

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.23210 of 2012

and

M.P.No.1 of 2012

Nandini

.. Petitioner

Vs.

1.The Principal Secretary to Government of
Tamil Nadu,
Planning Development, (ST.2&E) Department,
Fort St.George, Chennai-9.

2.The Director of Evaluation and Applied Research Department,
Kuralagam Buildings,
Chennai-108.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records relating to the proceedings of 1st respondent issued in G.O.Ms.No.102 Planning Development and special Initiatives (ST.2&E) Department dated 21.07.2010, G.O.Ms.No.222 Planning Development and Special Initiatives (St.2&E) Department dated 28.12.2010 and G.O.RT.No.66, Planning Development and special Initiatives (St.2&E) Department dated 09.03.2011 and quash the same and consequently to direct the 1st respondent to treat the period from 04.12.2004 to 14.02.2006 as compulsory wait to all purposes and to pay all eligible service and monetary benefits to the petitioner along with suitable compensation for initiating illegal and unwarranted disciplinary proceedings.

For Petitioner .. Mr.P.I.Thirumoorthy

For Respondents .. Mr.T.M.Pappiah
Special Government Pleader.

ORDER

Challenging the order of the first respondent dated 21.07.2010 and 09.03.2011 and for a consequential direction to the 1st respondent to treat the period from 04.12.2004 to

14.02.2006 as compulsory wait to all purposes and to pay all eligible service and monetary benefits to the petitioner along with suitable compensation , the present writ petition has been filed.

2. The case of the petitioner is that he is working as Research Officer in the second respondent's Office. He was transferred by the second respondent from Chennai to Virdhunagar vide order dated 03.12.2004 . The said transfer order was served on the petitioner by way of registered post and the same was duly received by the petitioner. In the meanwhile, the petitioner applied for Earned Leave from 06.12.2004 to 24.12.2004. The petitioner has also approached this court, challenging the transfer order in W.P.No.37863 of 2004. This Court has granted an order of interim stay on 20.12.2004. Thereafter, the petitioner submitted a representation on 24.12.2004 seeking permission to join duty at Chennai in terms of the stay order granted by this Court.

3. It is further stated that inspite of the petitioner's request seeking permission to join duty, she was not permitted by the respondents. Therefore, she was constrained to file contempt petition in Cont.P.No.89 of 2005. However, the contempt petition was closed by this Court on 19.03.2005, in view of the submission made on behalf of the respondents that vacate stay petition was pending. Subsequently on 06.12.2005, the vacate stay petition filed by the respondents came up for hearing and the same was dismissed and the interim order, which was granted in favour of the petitioner was made absolute.

4. Against the said order, writ appeal in W.A.No.2328 of 2005 was filed before this Court and the Division Bench of this Court by allowing the appeal, directed the second respondent to consider the representation of the petitioner, within a period of two weeks and granted four weeks time to the petitioner to join at transfer place viz., Virdhunagar. Pursuant to the direction, the representation was given by the petitioner dated 20.06.2006 to the second respondent and the same was rejected on 25.01.2006. The petitioner in compliance with the direction passed by the Division Bench of this Court joined the transferred post at Virdhunagar joined the post on 15.02.2006 and joining report was also forwarded to the second respondent.

5. While matter stood thus a charge memo was issued on 19.04.2007 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, treating the entire period in which, the writ petitioner has obtained stay order from this Court, as unauthorized leave .

6. On receipt of the charge memo, an explanation was given by the petitioner about the stay order of this Court and the

administration was also aware of the same. However, notwithstanding an enquiry was conducted and the report was submitted holding the charge proved. On the basis of the report, the final order was passed by the first respondent imposing the punishment of stoppage of increment for two years without cumulative effect. As against which, an appeal / revision was filed and the same was also rejected.

7. In such circumstances, the petitioner is before this Court seeking the relief stated supra.

8. Heard the learned counsel appearing for the petitioner and perused the records and pleadings thereon.

9. Upon notice Mr.T.M.Pappiah, learned Special Government Pleader appeared on behalf of the respondents and produced the relevant file relating to the transfer and the disciplinary action initiated against the petitioner. It is seen from the records that the petitioner has requested vide letter dated 08.12.2004 for Earned Leave from 06.12.2004 to 24.02.2004. Thereafter, after obtaining stay order from this Court, she addressed a letter to the second respondent on 24.12.2004 seeking permission to join duty in Chennai. These two documents categorically establish the case of the petitioner that she cannot be faulted with for non-joining the duty in Chennai and her absence during the period of operation of the stay order granted by this Court cannot be considered as unauthorized absent.

10. In the light of the present conclusion, based on which the disciplinary action initiated against the petitioner cannot stand. In such circumstances, this Court has no hesitation in quashing the entire disciplinary action initiated against the petitioner.

11. In the circumstances, the impugned orders dated 21.07.2010, 28.12.2010 are set aside. The respondents are directed to treat the period from 04.12.2004 to 14.02.2006 as one of the authorised for all purposes. An order may be issued by the competent authority regularising the leave period.

The said exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

The writ petition is allowed on the above terms. No costs.
Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

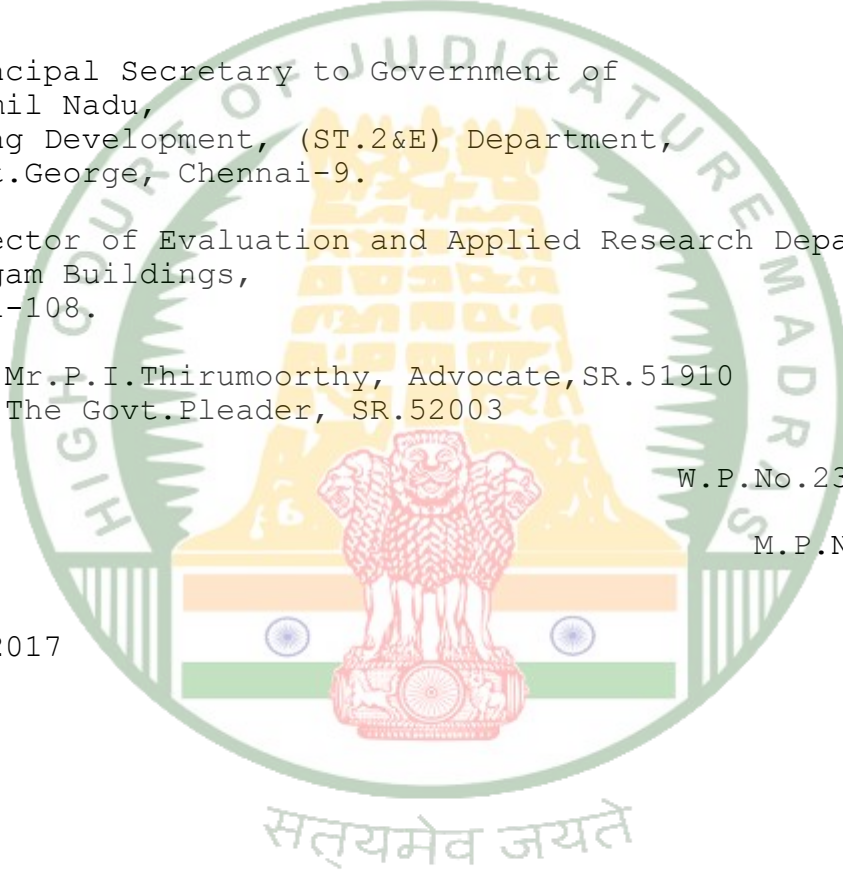
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To

- 1.The Principal Secretary to Government of
Tamil Nadu,
Planning Development, (ST.2&E) Department,
Fort St.George, Chennai-9.
 - 2.The Director of Evaluation and Applied Research Department,
Kuralagam Buildings,
Chennai-108.
- + 1 cc to Mr.P.I.Thirumoorthy, Advocate,SR.51910
+ 1 cc to The Govt.Pleader, SR.52003

W.P.No.23210 of 2012
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M.P.No.1 of 2012

SJ(CO)
NR 04/10/2017



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