

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2018

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THE HONOURABLE Dr. JUSTICE S.VIMALA

W.P.No.2851 of 2017
and W.M.P.No.2773 of 2017

K.Gayathri

.... Petitioner

versus

1. The State of Tamil Nadu,
Rep. by the Secretary,
Department of Higher Education,
St. George Fort,
Chennai.
2. The Director of Collegiate Education,
College Road, Chennai - 600 006.
3. The Registrar,
Annamalai University,
Annamalai Nagar,
Chidambaram - 608 002.
4. The Principal,
Government Arts College,
C-Muttalur,
Chidambaram.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking for the issuance of writ of certiorarified mandamus, calling for the records pertaining to the impugned office memorandum No.C-C5/11071-06/2016 dated 22.12.2016 from the file of the 3rd respondent, quash the same and issue consequential direction directing the respondents to pay the non-disbursed and withheld salary and other monetary benefits to the petitioner for the periods from 10.03.2016 to 07.06.2016 and 11.08.2016 to 25.10.2016 amounting to 5 months and 11 days, as per the salary prevailing in those period.

For Petitioner

:Mr.R.Ganesan

For Respondents

:Mr.K.Karthikeyan,

Special Govt. Pleader for R1 and R2

Mr.V.R.Kamalanathan for R3

No appearance for R4

ORDER

This writ petition has been filed seeking for the issuance of writ of certiorarified mandamus, calling for the records relating to the impugned office memorandum dated 22.12.2016 from the file of the 3rd respondent and to quash the same and consequently, directing the respondents to pay the non-disbursed and withheld salary and other monetary benefits to the petitioner for the period from 10.03.2016 to 07.06.2016 and 11.08.2016 to 25.10.2016 amounting to 5 months and 11 days, as per the salary prevailing in those period.

2. The petitioner joined as Lecturer in the Department of Tamil Studies and Research in the 3rd respondent University, on 09.11.2006 and she was promoted as Assistant professor.

3. The administration of the 3rd respondent University was taken over by the Government of Tamil Nadu under G.O.Ms.No.170, Higher Education (H1) dated 25.09.2013. It was found that there were 369 surplus teaching faculties in various departments in the 3rd respondent University, including 38 numbers in the Department of Tamil Studies and Research.

4. The Government devised a scheme in concurrence with the faculties to deploy them in other Colleges run by the Government for three years and as such, one Dr.Anbarasu was transferred to Government Arts College, Kulithalai. However, as the validity of his qualifications was doubtful, alternatively, the petitioner's name was suggested and the second respondent, by proceedings dated 03.03.2016, directed the petitioner to join the Government Arts College, Kulithalai, in the place of Dr.Anbarasu and in pursuant to the same, the 3rd respondent relieved the petitioner on 09.03.2016 AN.

5. According to the petitioner, she was not earmarked as excess/surplus staff. Hence, she filed W.P.No.9637 of 2016 and W.M.P.No.8661 of 2016, seeking to call for the entire records pertaining to the transfer order in Na.Ka.No.28403/D5/2015 dated 03.03.2016, issued by the Director of Collegiate Education and quash the same, as unconstitutional, arbitrary, unreasonable being violative of rules and principles of natural justice and thereby direct the respondent to reinstate the petitioner in Annamalai University. This Court, by an order dated 18.03.2016, ordered notice and further ordered status quo to be maintained.

6. It is claimed by the petitioner that the 3rd respondent herein did not obey the order of status quo and not allow the petitioner to continue in the service of the 3rd respondent University and that made the petitioner to file another W.P.No.17329 of 2016 and this Court, by an order dated

05.05.2016, directed the 3rd respondent to permit the petitioner to join duty forthwith and pay salary.

7. The order of this Court dated 05.05.2016 was also not obeyed by the 3rd respondent. However, the 3rd respondent permitted the petitioner to join duty only on 08.06.2016. Thereafter, the petitioner continued her service in the University without any break.

8. This Court, by a common order dated 21.07.2016, dismissed W.P.No.9637 and closed W.P.No. 17329 of 2016, but, however, directed the respondents to consider the request of the petitioner to post her in a nearby place, as the petitioner is a physically handicapped person.

9. The 3rd respondent relieved the petitioner on 11.08.2016 and directed her to join in the old place, i.e., Government Arts College, Kulithalai, immediately, which was contrary to the direction of this Court passed in the writ petitions.

10. According to the petitioner, there was a vacancy in the C-Muttur Government College, Chidambaram, and hence, she made a representation to the second respondent on 22.08.2016 to consider her case sympathetically. The second respondent also considered the request and cancelled the previous order dated 29.01.2016 and 11.08.2016 and directed the petitioner to join in C-Muttur Government Arts College, Chidambaram. The petitioner also joined the Government Arts College, C-Muttur, Chidambaram on 26.10.2016.

11. It is the claim of the petitioner that she has not been paid with any salary for the period from 10.03.2016 to 07.06.2016 and thereafter, from 11.08.2016 to 25.10.2016.

12. When the petitioner claimed salary for those periods, the 3rd respondent has issued an official memorandum dated 22.12.2016, in which, the orders of this Court dated 18.03.2016 and 05.05.2016, the letter of the petitioner dated 09.11.2016 and the order of the High Court dated 21.07.2016 are also referred to. Despite all these references, the 3rd respondent has passed the following order treating those periods as earned Leave and leave on loss of pay. The relevant portion of the proceedings read as under:

"Dr.K.Gayathri, Assistant Professor,
Department of Tamil Studies and Research who
has been posted as Assistant Professor at
Government Arts College, Chidambaram on
agreement basis is granted Leave for her
absence period as follows:

10.03.2016 to 26.03.2016 - 17 days - Earned

Leave

27.03.2016 to 07.06.2016 - 73 days - Leave on

Loss of Pay

13.07.2016 to 15.07.2016 - 3 days - Earned

Leave

10.08.2016 & 11.08.2016 - 2 days - Earned

Leave

(without permission from 13.08.2016 to 15.08.2016)."

13. It is the claim of the petitioner that those 98 days should have been treated as duty period and not leave period as she was willing to work on those days and it is only the 3rd respondent who was not willing to avail the services of the petitioner and in fact, the claim is for five months 11 days.

14. It is relevant to point out that inspite of the order of status quo passed by this Court, the 3rd respondent did not obey the order of the Court, which calls for initiation of contempt proceedings against the 3rd respondent. However, the petitioner has not invoked the contempt jurisdiction of this Court, but merely is seeking a direction to the respondents to treat the period aforesaid as duty period.

15. A perusal of the order passed by this Court would only go to show that those periods should have been treated as duty period, as the petitioner had not been relieved from the service of the respondent in terms of the order passed by this Court and, therefore, the 3rd respondent is liable to answer the legal claim of the petitioner and the impugned memorandum dated 22.12.2016 has no legs to stand. The claim of the petitioner is just, fair and reasonable, it ought to have been granted by the 3rd respondent.

16. On an overall view of the entire matter, the impugned memorandum dated 22.12.2016 stands quashed and the petitioner is entitled to salary as claimed in the writ petition. The 3rd respondent is directed to pay salary for the petitioner as claimed in the writ petition, noted above, within a period of one month from the date of receipt of a copy of this order. The writ petition is allowed in the above terms. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Department of Higher Education,
St. George Fort,
Chennai.
2. The Director of Collegiate Education,
College Road,
Chennai - 600 006.
3. The Registrar,
Annamalai University,
Annamalai Nagar,
Chidambaram - 608 002.
4. The Principal,
Government Arts College,
C-Muttur, Chidambaram.

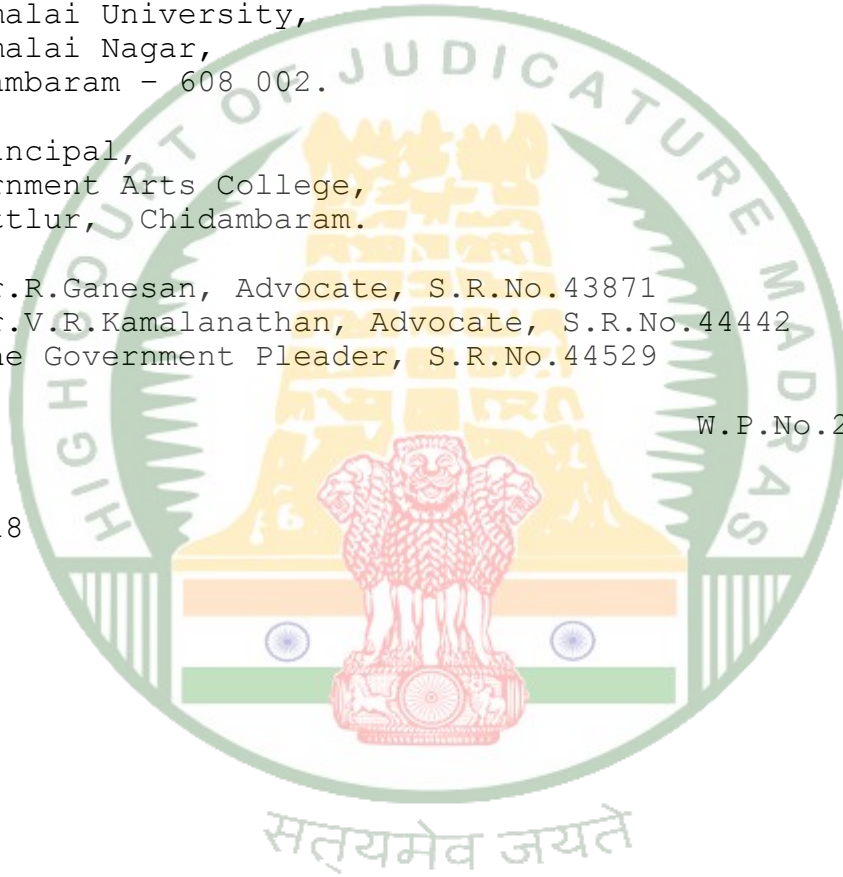
+1cc to Mr.R.Ganesan, Advocate, S.R.No.43871

+1cc to Mr.V.R.Kamalanathan, Advocate, S.R.No.44442

+1cc to the Government Pleader, S.R.No.44529

W.P.No.2851 of 2017

SPD(CO)
CS/11/09/18



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