

CONFIDENTIAL

S.MEIKANDEDEVAN, IAS.,
SPECIAL COMMISSIONER &
SECRETARY TO GOVERNMENT.



PERSONNEL AND
ADMINISTRATIVE REFORMS
DEPARTMENT.
CHENNAI - 600 009.

D.O.LETTER NO: 51661 / K / 2003-1

DATED 18.11.2003

Dear Thiru Dr. Krishnamurthy.

Sub: Public Services - Decision of the Panel Judges appointed to consider the representations of dismissed/suspended Government Employees and Teachers who resorted to illegal strike from 2.7.2003 - Implementation orders Issued- Communicated.

CB
18/11/03

Ref: G.OMs.No.264, P& AR (K) Dept, dated 17.11.2003.

I am to enclose a copy of the Govt. order cited. The original orders of the Panel of Judges on the representations made by the staff of your department are also sent herewith for your reference. These original orders of the Panel Judges are only for your reference and should be kept in your office for reference. The certified copy of the orders as and when received from the office of the Panel Judges may be served on the individuals.

It is requested that utmost care may be taken to ensure that the original or a copy of the orders of the Panel Judges is not served to the individuals concerned. Only certified copies of the orders of the Panel Judges should be served on the individuals concerned.

I am to request you to pass necessary individual orders of reinstatement in service except in cases involving reduction in rank, removal and dismissal. Orders in the later cases may be issued on receipt of certified copies of the orders of Panel Judges. The certified copies are to be served on the individuals on receipt.

Yours sincerely

To

Thiru / Tmt / Selvi Dr. P. Krishnamurthy, M.B.S. D.SS.
Dir. of P.H.S.P.M.,

.....P.H.S.P.M.....Department.



ABSTRACT

Public Services - Decisions of the Panel of Judges appointed to consider the representations of dismissed/suspended Government employees and teachers who resorted to illegal strike from 2.7.2003 - Implementation - Orders - Issued.

PERSONNEL & ADMINISTRATIVE REFORMS (K) DEPARTMENT

G.O.Ms.No.264

Dated: 17 -11.2003

Read:-

1. Orders of Supreme Court dated 6.8.2003 in Civil Appeals arising out of SLP (C) No.12224/2003.
2. G.O.Ms.No.1039, Public (L & O-F) Dept., dated 13.8.2003.
3. From the Court Officer, Office of the Panel of Judges letter dated 14.11.2003.

----00--00----

ORDER:-

The Supreme Court of India while disposing the batch of Civil Appeals filed on behalf of the dismissed/suspended Government employees/teachers directed on 6.8.2003 that the representations of the Government employees/teachers who participated in/incited the illegal strike on 2.7.2003 and were not reinstated in service would be considered by three retired High Court Judges to be named by the Chief Justice of the High Court of Madras. It also directed that the concerned Judges would decide the representations of the employees without taking into consideration Section 7 of the Tamil Nadu Essential Services Maintenance Ordinance and as far as possible in accordance with the Conduct Rules and equity.

2. As directed by the Supreme Court, the Chief Justice of Madras High Court nominated Hon'ble Tvl. Justice K. Sampath, Justice P. Thangavel and Justice Malai Subramaniam, retired Judges of Madras High Court for appointment as Panel Judges to consider the representations of the dismissed/suspended Government employees and teachers. Orders appointing the above Panel Judges were issued by the Government on 13.8.2003 in the Government Order 2nd read above.

3. The Panel Judges after completing the enquiry have passed orders in respect of 2937 Government employees of Secretariat and offices of Heads of Departments in Chennai City. In the reference 3rd read above, the Court Officer, Office of the Panel Judges has forwarded these orders to the Government which were received on 15.11.2003.

4. As per the orders of the Supreme Court, the decision of the Judges on the representations would be binding on the State Government and the State Government would act in accordance with the same. However if any of the employees is aggrieved it would be open to such employees to challenge the same before an appropriate forum.

5. The Government have accordingly decided to implement the decisions of the Panel Judges in respect of all the 2937 cases of dismissed/suspended employees and teachers so far received. The orders of the Panel Judges will be sent to the Secretaries of the Departments concerned and the concerned Heads of Departments as the case may be so as to take further action on the matter. The Government direct that all the employees and teachers excepting those who have been ordered to be dismissed/removed from service by the Panel Judges, should be reinstated in service forthwith. The Government also direct that in respect of those employees and teachers who have been either dismissed/removed or inflicted with punishment, a copy of the orders of the Panel Judges should be served on the individuals concerned and that appropriate action be taken to impose the punishment as ordered by the Panel Judges and necessary entries made in the Service Registers of the individuals concerned.

(BY ORDER OF THE GOVERNOR)

LAKSHMI PRENESH
CHIEF SECRETARY TO GOVERNMENT

To

All Secretaries to Government, Secretariat, Chennai-9.
Heads of Departments concerned in Chennai City.
The Accountant General, Chennai - 18
The Accountant General, Chennai - 9.
The Pay and Accounts Officer, Chennai - 9.
The Commissioner of Treasuries and Accounts, Chennai - 35.
The Court Officer, Office of the Panel of Judges,
No.3, Greenways Road, Chennai - 28.

Copy to:

The Secretary-I to Hon'ble Chief Minister, Chennai - 9.
The Finance Department, Chennai - 9.
The Public Department, Chennai - 9.

/forwarded/by order/

For. H. V. W. S. S.
17/11/03

UNDER SECRETARY TO GOVT

BEFORE THE PANEL OF RETIRED JUDGES

DATED: 14-11-2003

PRESENT:

THE HONOURABLE MR. JUSTICE K. SAMPATH

Representation No.2809 of 2003

1. Name of the petitioner: Pon. Vandhiyadevan
2. Designation: Assistant
3. Department: Directorate of Public Health & Preventive Medicines

4. Reasons for absence:

Arrested on 1.7.2003; could not attend office on 2.7.2003.

5. Documents marked/produced:

(a) For Petitioner: Nil

(b) For the Department: FIR

**6. Objections of the
Department**

:

General Objections mentioning about the various circulars issued against participation in the strike - Government instructions not obeyed; reasons afterthought and unacceptable; absence from duty on 2.7.2003 shows participation in the strike violating the Conduct Rules and TESMA.

7. Whether FIR filed : Yes, u/s 4 of TESMA

8. Dismissed/Suspended : Dismissed

**9. Conclusion and
Decision** :

Representation accepted.

Dismissal set aside.

Reinstatement ordered.

When a large number of its employees struck work for their demands, the Tamil Nadu Government terminated their services by invoking the relevant rules from Tamil Nadu Government Servants Conduct Rules, 1973 (hereinafter referred to as 'the Conduct Rules') and the provisions of the Tamil Nadu Essential Services Maintenance Act, 2002 (hereinafter referred to as '**TESMA**') and also the Tamil Nadu Ordinance No.3 of 2003 (hereinafter referred to as 'the Ordinance').

2. The affected employees challenged this before the High Court and finally the Supreme Court got seisin of the dispute. Though it came down heavily on the striking Government employees and held that they had no fundamental right, legal/statutory right or moral or equitable right to go on strike - {the Order of the Supreme Court is since reported in **TK RANGARAJAN v.. GOVERNMENT OF TAMIL NADU [2003 (6) SCC 581]**} - still, "considering the gravity of the situation and the fact that on occasion, even if the employees are not prepared to agree with what is contended by some leaders who encourage the strikes, they are forced to go on strikes for reasons beyond their control, that on occasion there is tendency or compulsion to blindly follow

the others, and that therefore, even though the provisions of the Act and the Rules are to be enforced, they are to be enforced after taking into consideration the situation and the capacity of the employees to resist", the Supreme Court suggested to the State Government to reinstate the employees who went on strike except those employees who had been arrested and those against whom FIR had been lodged.

3. It was reported before the Supreme Court that out of **1,70,241** Government servants dismissed and teachers of aided Colleges suspended as per Section 7 of TESMA, **1,56,106** were reinstated and the balance **14,135** represented the number of employees and teachers not reinstated, that out of this, the State Government was willing to reinstate **8063** with effect from **25.7.2003** leaving a balance of **6072** (in actual figure it is less by about 300), who fell under various categories.

4. It was agreed before the Supreme Court that out of this, Secretarial staff of 2215 and 534 Officers holding higher positions would be treated as suspended instead of dismissed. The orders of dismissal were withdrawn and suspension orders passed. With regard to the representations which were made or were to be made by the

6072 (actual figure is less) employees, the Supreme Court directed those representations to be considered by three retired High Court Judges to be named by the Chief Justice of the High Court of Madras, each Judge to decide approximately representations of 2000 employees without taking into consideration Section 7 of the Ordinance and as far as possible in accordance with the Conduct Rules and equity within a period of one month or thereabout from the date of allocation of representations. The Supreme Court further directed that the Judges were to evolve a common procedure for disposing of the representations. The Supreme Court has also ruled that the decision of the Judges on the representation would be binding on the State Government and the State Government would act in accordance with the same, and that however, if any of the employees, is aggrieved, it would be open to such employee to challenge the same before an appropriate forum.

5. On **13.8.2003**, the Hon'ble the Chief Justice of the Madras High Court nominated the Panel of Judges as per the directions of the Supreme Court.

6. The employees in their representations try to explain their absence on 2.7.2003 and/or subsequently by

giving some reason or the other. I will deal with the merits of the reasons while considering the individual representations. Suffice it to point out that the onus is very heavy on these employees to substantiate the grounds stated by them, and show that there is warrant for reconsideration of the order of suspension/dismissal.

7. Even on 8.4.2003 the Chief Secretary to Government in Letter No.18654/K/2003-1 had addressed all the Departments concerned that application for casual leave or any other leave, other than Medical Leave should not be allowed on the day of strike. The letter refers to several earlier Government Letters. This position is reiterated in the subsequent letter bearing No.18654/K/2003-8, dated 30.6.2003. Again stating that a large number of Government Servants were applying for medical leave, at the time of the proposed 'indefinite strike', and that false medical certificates were being issued by certain Doctors to a large number of Government Servants, the Chief Secretary directed the Department Heads to ascertain whether the medical certificates obtained and medical leave applied for were genuine, by referring the individuals to the Medical Board. It was further enjoined that no medical leave should be sanctioned without ascertaining the

genuineness of the reason, as certified by the Medical Board, and if the medical Board found that the certificates produced were not on real medical grounds the Government Servants concerned were liable for penal action.

8. Thus, the employees, whose representations are being considered and who have claimed that they were unwell, have an onerous duty to discharge. They should satisfy the panel Judges that they were really and truly unwell on the date of strike, which alone prevented them from attending Office on that day.

9. It is now necessary to have a look at some of the other provisions relevant for the purpose on hand. First let us refer to the Conduct Rules.

Rule 20 of the Conduct Rules requires every member of the Service to maintain absolute integrity and devotion to duty, to do nothing which is unbecoming of a member of the service, and to take all possible steps to ensure similar conduct all Government servants for the time being under his control and authority.

Rule 22. dealing with Strikes runs as follows:- No Government servant shall engage

himself in strike or in incitements thereto or in similar activities.

Explanation: For the purposes of this rule the expression 'similar activities' shall be deemed to include the absence from work or neglect of duties without permission and with the object of compelling something to be done by his superior.

Rule 22-A. on Procession and Meetings runs as follows:- No Government servant shall conduct any procession or hold or address any meeting in any part of any open ground adjoining any Government Office or inside any Office premises.

(a) during office hours on any working day, and

(b) outside office hours or on holidays, save with the prior permission of the head of the Department or head of office, as the case may be."

10. At the risk of repetition, we are to note that the Supreme Court has directed the Panel Judges to

consider the representations as far as possible in accordance with the Conduct Rules and Equity. Strictly speaking, Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 may not apply. However, to mete out proper punishment, **Rule 8** can be sourced.

11. Unless it is clearly established that the employee concerned had a valid and true excuse to stay away from duty or to neglect his/her duties on the relevant date, it must be deemed that he/she had participated in the strike. But then, a rider is added: The absence from work or neglect of duties must be without permission and with the object of compelling something to be done by his/her superior officers or the Government. In appropriate cases the object can be presumed.

12. FIRs have been filed against several of the employees either under Section 4 or Section 5 or under both the Sections of TESMA. The relevant sections run as follows:

"**Sec. 4.** Any person who commences a strike which is illegal under this Act goes or remains on, or otherwise takes part in, any such strike, shall,

on conviction, be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Sec.5. Any person, who instigates, or incites other persons to take part in, or otherwise acts in furtherance of, a strike which is illegal under this Act, shall, on conviction, be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both."

13. Here again, in equity we have to draw a line as between the employees proceeded against under Section 4 on the one hand and those proceeded against under Section 5 or under both Sections on the other, though both types of employees are treated on par in the matter of imposition of penalty.

14. With the above background let us now deal with individual representations:

Discussion R.No.2809

15. The petitioner has stated that he was arrested on 1-7-2003 and therefore he could not attend office from 2-7-2003.

16. Objections have been raised on behalf of the Department inter alia stating as follows:

The Government had notified the strike to be illegal and apprised the Government employees the consequence of participating in the strike, through circulars and letters; further the employees had been prohibited from applying for leave of any kind except medical leave during the strike; even with regard to medical leave, it should have been applied for earlier and sanctioning of the same would be after the genuineness of the medical certificate enclosed to the application was ascertained by reference to the Medical Board; the petitioner in the instant case not having attended office, the reasons given by

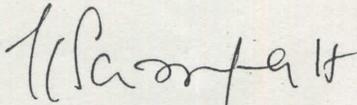
him not being acceptable, it would be clear that he had participated in the strike.

17. In his statement the petitioner has said that he is an organiser of the Literature Group in Tamil Nadu Government Officials Union, that he was arrested on 1-7-2003 in the night, that his house is adjacent to the Association Office near DMS Campus, that he was told by the police that they were trying to apprehend some senior leaders, namely, Mr. Mubarak Basha, Mr. Periyasamy, Mr. Shanmugam, Mr. Bose and Mr. Mohanraj, that the petitioner was appointed by Mr. Suriyamurthi, President of Tamil Nadu Non-Gazetted Officials Union, that he never participated in any strike, that it was never his intention to participate in the strike on 2-7-2003 and that he is against strikes.

18. The appointing authority has filed a general statement of objections. There is no material to show that the petitioner had any

serious intention to participate in the strike, except for the fact that he is an organiser of the Literature Group in Tamil Nadu Government Officials Union. There is nothing incriminating against him so as to warrant his arrest and to hold that he intended to participate in the strike or instigate the Government employees to participate in the strike. The petitioner had been wrongly proceeded against. Injustice has been done to him.

Decision 19. I accept the representation, set aside the order of dismissal and direct his reinstatement.


14-11-2003

