placed under suspension on 21.09.2011, the Tamil Nadu Village Panchayat Secretaries (Conditions & Service) Rules, 2013 provides for payment of subsistence allowance under Rule 17(4). Therefore, the petitioner will be entitled to receive subsistence allowance atleast from 09.07.2013 onwards. The Clause 17 of service rules is extracted hereunder :



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“17. Suspension-(1) The appointing authority may place a person holding the post under suspension, if it is necessary in public interest, where-

(i) an inquiry into grave charges against him/her is contemplated or is pending; or

(ii) a complaint against him/her of any criminal offence is under investigation or trial.

(2) A person holding the post who is detained in custody whether on a criminal charge or otherwise, for a period longer than 48 hours shall be deemed to have been suspended under this rule.

(3) Review on extension of suspension of the persons holding the post shall be done by the Personal Assistant (Development) to Collector for every quarter.

(4) During the period of suspension, a person holding the post is eligible for subsistence allowance of 50% of the last pay and allowances drawn.”

6. However, in G.O.Ms.No.113, Rural Development and Panchayat Raj Department dated 13.09.2023, the 2013 service rules have been repealed and new rules have been brought into force. Under the new rules, there is no provision for payment of subsistence allowance. The new rules have come into force with effect from 13.09.2023 onwards. Therefore, it is clear that the petitioner is eligible to receive subsistence allowance atleast for the period between 09.07.2013 to 13.09.2023.



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7. In view of the above said facts, the order impugned in this writ petition is set aside and the respondents are directed to release the eligible subsistence allowance within a period of twelve (12) weeks from the date of receipt of a copy of this order for the above said period.

8. With the above said observation, this writ petition stands allowed.
No costs. Consequently, connected miscellaneous petitions are closed.

21.10.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1.The Inspector of Panchayats- cum
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Theni District.

2. The Block Development Officer,
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Andipatti.

3.The President,
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R.VIJAYAKUMAR,J.

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