

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.8460 of 2019
and
W.M.P.No.8989 of 2019

M.Tamilselvi,
Stenographer Grade I,
Mahila Court Thiruvannamalai.

.. Petitioner

Vs.

1. The Principal District Judge,
Thiruvannamalai.
2. The Additional Sessions Judge,
Mahila Fast Track Court,
Thiruvannamalai.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records in ROC.No.246/19, dated 01.03.2019 on the file of the second respondent and quash the same.

For petitioner : Mr. V. Bhiman

For respondents : Mr.M.Kempraj

ORDER

(The Order of the Court was made by R.Subbiah,J)

The petitioner has come forward with the present Writ Petition challenging the order of suspension issued in proceedings in ROC.No.246/19, dated 01.03.2019 on the file of the second respondent, with effect from 12.02.2019 and also directing the petitioner to appear before the Principal Sub-Judge, Thiruvannamalai every day at 10 am and 5 pm.

2. The case of the petitioner is as follows:

(i) The petitioner had been working as Stenographer Grade-I for over 20 years. Due to severe pain in the cervical bone, she applied for Medical Leave from 03.01.2019 to 01.02.2019. The Medical Leave was supported by a Certificate issued by a

qualified Government Doctor. The second respondent directed the petitioner to appear before the Medical Board suspecting the Medical Certificate issued by the qualified Assistant Professor of the Government General Hospital. The petitioner appeared before the Team of Medical Doctors on 27.02.2019 and the Medical Board had issued a Fitness Certificate after examining her in full and accepted the Medical Certificate issued to the petitioner by the Team of Doctors only on 27.02.2019. The Fitness Certificate was issued by the Doctor to permit her to join duty on 28.02.2019.

(ii) In the meanwhile, by the impugned proceedings of the second respondent in ROC.No.246/2019, dated 01.03.2019, she was placed under suspension retrospectively with effect from 12.02.2019 and the second respondent also directed the petitioner to appear before the Principal Sub-Judge, Thiruvannamalai every day at 10 a.m. and 5 p.m., which according to the petitioner is contrary to the provisions contained in the Tamil Nadu Fundamental Rules and also the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

(iii) On receipt of the above suspension proceedings, the petitioner had given a detailed explanation requesting the first respondent to cancel the condition imposed by the second respondent and also to revoke the impugned suspension order issued to her. But the said explanation was not considered. Hence, the petitioner has come forward with the present Writ Petition for the relief stated supra.

3. When the Writ Petition is taken up for consideration, the learned counsel for the petitioner made detailed submissions by adverting to the averments made in the affidavit and prayed for quashing the impugned suspension order.

4. Per contra, the learned counsel appearing for the respondents, by filing counter affidavit, submitted that the second respondent has assigned some judgment work in few cases and gave shorthand dictation to the petitioner in English for preparing the Bail Orders in Crl.M.P.Nos.793, 757, 900, 902 and 907 of 2018 on the file of the Fast Track Mahila Court, Tiruvannamalai in the office of the Additional District Court (FTC), Arni, on 19.12.2018 and that the petitioner had committed mistakes in preparing the orders. Hence, the second respondent enquired about the mistakes with the petitioner and she replied that she is not used to practice in shorthand strokes in English and she had never written in English shorthand strokes in her service of 20 years. Therefore, the second respondent conducted a test in Stenography both in English and Tamil for the petitioner on 21.12.2018 in the Additional District Court (FTC), Arni with the aid of the Tami Nadu Commerce Institutes' Association-Model Tests question papers both in English and

Tamil. The petitioner had attended the said Test and she had committed spelling mistakes and grammatical mistakes.

5. It is further contended by the learned counsel appearing for the second respondent that the petitioner was not fit to continue in service as Stenographer and hence she was recommended/opined that she has to be either terminated or in the event of showing mercy on her, she may be demoted to the level of Grade-III Stenographer. Based on the letter of the second respondent, a Memorandum was issued to the petitioner by the first respondent on 31.01.2019 by calling for explanation about the contention of the second respondent. On 01.02.2019, she met the first respondent in his Chambers along with the Chief Administrative Officer of the Principal District Court, Tiruvannamalai and expressed her willingness to join duty on 02.02.2019 and also requested for transfer to any other Court. Thereafter, the first respondent instructed the petitioner to join duty immediately on 02.02.2019 and also advised her to join the Stenography course in any one of the institutions to improve her skills in the field of Stenography without hindrance to the Court work atleast for one month. Despite the same, she just wanted to gain sympathy by simply crying and she had not taken steps to rectify her mistakes. But she failed to join duty on 02.02.2019 and extended/availed her Medical Leave for further period of 26 days from 02.02.2019 to 27.02.2019. She submitted the leave application belatedly on 06.02.2019.

6. The learned counsel appearing for the respondents further contended that, in fact, the second respondent/Additional Sessions Judge, Fast Track Mahila Court, Tiruvannamalai had issued notice to the petitioner on 06.02.2019 instructing her to join duty immediately on expiry of her Medical Leave on 01.02.2019, but she had applied for an Unearned Leave on Medical Certificate for the further period of 26 days from 02.02.2019 to 27.02.2019 and submitted the leave application through Post. Hence, notice was issued to the petitioner by the second respondent to join duty immediately. The second respondent/Additional Sessions Judge, Fast Track Mahila Court, Tiruvannamalai had referred the petitioner's Medical Certificate to the Medical Board and the petitioner was directed to appear before the Medical Board on 23.01.2019 itself, but she wantonly evaded herself from appearing before the Medical Board and subsequently extended her Medical Leave for 26 days from 02.02.2019 to 27.02.2019, as stated supra, by sending the Leave Application belatedly to the Authority. Hence, the second respondent passed the impugned suspension order under Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 01.03.2019. In fact, the second respondent had already revoked the impugned order of suspension, by proceedings in Dis.No.374/2019, dated 29.03.2019, by considering the work load of the Fast Track Mahila Court, Tiruvannamalai and also the non-

availability of spare Stenographer in the above Court. Thus, the learned counsel appearing for the respondents submitted that inasmuch as the impugned suspension order itself had been revoked, he submitted that nothing further survives for consideration in the Writ Petition and prayed for dismissal of the Writ Petition.

7. Keeping in mind the above submissions made by the learned counsel appearing on either side, this Court carefully considered the same and perused the materials available on record.

8. It is the main submission of the learned counsel for the petitioner that the condition imposed in the suspension order directing the petitioner to appear before the Principal Sub-Judge, Thiruvannamalai every day at 10 am and 5 pm, is unwarranted and such a condition may not be imposed in any suspension order. In this regard, the learned counsel for the petitioner relied on a decision of the Supreme Court reported in AIR 2002 SC 2959 (Anwarun Nisha Khatoon Vs. State of Bihar), wherein the Apex Court held as follows:

"8. Mr.B.B.Singh relied upon the authority of the Patna High Court in the case of Ganesh Ram Vs. State of Bihar reported in 1995 (2) PLJR 690 = 1995 Lab IC 360), wherein, after considering the above mentioned rules, it has been held that after suspension it is not necessary that the employee must attend work. It is held that a suspended employee cannot be compelled to mark attendance. It has been held that the authority is, however, entitled to ensure itself about the presence of the suspended employee at the headquarter before making payment of subsistence allowance. It is held that in the event of a dispute it will be for the employee to establish his presence at the headquarter. सत्यमेव जयते

9. In our view, this authority, far from assisting the respondents, is against them. This authority shows that there is no requirement to mark attendance. To us also no rule could be shown which required a suspended employee to mark attendance."

9. It is clear from the above decision of the Supreme Court that a suspended employee cannot be compelled to mark attendance.

10. The learned counsel for the petitioner further submitted that the petitioner cannot be treated like an accused, who alone will be directed to sign in the relevant Register marking attendance while a Court grants bail/anticipatory bail. At the most, as held in the above decision of the Supreme Court, the disciplinary authority can ensure that the delinquent be present at the headquarters, and for this purpose, the delinquent need not be asked to present every day. Therefore, he prayed for setting aside that portion of the impugned order of suspension relating to appearance of the petitioner before the Judicial Officer.

11. Be that as it may. Now that the impugned suspension order had been revoked by the second respondent on 29.03.2019 itself, which is evident from the counter affidavits filed by both the respondents, as stated above, and she had also joined duty on 29.03.2019 itself. Therefore, the question of dealing with the merits of the matter does not arise in this case.

12. In view of the fact that the impugned suspension order itself had been revoked, nothing further survives for consideration in this Writ Petition, which is accordingly dismissed as having become infructuous. No costs. Consequently, W.M.P. is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Thiruvannamalai.

2. The Additional Sessions Judge,
Mahila Fast Track Court,
Thiruvannamalai.

+lcc to Mr.V.Bhiman, Advocate, S.R.No.60402

+lcc to Mr.M.Kempuraj, Advocate, S.R.No.61409

W.P.No.8460 of 2019

PA(CO)

SP(20/09/2019)