

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAN

W.P.No.240 of 2018

S.Baby Susila Bai

... Petitioner

Versus

1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.

3. The Chief Educational Officer,
Nagercoil, Kanyakumari District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to settle retirement benefits and pensionary benefits to the petitioner by taking note of 20 years of service rendered by the petitioner as Secondary Grade Teacher from 08.11.1981 to 12.04.2001 with regular pension, based on the representation submitted by the petitioner dated 10.05.2017 and in the light of proceedings of 2nd respondent issued in Mu.Mu.No.029840/R1/E3/2017 dated 18.05.2017.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.A.Rajaperumal
Addl.Government Pleader

O R D E R

The relief sought for in the present writ petition is for a direction to direct the respondents to settle the retirement benefits and pensionary benefits to the petitioner by taking note of 20 years of service rendered by the petitioner as

Secondary Grade Teacher from 08.11.1981 to 12.04.2001 with regular pension, based on the representation submitted by the petitioner on 10.05.2017 and in the light of proceedings of 2nd respondent issued in proceeding Mu.Mu.No.029840/R1/E3/2017 dated 18.05.2017.

2. The present writ petition is classic one where the writ petitioner made an attempt to twist the facts and coined the prayer in such a way claiming the regular pension. Though the petitioner pleads ignorance of her removal of service, which was issued by the Chief Educational Officer, Nagercoil in proceeding Na.Ka.6855/A2/2002 dated 19.08.2004. This Court is unable to trust such a statement in view of the fact that the writ petitioner was serving as a Secondary Grade Teacher in the Education Department and not attended duty after the year 2003. The writ petitioner is not in service for more than 15 years and now filed the writ petition seeking pensionary and other benefits. The actions taken for the past 15 years are also not known.

3. The writ petitioner pleads that she was not aware of the removal order, further the writ petitioner states that she had not received the order of removal at all. However, the writ petitioner is unable to explain why she remained absent and not enquired about the order if any passed with the Authorities concerned. All these factual aspects raises a doubt in the mind of the Court in respect of the pleadings set out in the present writ petition.

4. In the affidavit filed in support of the writ petition, the writ petitioner has not stated about the actions taken by the Authorities and about the order of removal passed by the Competent Authority in proceeding dated 19.08.2004. Contrarily, it is stated that, the writ petitioner had rendered service as Secondary Grade Teacher from 08.11.1981 to 12.04.2001 and she was already sanctioned with selection grade in the post of Secondary Grade Teacher.

5. It is further stated that the writ petitioner remained absent from attending duty and no steps were taken by the respondents. It is admitted by the writ petitioner that she had not return back and joined duty. Only after 15 years, owing to family circumstances narrated in the affidavit filed in support of the writ petition, the writ petitioner is now seeking the pensionary benefits and pension for the services rendered by her. The writ petitioner pleads that she had served about 20 years in the department till the year 2003 and therefore, she is entitled for pensionary benefits.

6. The counter affidavit filed by the Chief Educational Officer states that, the writ petitioner signed the school attendance register on 12.04.2001 and thereafter not returned to duty. The writ petitioner had applied for leave on medical grounds from 04.06.2001 to 01.07.2001 in an application dated 07.06.2001, which was received on 11.06.2001 by the Head Mistress, Governance Girls Higher Secondary School, Iranial. Again she submitted a medical certificate for another 21 days from 02.07.2001.

7. The writ petitioner applied for leave on loss of pay for one month from 24.07.2001 and up to 24.10.2001 in a letter dated 27.08.2001. The writ petitioner did not returned duty after expiry of the leave and after a lapse of one year a notice was issued to the writ petitioner by the Head Mistress on 26.09.2002 to return to duty and in the notice itself it is clearly stated that in the event of further continuous absence, disciplinary actions will be taken against the writ petitioner. The Head Mistress reported the same through the letter dated 16.12.2002. Even thereafter no response from the writ petitioner and therefore, actions were initiated by the respondents and accordingly an order of removal was issued by the Chief Educational Officer in proceeding dated 19.08.2004.

8. The writ petitioner had not challenged the order of removal issued on 19.08.2004. This Court is not aware of the fact that whether any appeal or further actions are taken by the writ petitioner against the order of removal. The learned Additional Government Pleader states that no action was taken by the writ petitioner nor any writ petition was filed challenging the order of removal. Thus, the punishment of removal from service became final in the year 2004 itself. It is further stated that the Government issued an order in G.O.Ms.No.1046 Personnel and Administrative Reforms Department dated 13.11.1987 stating that the Government servant who had completed five years of service cannot be absent or go on leave for a period of one year, continuously. If the Government servant is absent or goes on leave beyond the said period the said Government servant can be removed from service. Government had issued G.O.Ms.No.1046 Personnel and Administrative Reforms Department dated 13.11.1987, ordering that no Government servant, who has completed five years of service should be granted leave for a continuous period exceeding one year, except on a medical certificate or study leave and that, when a Government servant does not assume duty remaining on leave or absent for a continuous period of one year, he or she may be removed from service following the procedures laid down in the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Rule 18 of the Fundamental Rules of the Tamil Nadu Government has also been

amended to the above effect and the amended Rule came in to force from 13.11.1987.

9. Accordingly, disciplinary action was initiated against the petitioner. It has been further stated that Rule 18(3) of the Fundamental Rules specifically provides for the imposition of the punishment of removal from service. According to the said rule, no other punishment could be imposed on the individual who contravenes the provisions of sub rule (2) of Rule 18 of the Fundamental Rules of the Tamil Nadu Government. Hence the action of the respondent in having removed the petitioner from service is as per rules and procedures contemplated.

10. After the order of removal, there was no claim from the writ petitioner in respect of pension and pensionary benefits. It is stated in the counter that the writ petitioner had suppressed all these material facts before this Court to achieve her ends by false means. The writ petitioner is not eligible for pensionary claims due to her removal from service.

11. This Court is of the considered opinion that the present writ petition is filed with misleading facts. The fact regarding the removal from service had been suppressed by the writ petitioner in the affidavit filed in support of the writ petition. When the Additional Government Pleader submitted that order of removal dated 19.08.2004, the writ petitioner was directed to be present before this Court. The writ petitioner Smt. Baby Susila Bai who is present before this Court on 20.02.2019 is repeatedly saying that she is not aware of any of these facts.

12. Further, she replied that she did not approach any of the Authorities nor received any information for the past more than 15 years. Such a blanket statement made by the writ petitioner cannot be trusted in view of the fact that she served as a Secondary Grade Teacher for about 20 years in the Education Department and now even before this Court, the writ petitioner states that she had not approached nor gathered any information about the removal of service imposed on her during the year 2004.

13. When the writ petitioner herself appeared before this Court and made such false statement or the statement which cannot be believed, this Court is of an opinion that, she is not entitled for any relief as such sought for in the present writ petition.

14. This apart, even as per the pension Rules, the punishment of removal is forfeiture of past services rendered by the Government employee. Even as per the rules also she is not entitled to get the relief and accordingly, the writ petition is devoid of merits. The writ petition stands dismissed. No Costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Pkn

To

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
School Education Department,
Secretariat, Fort St.George,
Chennai - 600 009.
- 2.The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.
3. The Chief Educational Officer,
Nagercoil, Kanyakumari District.

+1cc to Mr.G.Sankaran, Advocate Sr.15892

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srg 28/03/2019

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