

(2009) 10 MAD CK 0206**Madras High Court****Case No:** Writ Petition No. 17515 of 2009 and M.P. No. 1 of 2009

Soundha	APPELLANT
Vs	
The Collector	RESPONDENT

Date of Decision: Oct. 23, 2009**Hon'ble Judges:** K. Chandru, J**Bench:** Single Bench**Advocate:** P. Mohanraj, for the Appellant; R. Neelakantan, G.A., for the Respondent**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

K. Chandru, J.

The petitioner was a cook at the Noon Meal Centre, Government Higher Secondary School, Periyampatti, Karimangalam Block, Dharmapuri District. The petitioner was suspended by the respondent District Collector by an order dated 07.08.2009, pending further action.

2. In the order of suspension, it was stated that the petitioner's centre was inspected by the Personal Assistant (Noon Meal Scheme) of the District Collector, Dharmapuri on 23.07.2009. As per the register for the food items kept in the centre, it was claimed that food was prepared for 640 students, but only 451 students had their lunch. Therefore, the materials were taken in excess of actual requirement. Further, food was not supplied to those students. It was also stated that from Karimangalam Panchayat Union, the Noon meal Organiser received 640 eggs on that day. Out of which 531 were boiled and only 451 was given to students and the balance 80 eggs were not supplied. There was also shortage of 109 eggs in the centre. It is for this reason the Noon meal organiser S.Sivagami and the cooks M/s. Soundhara, Sarala and Assistant Cooks Savithri, Sathiyaveni and Govindhammal were kept under suspension. The Block Development Officer was directed to give additional charge to the neighbouring staff for carrying out the duties of the centre

and also submit a report to the District Collector.

3. The petitioner challenged the order stating that while placing the petitioner under suspension, duties and job responsibilities of the petitioner were not taken into account and the order was passed mechanically. The suspension was also issued without notice to the petitioner and it is not clear as to whether the suspension was in public interest.

4. This Court is not impressed with the arguments advanced on behalf of the petitioner. In fact on notice from this Court, the learned Government Advocate had produced a letter dated Nil (October 2009) stating that the direct inspection brought to the notice large scale irregularities committed in the centre and the petitioner was also an accomplice in the irregularities committed by the organiser and it was therefore, the suspension was made.

5. On a further direction from this Court as to whether Subsistence Allowance was paid to the petitioner pending the further action, a fax message dated 23.10.2009 was obtained from the District Collector. In that it was stated that since there is no rule for providing Subsistence Allowance, the petitioner was not granted any subsistence allowance.

6. While this Court is not inclined to interfere with the order of the suspension pending further enquiry into the charges, at the same time it cannot be said that the petitioner is not entitled for subsistence allowance for the reason that there is no provision for providing subsistence allowance. The supreme Court vide its Judgment in Balvantrai Ratilal Patel v. State of Maharashtra reported in Balvantrai Ratilal Patel Vs. The State of Maharashtra, has held that in the absence of any Rule, an employee is entitled for full wages. The following passage found in paragraph 4 may be usefully extracted below:

4. The general principle therefore is that an employer can suspend an employee pending an inquiry into his misconduct and the only question that can arise in such suspension will relate to payment during the period of such suspension. If there is no express term relating to payment during such suspension or if there is no statutory provision in any enactment or rule the employee is entitled to his full remuneration for the period of his interim suspension. On the other hand, if there is a term in this respect in the contract of employment or if there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension the payment will be made in accordance therewith. This principle applies with equal force in a case where the Government is an employer and a public servant is an employee with this qualification that in view of the peculiar structural hierarchy of Government administration, the employer in the case of employment by Government must be held to be the authority which has the power to appoint the public servant concerned. It follows therefore that the authority entitled to appoint the public servant is entitled to suspend him pending a

departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or statutory rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. On general principles therefore the Government, like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. The Government may also proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty. As we have already pointed out, the question as to what amount should be paid to the public servant during the period of interim suspension or suspension as a punishment will depend upon the provisions of the statute or statutory rules made in that connection.

7. Therefore, the writ petition stands dismissed in so far as the order of suspension is concerned. However, a direction is issued to the respondents to pay subsistence allowance to the petitioner as stipulated by the Supreme Court referred to above. No costs. Consequently, connected miscellaneous petition is closed.