

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 23.11.2016

Orders pronounced on : 02.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.20359 of 2016

K.Amirthammal .. Petitioner

Vs.

1. The Commissioner,
Social Welfare Department,
Thiru.Vi.Ka. Industrial Estate,
Guindy, Chennai-32.
2. The District Social Welfare Officer,
Villupuram District, Villupuram.
3. The Child Development Project Officer,
Marakanam, Tindivanam Taluk. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent in Na.Ka.No.25/2010, dated 30.03.2016 and quash the same and thereby direct the respondents to regularise the services of the petitioner with Selection Grade Pay from 04.09.2006 to 21.02.2007, direct the respondents to pay Provident Fund and Special Provident Fund to the petitioner and also to pay the pensionary benefits including pension from the date of retirement of the petitioner from 31.10.2010.

For Petitioner : Mr.N.Suresh

For Respondents : Mr.K.Dhananjayan, Spl.G.P.

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent in Na.Ka.No.25/2010, dated 30.03.2016, quash the same and thereby direct the respondents to regularise the services of the petitioner with Selection Grade

Pay from 04.09.2006 to 21.02.2007, with further direction to the respondents to pay Provident Fund and Special Provident Fund to the petitioner and also to pay the pensionary benefits including pension from the date of retirement of the petitioner from 31.10.2010.

2. It is the case of the petitioner that she was originally appointed as Child Welfare Officer on 01.07.1978 in the Department of Social Welfare and was appointed in Thenalappakkam Village, Tindivanam Taluk. Thereafter, she was promoted as Nutrition Supervisor, Grade-II on 01.11.1993 and was posted in Vanur Block, Tindivanam Taluk. The petitioner was working without any blemish and without any adverse records. The petitioner retired from service on 31.10.2010. Earlier, the respondents did not pay the petitioner the Selection Grade Pay from 31.03.2003 and also neither regularised her Medical Leave nor regularised the service of the petitioner from 04.09.2006 to 21.02.2007 and she was also not paid the other benefits including the pensionary benefits. Hence, the petitioner filed W.P.No.32222 of 2012 and this Court, on 07.08.2013, while disposing of the Writ Petition, directed the first respondent therein to consider her representation, dated 01.03.2011 and to pass orders on the same within a period of three months from the date of receipt of a copy of the order.

3. Pursuant to the above order of this Court, the Joint Director, Social Welfare Department, Chennai, by order dated 19.06.2014, had directed that for the period from 04.09.2006 to 21.02.2007, the petitioner's service will be regularised without pay for 171 days and increment was also granted to the petitioner, but the other representation was not considered. Hence, the petitioner filed subsequent Writ Petition in W.P.No.17447 of 2014, challenging the said order dated 19.06.2014. This Court, on 27.01.2015, quashed the said order, dated 19.06.2014 and other proceedings and remitted the matter to the Child Development Project Officer for fresh consideration and this Court also directed the respondent-Child Development Project Officer, Marakkanam, to consider the case of the petitioner for Selection Grade taking into account the verification of the genuineness of her SSLC Certificate and the earlier proceedings on the file of the District Welfare Officer, Villupuram, dated 09.05.2005 recommending the case of the petitioner for Selection Grade and such exercise was directed to be completed within a period of three months from the date of receipt of a copy of the order.

4. It is the further case of the petitioner that since the above said order passed in W.P.No.17447 of 2014 was not complied with by the respondents, a Contempt Petition in Cont.P.No.1507 of 2015 was filed on 29.06.2015 and when the said Contempt

Petition came up for hearing on 29.09.2015, the Joint Director, Chennai, produced an order before the Court granting Selection Grade pay from 01.11.2003 and hence, the Contempt Petition was closed. It is the grievance of the petitioner that while granting Selection Grade, the respondents have neither paid the petitioner the Selection Grade pay from 04.09.2006 to 21.02.2007 - 171 days, nor have they paid the Provident Fund and Special Provident Fund and so far, even the pension has also not been paid to the petitioner. Hence, the petitioner filed another Writ Petition in W.P.No.1612 of 2016 and this Court, on 19.01.2016, directed the second and third respondents to consider the representations of the petitioner, dated 25.02.2015 and 16.10.2015 and pass appropriate orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of the order and communicate the decision taken to the petitioner.

5. Pursuant to the said order of this Court, dated 19.01.2016, the third respondent has passed the impugned order dated 30.03.2016, rejecting the claim of the petitioner, and thereby, regularised the services of the petitioner without pay for 171 days, i.e. from 04.09.2006 to 21.02.2007. In the impugned order, it is stated that the petitioner was given placement in Karambakudi Block in Pudukkottai District, as there was no vacancy in Villupuram District at that time and she stayed there for a period of 171 days from 04.09.2006 to 21.02.2007 without any prior intimation to the authorities. According to the petitioner, the said reasoning assigned in the impugned order is false. In fact, no such transfer order was served on the petitioner as stated in the impugned order. Hence, challenging the said order dated 30.03.2016, the petitioner has come forward with this Writ Petition for the above relief.

6. When the Writ Petition is taken up for hearing, learned counsel for the petitioner made his submissions adverting to the averments made in the affidavits filed in support of the Writ Petition. He mainly contended that without conducting any enquiry, the service of the petitioner was regularised without pay from 04.09.2006 to 21.02.2007. He further submitted that in the impugned order, it is stated as if the petitioner did not obey when she was given placement outside the District and for want of vacancy in the native District, she stayed there for a period of 171 days from 04.09.2006 to 21.02.2007 without any prior intimation to the authorities. Actually, no such transfer order was issued on the petitioner. For the first time, it has been stated so in the impugned order. The denial of pay and service benefits for 171 days from 04.09.2006 to 21.02.2007 would amount to punishment imposed on the petitioner without any enquiry and there cannot be any punishment after allowing the petitioner to retire without any condition. Hence, learned

counsel prayed for quashing the impugned order and allowing the Writ Petition.

7. Per contra, learned Spl.G.P. appearing for the respondents, by filing counter affidavit, submitted that due to shuffling made by the Government in the Department in the year 2006, many of the Supervisors, including the petitioner, became surplus staff in the post of Supervisor Grade-II. Therefore, in order to avoid retrenchment / compulsory wait and also considering the future of the surplus Supervisors, the authorities had placed them in the existing vacancies of Supervisor Grade-II post throughout the State. While doing so, preference was given to appoint them in their native District itself, if such vacancies are available. It is further stated by the learned Spl.G.P., that the petitioner being one among the surplus staff, was firstly given placement in Sankarapuram Block, in her native District of Villupuram District. When the petitioner went to join duty in Sankarapuram Block, unfortunately, no vacancy existed there in the post of Supervisor Grade-II. When the petitioner brought the matter to the knowledge of the higher authorities, they immediately gave placement to the petitioner in the existing vacancy in Karambakudi Block in Pudukkottai District. Hence, the transfer is purely on administration reasons with good intention to provide placement to the petitioner in order to avoid compulsory wait.

8. Learned Spl.G.P. further contended that whenever the petitioner was transferred and posted within her native District, she used to join duty immediately, but when she was given placement outside the District, i.e. to Karambakudi Block in Pudukkottai District for want of vacancy in the native District, she stayed away from duty for a period of 171 days from 04.09.2006 to 21.02.2007 without any prior intimation to the authorities. It is the duty of the petitioner to obey the orders of the higher authorities or she should have made a representation before the authorities. But, without following the procedure, she had approached this Court by filing Writ Petition to deploy her within the native District. In compliance of the orders of this Court, she was given placement in Marakkanam Block, as there was a vacancy. The petitioner unauthorisedly stayed away from duty without prior intimation to the authorities. The act of the petitioner is nothing but wilful disobedience of the orders of the higher authorities. For the period she stayed away for 171 days, her services had been rightly regularised as leave on loss of pay by the Joint Director of Social Welfare, by order dated 19.06.2014, who is the competent authority to regularise the leave of the Supervisors and therefore, the said authority has regularised her unauthorised absence without pay, by treating the period of unauthorised absence as loss of pay, which act is within the

relevant Rules.

9. Learned Spl.G.P. further contended that the petitioner had been paid retiral benefits such as Selection Grade pay, Sixth Pay Commission arrears, encashment of Earned Leave for 240 days and encashment of Unearned Leave for 90 days. Since the entries pertaining to the date of the commencement of the subscription of Special Provident Fund and completion of last recovery (148th instalment) in respect of Special Provident Fund, were not found in the Service Register of the petitioner, there was a delay in sanctioning Special Provident Fund amount to her, however, steps have been taken to get the entries from the old Station and the amount of Special Provident Fund will be settled shortly. As far as the pension is concerned, it is the stand of the respondents that despite repeated requests, the petitioner did not submit her pension application in full shape. The respondents can forward the pension proposal to the Accountant General only on submission of the pension application in full shape, which has not been done by the petitioner. Hence, the delay in sanctioning pension could not be attributed on the part of the respondents. Learned Spl.G.P. further contended that without even submitting any leave application and without obtaining prior permission from the concerned authority, the petitioner stayed away from duty for 171 days. Hence, for all the above reasons, learned Spl.G.P. prayed for dismissing the Writ Petition.

10. Keeping in mind the above submissions made by learned counsel on either side, I have given my anxious consideration to the same and perused the materials available on record.

11. It is the main contention of the learned counsel for the petitioner that denial of service benefits for 171 days from 04.09.2006 to 21.02.2007, would tantamount to imposing punishment without any enquiry. He further contended that no order had been issued by the respondents with regard to her transfer of service from her native District to the other District. He further submitted that the reasons adduced in the impugned order are not legally sustainable. On the other hand, learned Spl.G.P. appearing for the respondents submitted that for want of vacancy, when the petitioner was transferred to another place, she has wantonly not attended duty for the above said 171 days and unauthorisedly absented herself, for which, the respondents, while regularising the said period of unauthorised absence, treated it as on loss of pay. In my considered opinion, when there is specific allegation against the petitioner, the respondents ought to have conducted enquiry before passing the impugned order. As rightly contended by the learned counsel for the petitioner, the impugned order of treating the unauthorised absence as on loss of pay while

regularising the said period, would certainly amount to imposing punishment without enquiry, which is illegal. Hence, on this ground alone, the impugned order is liable to be quashed.

12. Accordingly, the Writ Petition is allowed as prayed for. The impugned order is quashed. The respondents are directed to regularise the service period of the petitioner with Selection Grade pay from 04.09.2006 to 21.02.2007. The respondents are further directed to take steps to pay the amount of Provident Fund and Special Provident Fund to the petitioner and also further directed to pay the consequential pensionary benefits including pension from the date of retirement of the petitioner from 31.10.2010. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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Copy to

1. The Commissioner, Social Welfare Department,
Thiru.Vi.Ka. Industrial Estate, Guindy, Chennai-32.
2. The District Social Welfare Officer,
Villupuram District, Villupuram.
3. The Child Development Project Officer,
Marakanam, Tindivanam Taluk.

+1cc to Mr.N. Suresh, Advocate, S.R.No.71383
+1cc to the Government Pleader, S.R.No.71699

kgk(CO)
md(22/12/2016)

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