

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.11.2020

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.13501 of 2013

A.Lakshmi

... Petitioner

vs.

The Managing Director,
Tamilnadu Water Supply and Drainage Board,
No.31, Kamarajar Salai,
Chepauk, Chennai 600 005. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records connected with the impugned orders vide letter No.c1/H0/EE/40216/2012 dated 22.02.2013 issued by the respondent and quash the same and further direct the respondent to treat the period of suspension from 24.04.1995 to 03.09.1995 as duty and permit the petitioner to draw arrears of pay and allowances after adjusting the amount of subsistence allowances already paid to him with interest at 12% per annum for the delayed payment.

For Petitioner : Mrs.N.Indhumathi

For Respondent : S.Erasikine Leo

ORDER

This writ petition is filed to call for the records connected with the impugned orders vide letter No.c1/H0/EE/40216/2012 dated 22.02.2013 issued by the respondent and quash the same and further direct the respondent to treat the period of suspension from 24.04.1995 to 03.09.1995 as duty and permit the petitioner to draw arrears of pay and allowances after adjusting the amount of subsistence allowances already paid to him with interest at 12% per annum for the delayed payment.

2.The case of the petitioner is that she was working as Assistant in the respondent Board and while in service she was placed under suspension from 25.04.1995 to 03.09.1995 vide order dated 24.04.1995, for certain allegations and accordingly a

charge memo was issued under the Regulation 9(b) of the TWAD Board Employees (Discipline and Appeal) Regulations 1972 alleging that she had torn the office records and tapals. Thereafter the petitioner has submitted her explanation denying the charges and accepting her explanation, the respondent dropped the charges by passing final orders on 31.01.1996 with a severe warning to the petitioner and subsequently the respondent treated her suspension period as leave to which she is eligible. Accordingly, the Deputy Chief Engineer, New Veeranam Project, TWAD Board, Chennai had issued orders treating the period of suspension from 25.04.1995 to 03.09.1995 comprising of 132 days as Earned leave under Tamil Nadu Leave Rules, 1933 read with Regulation 49 of TWAD Board Service Regulation 1972.

2.1.It is the averment made by the petitioner that during the relevant period of her suspension on 25.04.1995, she was working as Assistant and therefore she was a workman as defined under Section 2(1) of the Industrial Employment(Standing Orders) Act,1946 read with Clause No.1(11) of the TWAD Board Standing Order and Section 2(s) of the Industrial Dispute Act,1947. Therefore she claims that the above period of suspension from 25.04.1995 to 03.09.1995 should have been treated as duty and the subsistence allowance paid to her should be adjusted towards salary to which she is entitled. However, erroneously, the respondents treated the suspension period as Earned Leave under the provisions of Fundamental Rule 54. It is the further averment of the petitioner that before taking decision she was not given any show cause notice and orders have been passed, which is unsustainable. She made a representation on 10.07.2006 to the respondent to treat her suspension period as duty period and disburse the arrears of pay and allowances, however the respondent has not responded to her representation.

2.2.Aggrieved against the same, she filed WP.No.49194/2006 before this Court and this Court by its order dated 06.08.2012 directed the respondent to consider her representation dated 10.07.2006 and pass orders after affording opportunity. Accordingly she submitted the copy of her representation dated 10.07.2006 to the respondent, but to her shock and surprise, the respondent issued a reply dated 22.02.2013 to her representation dated 10.07.2006, rejecting her request. As against the same, the present writ petition was filed.

3.Learned counsel appearing for the petitioner, referred to the decision of the Hon'ble Supreme Court in TWAD Board and others Vs.M.D.Vijaykumar (SLP.NO.7571 of 1992 - dated 23.07.1992), wherein it has been held that even the period of suspension with censure shall be treated as duty period. The petitioner's case is similar in nature and accordingly she is

entitled for claiming her suspension period to be treated as duty period and, in the light of the above, the order passed by the respondents is wholly unsustainable.

4. Per contra, learned counsel appearing on behalf of the Board, referring to the counter, while denied the averments made by the petitioner and contended that the misdeeds of the petitioner entailed in action being taken against her, and though she was found guilty, however, taking a lenient view, the petitioner was let off with a punishment of severe warning. Therefore, it is not a case of dropping of charges against the petitioner which would enable her to get the period of suspension regularised. Further, the petitioner stands covered by the Tamil Nadu Water Supply and Drainage Board Regulations and pay and allowances are as per the Fundamental Rules. It is the further submission of the petitioner that the Regulation and Fundamental Rules prescribe as to how to treat the period of suspension in case of punishment, even be it severe warning, imposed on a delinquent and, therefore, submitted that she is not eligible for regularisation of her suspension period. It is the further submission of the learned counsel for the respondents that the petitioner comes under the workmen category and coming under the Industrial Disputes Act and not under the Industrial Employment Act. The respondents, taking a reasonable view, has treated the period of suspension as earned leave and, therefore, no interference is called for with the impugned order.

5. This Court heard the rival submissions made by the learned counsel on either side and perused the materials available on record.

6. The petitioner was proceeded upon for certain delinquencies, which ultimately ended in the petitioner being let off with a severe warning. The delinquency of the petitioner stood proved in the disciplinary proceeding. Therefore, as put forth by the respondents, it is not a simple case of dropping of charges but a case where the petitioner was punished. Once when punishment has been inflicted on the petitioner, it is for the respondents to treat the period of her suspension as duty or otherwise for which the relevant provisions of the Regulations stands attracted. As pointed out by the respondents, the TWAD Board Regulations stand attracted and the petitioner's period of suspension was treated as earned leave, which for all purposes means that the period of her service stood regularised, though without any monetary benefits. The petitioner cannot come before this Court and claim that she is entitled to all the monetary benefits when she has been found delinquent and imposed with the punishment. The respondents have considered the case of the petitioner in proper perspective

and has passed the order, which does not suffer from the vice of any illegality.

7.For the reasons aforesaid, this petition is liable to be dismissed and, accordingly, the same is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

jrs

To

The Managing Director,
Tamilnadu Water Supply and Drainage Board,
No.31, Kamarajar Salai,
Chepauk, Chennai 600 005.

+1cc to M/s.Law square, Advocate Sr.36425

W.P.No.13501/2013

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