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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.11.2019

C O R A M

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.10247 of 2013

R.Mariammal

... Petitioner

Vs.

The Principal Secretary/Special Commissioner,
Department of Social Defence,
Chennai-600010.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the respondent in Proceedings No.3057/A2/2012 dated 11.7.2012 and quash the same in so far as it directs the appointment of the petitioner only from the date of joining pursuant to the impugned order ignoring the service rendered by her from 1994-2003 and direct the respondent to issue an order of reinstatement with effect from 26-05-2003 (date of removal from service) and fix her pay in the revised pay band of Rs.5200-20200 + Grade Pay of Rs.2800 with reference to the pay which she would have drawn if she had continued in service without any break due to the removal from service.

For petitioner : Mr.P.Mohanraj

For Respondent : Ms.K.Bhuvaneswari,
Additional Government Pleader.

ORDER

The instant writ petition is filed for a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the respondent in Proceedings No.3057/A2/2012, dated 11.7.2012 and to quash the same in so far as it directs the appointment of the petitioner only from the date of joining pursuant to the impugned order ignoring the service rendered by her from 1994-2003 and to direct the respondent, to issue an order of reinstatement with effect from 26-05-2003 (date of removal from service) and to fix her pay in the revised pay band of Rs.5200-20200 + Grade Pay of Rs.2800, with reference to the pay which she would have drawn if she had continued in service, without any break, due to the removal from service.



2. The petitioner was appointed as Weaving Instructor Grade-I on 16.02.1994 in the Government Juvenile Home, Mallipudur, Srivilliputhur Taluk, Virudunagar District. The employment was made through the Employment Exchange. The petitioner had passed the Lower Grade Examination in Handloom Weaving in the Government Technical Examination, held in May, 1984. Her appointment was made, after due verification of all certificates. A charge memo, dated 18.03.2002, was issued to her, stating that the qualification required for being appointed as a Weaving Instructor Grade-I, is a National Trade Certificate awarded by the National Council for Vocational Training and the qualification possessed by the petitioner, namely passing of the Lower Grade Examination in Handloom Weaving in the Government Technical Examination, is not equivalent to the National Trade Certificate and therefore the petitioner was not entitled to be appointed as a Weaving Instructor Grade - I.

3. Thereafter, the petitioner was removed from service on 26.05.2003. The order of removal was challenged by filing W.P.No.940 of 2006. This Court by an order dated 23.03.2011, found that there was no suppression by the petitioner and that the petitioner was appointed only after due verification of all certificates. This Court was of the view that had the petitioner not been given an appointment, she would have got the sponsorship by the concerned employment exchange for appointment to the post of Weaving Instructor Grade-II, to which she was qualified or for any other suitable post for which she had the relevant educational qualification. This Court found that due to delay on the part of the respondent, the petitioner had crossed the maximum age limit, prescribed for government employment and therefore she has lost all employment opportunities. This Court passed the following directions:-

"7. The contention of the learned counsel for the petitioner that if this Court is inclined to set aside the order of removal, suitable directions may be issued to the respondent to reinstate the petitioner, in any of the available posts, suitable to her educational qualification particularly, the post of weaving instructor grade-II, taking into consideration that the petitioner had been serving the department for seven years deserves to be considered that for no fault of the petitioner, she has been removed. As rightly contended, if the name of the petitioner had not been removed from the live register of the employment exchange, being a qualified person, she would have had her chance considering her case to any one of the posts suitable to her educational qualification. Therefore, in the interest of justice and considering the plight of the petitioner a direction is issued to the respondent to reinstate the



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petitioner in service, in any one of the posts suitable to her educational qualification in the department of Social Defence, Chennai and particularly in the post of Weaving Instructor Grade-I, within the period of four weeks from the date of the receipt of the copy of the order. No costs."

4. This order was taken up an appeal by the State Government in W.A.No.74 of 2012. By an order dated 14.02.2012 in W.A.No.74 of 2012, the Hon'ble Division Bench of this Court did not interfere with the order of reinstatement in a commensurate post, passed by the learned Single Judge, but however modified the order to the extent that the petitioner was not entitled to claim any salary from the date of removal till the date of reinstatement. The Hon'ble Division Bench of this Court, has clarified that the petitioner shall be entitled to continuity in service. Paragraph No.3 of the Judgment of the Hon'ble Division Bench of this Court in W.A.No.74 of 2012, dated 14.02.2012, reads as under:-

"3. After giving our anxious consideration to the matter, we dispose of this appeal with a slight modification of the impugned order by directing that the respondent shall be reinstated in a lower post commensurate with her qualification. However, she will not claim any salary from the date of removal till the date of her reinstatement, but she shall be entitled to continuity in service. It is also clarified that the appellant shall not initiate any action to recover the excess amount paid to the respondent in the post of Weaving Instructor Grade - I. There shall be no order as to costs."

5. Consequent to the order of the Hon'ble Division Bench of this Court, the Principal Secretary/Special Commissioner, Department of Social Defence, Chennai, by his Proceedings No.3057/A2/2012, dated 11.07.2012, has appointed the petitioner, as Weaving Instructor Grade-II, but her appointment commensurate under Rule 10 (a) (1) of the General Rules for the Tamil Nadu State and Subordinate Services in the vacant post at Government Special Home, Chengalpattu on a purely temporary basis with effect from the date of joining. This order is under challenge in the instant writ petition.

6. No counter affidavit has been filed by the respondent.

7. Heard the learned counsel for the parties.

8. The learned counsel for the petitioner would contend that the order impugned in the instant writ petition, does not amount to compliance of the order passed in W.P.No.940 of 2006, dated



23.03.2011 and upheld by the Hon'ble Division Bench of this Court in W.A.No.74 of 2012, dated 14.02.2012. He would further state that this Court had directed the respondent to reinstate the petitioner in a suitable post commensurate with her educational qualification and therefore the petitioner would be entitled to continuity in service, on such reinstatement. What was denied the petitioner, is only back wages. He would therefore contend that a fresh appointment under Rule 10 (a) (1) of the General Rules for the Tamil Nadu State and Subordinate Services, which is purely temporary basis, has to be set aside. There is merits in the contention of the learned counsel for the petitioner.

9. The fact that this Court in W.P.No.940 of 2006, dated 23.03.2011, has specifically directed the respondent that the petitioner must be "reinstated in service" in a post commensurate with her educational qualification. This Court in W.A.No.74 of 2012, dated 14.02.2012, has also directed that the petitioner would be entitled to continuity in service. What has been denied is only the back wages.

10. The order impugned herein by which a temporary appointment to the post of Weaving Instructor Grade - II under Rule 10 (a) (1) of the General Rules for the Tamil Naud State and Subordinate Services, runs contrary to the spirit of the order of this Court and cannot be sustained. The impugned order, dated 11.07.2012, is set aside. The writ appeal is allowed. The respondent is directed to reinstate the petitioner in a suitable post (not temporary), in accordance with the directions issued by this Court in W.P.No.940 of 2006, dated 23.03.2011 and confirmed in W.A.No.74 of 2012, dated 14.02.2012. The respondent is further directed to pass necessary orders, within a period of twelve weeks, from the date of receipt of a copy of this order. No Costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

The Principal Secretary/Special Commissioner,
Department of Social Defence,
Chennai-600010.

+1 CC to Mr.P.Rajendran, Advocate sr 92611.
+1 CC to Govt. Pleader sr 93064.

W.P.No.10247 of 2013

RR(CO)
SP(20/12/2019)