



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.13224 of 2018

and

W.M.P. (MD)No.12057 of 2018

V.Devaki

: Petitioner

Vs.

1. The Director of Elementary Education,
DPI Campus,
College Road,
Chennai - 600 006.
 2. The District Elementary Educational Officer,
Trichy.
 3. The Assistant Elementary Educational Officer,
Musiri,
Trichy District.
- : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the second and third respondents to disburse the full salary and allowances to the petitioner from 01.08.2017 to 31.03.2018 as per the rules in force along with interest at 18% p.a. within a time limit to be fixed by this Court.

For Petitioner : Mr.A.Thirumurthy

For Respondents : Mr.D.Muruganantham
Additional Government Pleader

ORDER

The prayer sought for in this Writ Petition is for a Writ of Mandamus, directing the second and third respondents to disburse the full salary and allowances to the petitioner from 01.08.2017 to 31.03.2018 as per the rules in force along with interest at 18% p.a. within a time limit to be fixed by this Court.

2.Heard Mr.A.Thirumurthy, learned Counsel appearing for the petitioner and Mr.D.Muruganantham, learned Additional Government Pleader appearing for the respondents.

3.The petitioner was working as a Middle School Head Master at the Panchayat Union Middle School, at Therku Siddhambur in Musiri Union, from 18.08.2015. While so, an order of transfer was issued on 08.08.2017. Challenging the same, the petitioner approached this Court and filed W.P. (MD)No.16617 of 2017, where, an interim order of

stay of the said transfer order was granted by this Court on 04.09.2017.

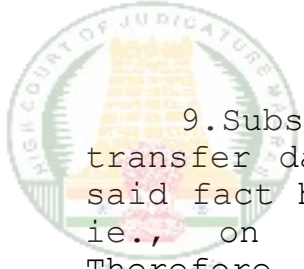
4. Pursuant to the said order of stay granted by this Court, the petitioner reported duty on 08.09.2017, but, she was not permitted to join. On 11.09.2017, the petitioner once again reported duty and in fact she had taken classes. The third respondent, however, refused to permit the petitioner to take classes. Thereafter, the petitioner filed Contempt Petition and ultimately, when the said writ petition came up for hearing in January 2018 the respondents had produced an order dated 24.01.2018, whereby, the earlier transfer order, which was impugned in the said writ petition was withdrawn / cancelled. Recording the same, the said writ petition was disposed of, pursuant to which, the petitioner joined in the same school, from where, she was transferred.

5. From 25.01.2018 onwards, she has been continuously working. In this regard, the petitioner had applied for medical leave from 11.08.2017 to 07.09.2017. Subsequently, from 08.09.2017 onwards, though she reported duty pursuant to the stay order, the petitioner had not been permitted to join duty and ultimately, she was permitted to join duty only on 25.01.2018, after the order of cancellation of the earlier transfer order dated 24.01.2018. Despite the petitioner joined duty on 25.01.2018, with the permission of the respondents, the salary for the month of January, February and March ie., upto 31.03.2018, had not been paid.

6. Therefore, the petitioner had approached the respondents by sending a detailed representation on 04.04.2018. Since, no orders have been passed and nothing has been forthcoming from the respondents to disburse the salary of the petitioner from 01.08.2017 to 31.03.2018, the petitioner is before this Court.

7. I have heard the learned Additional Government Pleader appearing for the respondents, who would submit that in view of the said facts mentioned above, the said representation of the petitioner dated 04.04.2018, would be considered by the respondents on merits and in accordance with law and a decision would be taken with regard to the grievance of the petitioner for the disbursement of salary and such order would be passed within the time frame to be fixed by this Court.

8. I have considered the submissions made by the learned Additional Government Pleader and have gone through the materials placed before this Court, which does not dispute that the petitioner, initially, suffered with an order of transfer and the same was stayed by this Court on 04.09.2017, pursuant to which, she reported duty on 08.09.2017 and in fact, on 11.09.2017, the petitioner, not only reported duty at the school, but, also started taking classes. However, the petitioner was not permitted to continue in the school in spite of the order of stay granted by this Court, against the order of transfer.



9. Subsequently, the respondents cancelled the said order of transfer dated 08.08.2017, by proceedings dated 24.01.2018 and the said fact had also been recorded by this Court. Only the next day, ie., on 25.01.2018, the petitioner was permitted to work. Therefore, from 08.09.2017, till 24.01.2018, the petitioner, on her part had not committed any mistake in not joining duty. In fact, she has taken earnest efforts in the strength of the order of stay granted by this Court. Between the period from 11.08.2017 to 07.09.2017, the petitioner also had applied medical leave. Even after joining duty on 25.01.2018, till 31.03.2018, she makes complaint that the salary upto the month of March 2018, also had not been paid.

10. Taking into consideration the aforesaid facts, this Court is of the view that the petitioner shall be entitled to claim the salary for the said period, as the petitioner had not been unauthorizedly absent for even a single day. When that being the position, it is not fair on the part of the respondents to withhold the salary of the petitioner for the period from 01.08.2017 till 31.03.2018.

11. In that view of the matter, this Court is inclined to pass the following order:

"There shall be a direction to the respondents to consider the said request of the petitioner dated 04.04.2018, taking into consideration the aforesaid facts and circumstances and also taking into account the medical leave applied by the petitioner from 11.08.2017 to 07.09.2017 and the stay order granted by this Court on 04.09.2017 and the subsequent cancellation of the transfer order passed by the respondents dated 24.01.2018 and also the fact that the petitioner was permitted to join duty only on 25.01.2018 and accordingly, pass necessary orders for sanctioning salary to the petitioner for the said period and such orders shall be passed within a period of six weeks from the date of receipt of a copy of this order. It is made clear that if the salary is not disbursed within a period of six weeks as indicated above, the said amount shall carry 6% interest.

12. The writ petition stands disposed of with the above directions. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(W)



To

1. The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 600 006.
2. The District Elementary Educational Officer,
Trichy.
3. The Assistant Elementary Educational Officer,
Musiri, Trichy District.

+1cc to Mr.A.Thirumurthy, Advocate Sr.No.69174
+1cc to SPL.Govt.Pleader, Sr.No.69392

MR

KM/BK/SAR4/07.12.2018/4P/6C

**ORDER MADE IN
W.P. (MD) No.13224 of 2018
21.06.2018**