



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.05.2017

CORAM

THE HONOURABLE MR.JUSTICE **R.SURESH KUMAR**

W.P.(MD).No.19355 of 2014

and

MP(MD)No.1 of 2014

W.M.P(MD) No.17455 of 2016

R. Rani

.. Petitioner

Vs.

1. The District Collector,
Pudukkottai.

2. The District Revenue Officer,
Pudukkottai.

3. The Divisional Excise Officer,
Pudukkottai.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 2 and 3 to permit the petitioner to join duty as Revenue Assistant in the Office of the third respondent.

For Petitioner : Mr. P.Ganapathi Subramanian

For Respondents : Mr. K.P.Krishnadoss

Government Advocate

O R D E R

The Prayer in the Writ Petition is for a Writ of Mandamus, directing the respondents 2 and 3 to permit the petitioner to join duty as Revenue Assistant in the Office of the third respondent.

2.The short facts leading to file the Writ Petition are as follows :

2.1.The petitioner was selected as Assistant through Competitive Examination conducted by Tamil Nadu Public Service Commission and accordingly she was appointed as Assistant at the Taluk Office at Ponnamaravathi Taluk, Pudukkottai District, where she joined duty on 13.03.2012. Thereafter, the petitioner was transferred to the Office of the Deputy Collector (Training),



Pudukkottai, on 25.10.2013 and again the petitioner was transferred to the Office of the third respondent i.e. Divisional Excise Officer, Pudukkottai, on 02.12.2013 where the petitioner also joined and was working.

2.2. While so, the petitioner applied for Maternity Leave from 31.01.2014 to 29.07.2014, on the strength of the medical certificate. After completion of the said leave period, according to the petitioner, while she reported for duty to the third respondent office, she was not permitted to join duty.

2.3. Further case of the petitioner is that, in fact, the third respondent office has informed the petitioner at the time of reporting for duty, that a Criminal case has been filed against her in Crime No.3 of 2014, under Sections 498(A), 506(ii) of IPC read with Section 4 of Tamil Nadu Prohibition of Women Harassment Act and a final report has also been filed before the learned Judicial Magistrate, Palani. By stating the said reason, the third respondent has not permitted the petitioner to rejoin duty. In this regard, the petitioner, though had given a representation on 04.08.2014 to the second respondent to give her re-posting, the same was not considered and therefore, the petitioner filed the present writ petition with the aforesaid prayer.

3. Mr. P.Ganapathi Subramanian, the learned counsel appearing for the petitioner would submit that, after completion of Maternity Leave, when the petitioner reported for duty on 30.07.2014 it was informed that a criminal case was pending against the petitioner and in view of the same the petitioner was not permitted to rejoin duty by the Office of the third respondent. The learned counsel for the petitioner would submit that, the said criminal case is a false case against the petitioner and the petitioner was also taking necessary steps to defend her suitably in the manner known to law. The third respondent office cannot refuse to take back the petitioner for duty as no action was taken against the petitioner departmentally by the office of the third respondent and in fact, the petitioner was not even suspended, if at all for any alleged involvement in the criminal case. Therefore, the petitioner had given a representation to permit her to rejoin duty and since the same was not considered, the petitioner had approached this Court.

4. The learned Counsel for the petitioner would also submit that during the pendency of the writ petition, the said criminal case ended in acquittal and in this regard, the learned counsel would produce a copy of the judgment dated 20.01.2015 passed by the Judicial Magistrate Court, Palani, in C.C.No.192 of 2014. After the said acquittal, the petitioner had also given a representation on 20.05.2015 to the second respondent and even the said representation was not considered so far. Therefore, the learned counsel for the petitioner would submit



that the petitioner's request to rejoin duty at the office of the third respondent may be considered by the respondents and in this regard, the mandamus sought for in this writ petition may be considered by this Court.

5. Per contra, Mr. K.P. Krishnadoss, learned Government Advocate appearing for the respondents would submit that, the petitioner had applied for Maternity Leave between 31.01.2014 and 29.07.2014. After completion of the said leave period, the petitioner reported duty and in fact worked for four days only, thereafter she did not turn up for duty and she voluntarily absent for duty for a longer period.

6. The learned Government Advocate would further submit that all these days, the petitioner has not reported for duty to the office of the third respondent or any other authority and now only, it has come to the knowledge of the respondents that the criminal case has been ended in acquittal against the petitioner. At any rate, the said absence period on the part of the petitioner can be dealt with only in accordance with the Fundamental Rules and it is for the employers to take a decision thereon.

7. This Court has considered the said submissions made by both sides.

8. It is not in dispute that the petitioner was on Maternity Leave between 31.01.2014 and 29.07.2014. Thereafter, it is an admitted case on the part of the respondents that she reported duty and in fact attended duty for four days. It is the case of the respondents that thereafter the petitioner voluntarily became absent for a longer period and she has never turned up for reporting duty. However, the case of the petitioner is that, though the petitioner approached the third respondent to rejoin duty after completion of maternity leave, she was not permitted to join duty by citing the reason that a criminal case is pending against her.

9. Be that as it may, during the pendency of the writ petition, the criminal case has ended in acquittal by order dated 20.01.2015 and a copy of the same has been produced before this Court by the petitioner. The learned Counsel for the petitioner submits that even after acquittal, though the petitioner had given a representation to permit the petitioner to rejoin duty on 20.05.2015, the same so far has not been considered.

10. Admittedly, the respondents did not take any action departmentally for the alleged absence on the part of the petitioner. As per the instructions given by the respondents the learned Government Advocate submitted that no disciplinary action has been taken against the petitioner and no suspension has been made against the petitioner.



11. The only defence from the respondents side is that the petitioner voluntarily became absent for a longer period. However, such stand taken by the respondent is rebutted by the learned counsel for the petitioner stating that if the petitioner had been voluntarily absent, she would not have come before this Court by filing this writ petition in the year 2014 itself, seeking for a Mandamus to permit the petitioner to rejoin duty, at any rate, now the criminal case, which was pending against the petitioner, has ended in acquittal, there can be no further impediment for the respondents to take her back for duty.

12. The long absent period after completion of Maternity Leave is on voluntary basis of the petitioner or otherwise can be decided by the second respondent to whom already a representation has been made by the petitioner. In the circumstances, this Court is of the view that certainly, the petitioner would be entitled to rejoin duty either at the third respondent's office or in other authorities / office before whom the petitioner is re-posted.

13. In the result, the Writ Petition is disposed of with the following directions:

- (i) The second respondent is directed to pass orders permitting the petitioner to rejoin duty as Assistant either at the third respondent's office or in any other office depending upon the vacancy.
- (ii) It is for the second respondent to decide the absence period on the part of the petitioner in accordance with Fundamental Rules and based on such decision, the benefit if any to be extended to the petitioner can also be finalized by the second respondent.
- (iii) The order permitting the petitioner to join duty shall be made by the second respondent within a period of four weeks from the date of receipt of a copy of this order.
- (iv) The decision regarding the absence period on the part of the petitioner shall also be decided by the second respondent within a period of twelve weeks from the date of receipt of a copy of this order.

No costs. Consequently, connected MP(MD) No.1 of 2014 and W.M.P (MD) No.17455 of 2016 are closed.

Sd/-

Assistant Registrar(crl side)

/True Copy/



To

1. The District Collector,
Pudukkottai.

2. The District Revenue Officer,
Pudukkottai.

3. The Divisional Excise Officer,
Pudukkottai.

+1cc to Mr.P.Ganapathi Subramanian, Advocate Sr.No.55964

+1cc to Spl.Government Pleader Sr.No.55982

CM/RM/MR/TSG

VB/GT/SAR4/22/11/2017/5P/6C

ORDER MADE IN
W.P. (MD) .No.19355 of 2014
and
MP (MD) No.1 of 2014
W.M.P (MD) No.17455 of 2016
08.05.2017