

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22 /01/2020

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.621 of 1998

S.Thilagavathy

Appellant

Vs

1. The State of Tamil Nadu
rep. by its Secretary to Government
Labour and Employment Department
Fort St. George
Chennai 9.
2. The Secretary
Tamil Nadu Labour Welfare Board
D.M.S.Compound
Teynampet
Chennai 600 006.
3. G.Janakiraman,
Member (CITO)
No.62, Triplicane,
High Road, Chennai-600 005. ... Respondents
(Amended the case title of R3 as per order of this Court
dated 11.08.98 in CMP No.7884/98)

Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.4318 of 1987, dated 19/1/1998.

Prayer in WP No.4318 of 1987 : Writ Petition filed under article 226 of the constitution of India praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to issue a writ of mandamus directing the 1st respondent to restore the petitioner to the same posting that she was in prior to her discharge from service on 29.09.93 with effect from 29.09.93 with back wages and all consequential benefit and to post her in Trichy.

For appellant

...

Mr.R.Singaravelan
Senior Counsel

for Mr.R.Venkatesh

J U D G M E N T

SUBRAMONIUM PRASAD,J

The petitioner had filed Review Application No.23 of 2018, against the order dated 14/3/2007 passed in W.A.No.621 of 1998. This Court, by an order, dated 12/1/2018, allowed Review Application and the writ appeal is now being taken up on merits, for disposal.

2. The appellant/writ petitioner was appointed as an Organiser-cum-Training Instructor in Labour Welfare Centre. The petitioner was posted at Mettur. She was transferred from Mettur to Hosur and then was transferred to Trichy. She was later transferred to Karur and then to Thanjavur. All this happened in two and a half years. From Karur, she was transferred to Thanjavur and within thirty days, she was again transferred to Dalmiapuram. On her request, she was transferred to Trichy. Within three months of her joining in Trichy, she was transferred to Kovilpatti. Within a short span, the petitioner had been transferred nine times. The petitioner filed a suit in O.S.No.1460 of 1993, before the District Munsif, Tiruchirapalli, challenging the transfer. The petitioner got an interim stay. The suit was dismissed, on the ground of jurisdiction.

3. The petitioner was given a show cause notice on 22/9/2003, on the ground that she had not joined duty at Kovilpatti and she kept away from service. The petitioner, gave a reply on 23/3/1993, stating that she did not join Kovilpatti, because of the interim stay order which had been granted to her. She stated that she had not resigned from service nor had she applied for any leave, in view of the interim stay which had been granted to her. On 29/9/2003, the Secretary, Tamil Nadu Labour Welfare Board, Chennai, issued a letter that the petitioner had relieved herself from service without taking any permission from the Board, by a letter, dated 24/6/1993. The operative portion of the letter reads as under:-

"Even though it was clearly and repeatedly instructed in such a manner, her statement that no order was issued to her mentioning the place in which she should join, is against facts. Moreover, she has stated that she had not joined duty since there was Court order, staying the transfer order. Transfer order has been served to her in person on 18/6/1993 and by registered post on 19/6/1993. It was instructed that she should join at Kovilpatti after handling over the charges within 3 days from the receipt of the Transfer

order. Accordingly, she should have been joined duty at Kovilpatti on 21/6/1993, after handing over the charge. But she has not joined duty at new place after handing over the charges to relevant person. She has handed over the charges on 24/6/1993. According to her statement, the date of staying the transfer order by Court is 25/6/1993. The stay order has become invalid. Moreover, the District Munsif Court, has no power to deal with the petition related to Board Transfer.

On the whole, Tmt.S.Thilavathi had relieved from service by herself on 24/6/1993 at about 5.00 p.m. For such resignation no permission was obtained from the Board. The continuance of such person in Boards Register is a great loss. So Tmt.S.Thilavathi organiser is hereby discharged from Board Service w.e.f.25/6/1993."

4. This letter was challenged by the petitioner by filing W.P.No.18550 of 1998. The writ petition was withdrawn on 24/11/1993. The order dated 24/12/1993 reads as under:-

"In view of the endorsement made by the learned counsel for the petitioner, the writ petition is dismissed as withdrawn. Consequently, W.M.P is also dismissed. No costs."

5. The above order shows that the petitioner had unconditionally withdrawn the writ petition.

6. By proceedings dated Nil.February 1994, the petitioner was appointed as Temporary Organiser at Labour Welfare Centre, Manapparai, with basic pay of Rs.950/- in the scale of 950-20-1150-25-1500. The appointment order specifically reads as under:-

"This appointment is fresh appointment. It is purely temporary. It is informed that she will be terminated at any time without any prior notice. It is also informed that her previous service period should not be added with this appoint period for regularisation. In request of this service period, no petition will be entertained."

7. The petitioner objected to the said letter by stating that the writ petition No.18550 of 1993 had been withdrawn only on the basis that she would be reinstated at the same post and that she could not be given a fresh appointment at a lower post.

8. The Tamil Nadu Labour Welfare Board, issued a memorandum dated 05.08.1994, which has a bearing on the writ appeal is being extracted in its entirety:-

"Tmt.S.Thilagavathi, Organiser, Labour Welfare Centre, Manapparai, was severely warned and transferred for offences like creating dishonour in service, misappropriation, tampering the record, sleeping in duty time, sending leave letter to Labour Welfare Centre, Karur, on her own desire, went to Ooty along with tailoring class students (lady) for tour without obtaining permission from Board. Finally she was instructed to work at Labour Welfare Centre, Kovilpatti, on 16/6/1993. But as he had not joined duty till 25/6/1993, it was assumed that she by herself, relieved from service.

She had represented with High Court, Chennai, against this order. Then, as she by herself has withdrawn the case filed in the High Court, she was reappointed as fresh on compassionate basis in the post of organiser Grade 2 as per proceeding in reference 1st cited.

In this situation, she, in her letter dated 10/6/1994 referred in reference second cited, has requested for seniority. It can't be accepted. Tmt.S.Thilagavathi, Organiser, is hereby informed that if any seniority has to be given, that too, only after completion of three years continuously in the fresh appointment, her request will be considered on the satisfaction of her Superior Officer. So, it is severely informed that sending of reminder in this regard hereafter should be avoided."

9. Since there was no response from the Government, despite repeated representation, from the petitioner for reinstatement to the same post, from which she was relieved, the petitioner filed W.P.No.4318 of 1997, with the following prayer:-

"To direct the second respondent to restore the petitioner to the same position that she was in prior to her discharge from service on 29/9/1993 with effect from 29/9/1993 with backwages and all consequential benefits and to post her in Trichy.

10. The petitioner had also filed W.P.NO.9110 of 1997, challenging her transfer to Dindigul. The learned Single Judge, by common order, dated 19/1/1998, dismissed both the writ petitions.

11. W.P.No.4318 of 1997 was dismissed stating that the petitioner had approached the High Court seeking the prayer of reinstatement to the same post, from where she was relieved, after a period of three years and therefore, it was only an after thought. The learned Single Judge has also held that the petitioner had not brought out anything to substantiate that there was any assurance given to her that she would be

reinstated back to her old position. W.P.No.9110 of 1997 was dismissed on the ground that the counsel for the petitioner had agreed that the petitioner would repeat for duty at the place she had now been transferred.

12. Both orders was challenged by filing W.A.No.621 of 1998. The writ appeal was dismissed, by an order, dated 14/3/2007, only on the ground that the petitioner had agreed to report for duty to the place where she had been transferred.

13. The order dated 14/3/2007, dismissing the writ appeal was challenged before the Hon'ble Supreme Court in S.L.P(C) 13057 of 2008. The Hon'ble Supreme Court noted that the petitioner had filed two writ petitions W.P.No.4318 of 1997 assailing the reinstatement at a lower post and W.P.No.9110 of 1997 challenging the transfer. The Hon'ble SUPreme Court further observed that against the order of the learned Single Judge, dismissing both the writ petitions, writ appeal No.621 of 1998 had been filed challenging both the orders. The Hon'ble Supreme Court held that the Division Bench had given its reasoning only for upholding the order passed in W.P.No.9110 of 1997 but there was no consideration regarding W.P.No.4318 of 1997. The Hon'ble Supreme Court, held that since the Division Bench had not passed any order dealing with the plea of the appellant arising out of W.P.No.4318 of 1997 it is open to the petitioner to approach the Division Bench once again by filing a Review Petition, pointing out the error apparent on the face of the record that her appeal directed against the order in W.P.No.4318 of 1997 had not been discussed at all and had been dismissed without indicating any reason.

14. The petitioner therefore filed Review Application No.23 of 2018 which has been allowed and the writ appeal is now being taken up for hearing.

15. Heard Mr.R.Singaravelan, learned Senior Counsel for the appellant.

16. The learned Senior Counsel for the appellant contends that the learned Single Judge had erred in dismissing the writ petition only on the ground of delay. It is contended that the petitioner had given a number of representations which had not been considered. The writ petition No.18550 of 1993 challenged the order dated 29/9/1993. The writ petition had been withdrawn unconditionally. The present writ petition has also been filed that she should be restored to the same position which she was holding on the date of her discharge from service. There is nothing in the order indicating that there was any kind of assurance given to the petitioner that she would be reinstated at the same post. In the absence of any material that some kind of an assurance was given to the petitioner, it

is not possible to grant the relief as claimed by the petitioner.

17. The learned Senior Counsel further contended that the learned Single Judge erred in not considering the memorandum dated 5/8/1994 which categorically stated that the seniority of the petitioner will be considered on completion of three years. The records also indicate that a letter dated 1/9/1994 had been sent by one D.Janakiraman, Member CITU, Tamil Nadu Labour Welfare Board, stating that he had arranged for withdrawal of the writ petition and that she ought not to have been posted at the lowest pay in the lower post. The learned Senior Counsel would also contend that the petitioner was entitled to seniority and promotions. The learned Senior Counsel would rely on Rule 47 of the Tamil Nadu State and Subordinate Service Rules, which reads as under:-

"47. Relinquishment of rights by members - (1) Any person may in writing, relinquish any right or privilege to which he may be entitled under these rules or the Special Rules if, in the opinion of the appointing authority, such relinquishment is not opposed to public interest; and nothing contained in these rules or the Special Rules shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished. *(2) Relinquishment of a right or privilege for a temporary period shall be accepted if it is made for a period of not less than three years subject to the condition that after the expiry of the said period, the claim of the right or privilege relinquished will be with reference to the state of affairs that exist on the date of expiry of period of relinquishment and without restoration of original seniority. If relinquishment of right or privilege is made permanently and is accepted subsequent claim of the relinquished rights or privileges shall not be entertained.

18. The said Rules are not applicable to the present case in view of the fact that the petitioner had withdrawn the writ petition unconditionally, thereby accepting that the petitioner had relieved herself from the service. The learned Senior Counsel would also rely on para 31 of the judgment of the Hon'ble Supreme Court in CAPT.M.PAUL ANTHONY Vs.BHARAT GOLD MINES LTD AND ANOTHER {(1999) 3 SCC - 679}, which reads as under:-

"31.On joining government service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights, in favour of the Government. The Government, only because it has the power to appoint does not become the master of the body and soul of the employee. The Government by providing job opportunities to its

citizens only fulfils its obligations under the Constitution, including the Directive Principles of State Policy. The employee, on taking up an employment only agrees to subject himself to the regulatory measures concerning his service. His association with the Government or any other employer, like instrumentalities of the Government or statutory or autonomous corporations, etc., is regulated by the terms of contract of service or service rules made by the Central or the State Government under the proviso to Article 309 of the Constitution or other statutory rules including certified standing orders. The fundamental rights, including the right to life under Article 21 of the Constitution or the basic human rights are not surrendered by the employee. The provision for payment of subsistence allowance made in the service rules only ensures non-violation of the right to life of the employee. That was the reason why this Court in *State of Maharashtra v. Chandrabhan Tale* [(1983) 3 SCC 387 : 1983 SCC (L&S) 391 : 1983 SCC (Cri) 667 : (1983) 3 SCR 337 : AIR 1983 SC 803] struck down a service rule which provided for payment of a nominal amount of rupee one as subsistence allowance to an employee placed under suspension. This decision was followed in *Fakirbhai Fulabhai Solanki v. Presiding Officer* [(1986) 3 SCC 131 : 1986 SCC (L&S) 411 : (1986) 2 SCR 1059 : AIR 1986 SC 1168] and it was held in that case that if an employee could not attend the departmental proceedings on account of financial stringencies caused by non-payment of subsistence allowance, and thereby could not undertake a journey away from his home to attend the departmental proceedings, the order of punishment, including the whole proceedings would stand vitiated. For this purpose, reliance was also placed on an earlier decision in *Ghanshyam Das Shrivastava v. State of M.P.* [(1973) 1 SCC 656 : 1973 SCC (L&S) 289 : AIR 1973 SC 1183]"

19. The said paragraph is also of no help to the petitioner. Not only did the petitioner withdraw the writ petition No.18550 of 1993, unconditionally, the petitioner has also not chosen to pray for the relief of further increments and promotion in her writ petition. The prayer in W.P.No.4318 of 1997 from which the present appeal arises which has been quoted in the earlier portion of the judgment is specific and is restricted only to reinstatement to the post to which the petitioner was holding on 29/9/1993. No doubt, the Court can mould relief but it cannot go completely beyond the prayer in the writ petition. In the absence of any prayer for grant of promotions or increments from the date she was taken back in the service, the oral prayer by the learned senior counsel cannot be granted.

20. The writ appeal is therefore, dismissed. No costs.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

mvs/pkn.

To

1. The State of Tamil Nadu
rep. by its Secretary to Government
Labour and Employment Department
Fort St. George
Chennai 9.
2. The Secretary
Tamil Nadu Labour Welfare Board
D.M.S.Compound
Teynampet
Chennai 600 006.

+1cc to Mr.R.Venkatesh, Advocate SR.No.4252

Writ Appeal No.621 of 1998

GMR (CO)
GMY (06/02/2020)

सत्यमेव जयते

WEB COPY