

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.34651 of 2019

Glory Thilagam

... Petitioner

.Vs.

1.The Principal Secretary to Government,
Social Welfare & NMP Department,
Fort St.George, Chennai-9.

2.The District Collector,
Vellore.

3.The Director of Social Welfare,
Chennai-2.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the third respondent herein in R.C.No.10125/Admn. 5(1)/2012 dated 24.3.2017 and consequential order in Proceedings R.C.No.10125/admn. 5-1/2012 dated 04.05.2017 and quash the same and consequently direct the respondents herein to regularizing the suspension period from 05.04.2012 to 01.02.2017 as duty for all purposes as per Fundamental Rules 54-B-1 (5).

For Petitioner : Mr.R.S.Anandan

For Respondents : Mr.G.Prabhu
Government Advocate

O R D E R

Mr.G.Prabhu, learned Government Advocate takes notice for the respondents. On the consent given by both sides, the writ petition itself is taken up for final hearing.

2.This writ petition has been filed challenging the order passed by the 3rd respondent dated 24.03.2017, and the consequential proceedings dated 04.05.2017, and for a

direction to the respondents to regularise the suspension period from 05.04.2012 to 01.02.2017 as duty for all purposes as per the Fundamental Rules.

3.The petitioner joined as an Anganwadi worker in the year 1981. She was promoted to the post of Rural Worker Officer in the year 2009. She was served with a suspension order passed by the 2nd respondent on 05.04.2012, on the ground that an enquiry is going to be done into grave charges. Since no charge memo was given and the petitioner was kept under prolonged suspension, the petitioner approached this Court. Thereafter, the petitioner was reinstated by revoking the suspension in the year 2017. In the meantime, final orders were passed in a disciplinary proceedings on 11.01.2017, by treating the transfer made made from Vellore District to Chinna Salem, as a punishment. The petitioner has filed an appeal against this order before the 1st respondent and the same is yet to be disposed of.

4.In the meantime, the petitioner submitted a representation to the 3rd respondent on 14.12.2017, to regularise the suspension period from 05.04.2012 to 01.02.2017 as duty for all purposes. The representation was rejected by the 3rd respondent on the ground that the transfer order has been treated as a punishment, and therefore the suspension period cannot be treated as duty. Questioning the said order, the present writ petition has been filed before this Court.

5.Mr.R.S.Anandan, learned counsel for the petitioner submitted that the transfer order can never be regarded as a punishment, and the same is not contemplated under the rules. The learned counsel submitted that as against the order passed by the 3rd respondent, an appeal has been filed before the 1st respondent and the same is pending. The learned counsel further submitted that dehors the appeal, the fundamental rules and particularly under FR 54-B(6), the petitioner is entitled for treating the suspension period as duty since transfer cannot be treated as a punishment. Therefore, the learned counsel submitted that the impugned order passed by the 3rd respondent requires interference.

6.Per contra, Mr.G.Prabhu, learned Government Advocate, appearing on behalf of the respondents submitted that till the order dated 11.01.2017, is in force, the suspension period cannot be treated as on duty since the petitioner has been punished by virtue of the said order. The learned counsel submitted that the subject matter of punishment is now pending by way of an appeal and until a final decision is taken in the appeal, the suspension period cannot be treated as a duty period. Therefore, the learned counsel submitted that there are no grounds to interfere with the impugned order passed by the 3rd respondent.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.In this case, the impugned order has been passed by the 3rd respondent, only based on the punishment that was given to the petitioner by virtue of the order dated 11.01.2017. The punishment has now been made as a subject matter of appeal and the same is pending before the 1st respondent. Till this punishment is interfered, it may not be possible to treat the suspension period as duty period. The manner in which the suspension period will have to be treated, will depend upon the final result in the appeal. In fact, whatever grounds have been taken in this writ petition is the same ground that has been taken even in the appeal to the extent that a transfer cannot be considered to be a punishment under the rules. Therefore, if any findings are given in this writ petition, it will have a direct bearing in the appeal which is pending before the 1st respondent.

9.In view of the above discussion, this Court is not inclined to interfere with the impugned proceedings of the 3rd respondent at this stage. It is brought to the notice of this Court that the petitioner has already retired from service. Therefore in the fitness of things, there shall be a direction to the 1st respondent to dispose of the appeal that has been filed by the petitioner on 28.03.2017, within a period of four weeks from the date of receipt of copy of this order. The relief that has been claimed by the petitioner, to treat the suspension period from 05.04.2012 to 01.02.2017 as duty, will depend upon the result of the appeal. It is left open to the petitioner to revive his claim after the disposal of the appeal, and the petitioner is directed to give a fresh representation to the 1st respondent along with a copy of the appeal filed on 28.03.2017, and also a copy of this order.

This writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

KP

To

- 1.The Principal Secretary to Government,
Social Welfare & NMP Department,
Fort St.George, Chennai-9.
- 2.The District Collector, Vellore.
- 3.The Director of Social Welfare, Chennai-2.

+1cc to Mr.R.S.Anandan , Advocate SR.No. 104084

+1 cc to Government Pleader Sr.No. 104499

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