

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.11.2019

C O R A M

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.28480 of 2017
and
W.M.P.No.30592 of 2017

P.Santhi

... Petitioner

Vs.

- 1.The Director of Collegiate Education
DPI Campus, College Road,
Chennai-6.
- 2.The Regional Joint Director of Collegiate
Education, Vellore Region, Vellore.
- 3.Pachaiyappas' Trust Board Management,
Rep. by its Chairman
Pachaiyappas' College Campus,
Chennai-600 030.
- 4.Secretary,
Pachaiyappas' Trust Board Management,
Pachaiyappas' College Campus,
Chennai - 600 030.
- 5.Secretary of the College Committee of CKN
College for Women,
CKN College for Women,
Cuddalore-1.
- 6.The Principal,
CKN College for Women,
Cuddalore-1.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the orders passed by the Respondents 1,2 and 4 dated 22.03.2017, 04.04.2017 and 03.05.2017 in Na.Ka.No.9320/G4/2017, R.C.No.1325/C2/2016 and R.C.No.A2/2600/2016 respectively, quash the same and consequently direct the Respondents 3 to 6 to submit the proposal afresh treating the period from 27.11.2014 to 12.04.2015 as duty with pay for all purposes and the

Respondents 1 and 2 to approve the said proposal without any condition and to sanction the petitioner salary and other consequential benefits for the above period and also to sanction and pay him the earned salary for the period from 13.04.2015 to 30.04.2015 together with interest, award costs.

For petitioner : Mr.V.Ajoy Khose

For R1 and R2 : Mr.M.Elumalai
Government Advocate.

ORDER

The instant writ petition is filed for a Writ of Certiorarified Mandamus, calling for the records pertaining to the orders passed by the respondents 1, 2 and 4, dated 22.03.2017, 04.04.2017 and 03.05.2017 in Na.Ka.No.9320/G4/2017, R.C.No.1325/C2/2016 and R.C.No.A2/2600/2016 respectively, quash the same and consequently, to direct the respondents 3 to 6, to submit the proposal afresh treating the period from 27.11.2014 to 12.04.2015 as duty with pay for all purposes and to direct the respondents 1 and 2 to approve the said proposal without any condition and to sanction the petitioner's salary and other consequential benefits for the above period and also to sanction and pay him the earned salary for the period from 13.04.2015 to 30.04.2015 together with interest, award costs.

2. The petitioner was working as Associate Professor of Mathematics in CKN College for Women, Cuddalore. It is an aided institution. The petitioner was transferred to Pachaiyappas College for Men, Kancheepuram. The transfer order was challenged by filing W.P.No.31396 of 2014. This Court by an order dated 01.12.2014, granted an interim order of status quo. The petitioner was not allowed to join duty, even though she did not relieved from the service. On the day, when the order of status quo was passed. Writ petition is finally allowed by an order dated 02.03.2015.

3. Despite the fact that the writ petition was allowed, the petitioner was not permitted to join duty. The order dated 02.03.2015 was challenged by filing W.A.No.353 of 2015. Stay petition filed by the respondent was dismissed by the order dated 10.03.2015. The petitioner was constrained to file a contempt petition being Contempt Petition No.682 of 2015 and the petitioner was permitted to join duty on 13.04.2015. The petitioner sent a representation for regularisation for the period from 27.11.2014 to 12.04.2015. Despite repeated the representations, the service of the petitioner for the said period, was not regularised.

4. On 22.03.2017, the representation of the petitioner was considered and the same was rejected by the Director of Collegiate Education, Chennai/the first respondent herein. The said order dated 22.03.2017, reads as under:-

"The period from 27.11.2014 to 30.04.2015 during which Dr.P.Santhi did not work shall not be considered as on other duty period. Therefore, it is clarified that the said period could be regularized after getting an application from the individual to treat this period as any kind of eligible leave except Medical leave."

5. The consequential order was passed on 04.04.2017 by the Regional Joint Director of Collegiate Education, Vellore Region, Vellore/the second respondent herein, which reads thus:-

"Clarification has been received from the Director of Collegiate Education, Chennai through the Letter in reference 2 with regard to the request of the Secretary of the College in reference 1 to treat to period from 27.11.2014 to 30.04.2015 during which Dr.P.Santhi, Associate Professor of Mathematics was not on duty. It has been clarified that the said period could be regularized on getting a request from the individual to treat is an any kind of eligible leave except Medical Leave.

Therefore, an application from Dr.P.Santhi, Associate Professor of Mathematics, may be obtained to regularize the said period on any eligible leave except Medical Leave and after thus regulating the said period with proper entries in her Service Register in this regard may be resubmitted to the Regional Joint Director of Collegiate Education by the Secretary in this regard."

6. Above said two orders have been challenged in the instant writ petition.

7. Counter affidavit has been filed by the second respondent. In the counter affidavit, respondent has taken a stand that since the petitioner has not worked between the above said periods, she cannot be paid and on those days cannot be treated as "Other Duty".

8. Heard the learned counsel for the parties.

9. The learned counsel for the petitioner states that she has been wrongfully denied work from the date she got the orders

of stay i.e.01.12.2014. This Court was pleased to pass an order of status quo on 01.12.2014 and there was no reason for the respondents, not to permit the petitioner to work, from that day. The petitioner was entitled to the relief, as prayed for.

10. This Court in W.P.No.31396 of 2014, passed an order of status quo on 01.12.2014. The said order reads as under:-

"Considering the submissions made, this Court is inclined to pass an order of Status quo. Accordingly, there shall be an order of status quo for a period two weeks. It is made clear that if the petitioner indulges in any illegal activities, it is open to the respondents 6,7,8 & 10 to take appropriate action in accordance with law."

11. The said writ petition was allowed by an order dated 02.03.2015 in W.P.No.31396 of 2014, wherein this Court after considering the law and points, came to conclusion that the order of transfer was punitive measures and mala fides. The operative portion of the order, reads as under:-

"28. The materials available on record very clearly shows that only as a measure of punishment, the petitioner was transferred from Cuddalore to Kancheepuram. The representation submitted by the ninth respondent to the District Administration and Education Department proceeds as if the petitioner and other faculty members have been disturbing the normal functioning of the College from 2002 onwards. The petitioner is therefore justified in her contention that under the guise of transfer the sixth respondent was actually implementing a hidden agenda. I am therefore of the view that the transfer was made only as a punitive measure and it was not a simple transfer on administrative ground as projected by the sixth respondent.

29. In the result, the order dated 26 November 2014 is set aside. However, I make it clear that this order would not stand in the way of taking appropriate action by Pachiappa's Trust to re-open the College, to ensure orderliness and to enforce discipline inside the campus."

12. The State was challenged the said order, by filing W.A.No.353 of 2015. The applications for stay was rejected by an order dated 10.03.2015, wherein the Hon'ble Division Bench of this Court, passed the following order:-

"This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mrs.S.Prabakaran for Mr.M.Devendran, Advocate for the petitioner and of Ms.R.Vaigai for Ms.R.Krishnaswamy, Advocate for the 1st respondent, the court made the following order:-

Heard. The miscellaneous petition stands rejected."

13. Despite the rejection of stay, the petitioner was not permitted to join duty, thereby forcing the petitioner to file a contempt petition. When the contempt petition was filed, the petitioner was permitted to join duty.

14. The narration of the above mentioned facts would show that complete harassment met to the petitioner by the respondents and the adamant and defiant attitude of the respondent not to comply with the orders of this Court. Faced with threat of contempt, respondent has permitted the petitioner to join duty. The petitioner cannot be found fault with, for not working in the college, because she was not permitted to work by the respondents. The harassment of the respondents, did not end and the respondents have not regularised the services of the petitioner, for the periods from 27.11.2014 to 12.04.2015.

15. If the impugned order is permitted to stand, it will amount to permitting the respondents taking advantage of their own wrong, which this Court cannot permit.

16. The petitioner is entitled to be regularised at least from 01.12.2014, i.e. the date when the interim order was passed in favour of the petitioner. There was no earthy reason for the respondent not to permit the petitioner to join duty, after this Court granted an order of status quo, and admittedly, the petitioner had not been relieved from service on that date.

17. There is no justification in not denying the petitioner with continuity of service at least from 01.12.2014 that is the date on which this Court passed an interim order of status quo in W.P.No.31396 of 2014.

18. Resultantly, the order impugned before this Court are set aside. The writ petition is allowed. The respondents are directed to regularise the services of the petitioner for the period from 01.12.2014 i.e., the day Court passed the order of status quo, to the date the petitioner was allowed to join duty and also the consequential benefits. The petitioner has reached the age of superannuation on 31.03.2019. The above mentioned period would be counted for the purpose of the pensionary

benefits payable to the petitioner. The said exercises be completed within a period of twelve weeks from the date of receipt of a copy of this order. No Costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Dm

To

- 1.The Director of Collegiate Education
DPI Campus, College Road,
Chennai-6.
- 2.The Regional Joint Director of Collegiate
Education, Vellore Region, Vellore.
- 3.Pachaiyappas' Trust Board Management,
Rep. by its Chairman
Pachaiyappas' College Campus,
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- 5.Secretary of the College Committee of CKN
College for Women,
CKN College for Women,
Cuddalore-1.
- 6.The Principal,
CKN College for Women,
Cuddalore-1.

+1cc to Mr.V.Ajoy Kohse, Advocate, S.R.No. 91817
+1cc to the Government Pleader, S.R.No. 91986

W.P.No.28480 of 2017
and

W.M.P.No.30592 of 2017

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