

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
09.09.2020	11.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.37834 of 2005

U.Rajeswari

... Petitioner

-vs-

The Child Development Project Officer,
Pernambattu,
Vellore District.

... Respondent

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent to permit the petitioner to join duty as community Nutrition Helper and direct the period from 14.06.2004 till the petitioner is permitted to join duty as a period spent on duty and grant all consequential benefits to the petitioner.

For Petitioner : Mr.P.Mohanraj

For Respondent : Mr.A.Zakir Hussain
Govt. Advocate

O R D E R

The Writ Petition has been filed for a direction to the respondent to permit the petitioner to join duty as Community Nutrition Helper and direct the period from 14.06.2004 till the petitioner is permitted to join duty as a period spent on duty and grant all consequential benefits to the petitioner.

2. It was the case of the petitioner that she was appointed as Community Nutrition Helper in the year 1984 and pursuant to her illness, she availed medical leave from 01.11.2003 to 13.06.2004. After her recovery, she expressed her willingness to join duty by way of submission of representation dated 14.06.2004, duly supported by a certificate of fitness, issued by a Civil Surgeon, Government Hospital, Ambur. It was further case of the petitioner that though she was permitted to join duty at Vannianathapuram Centre, Mittalam, Pernambattu Block from 14.06.2004, she was not paid any salary for the work done for want of written order. It was the grievance of the

petitioner that till now, no order has been issued to her inspite of the fact that neither any disciplinary proceeding is pending against her for the absence nor was she placed under suspension. It was also the case of the petitioner since the employer-employee relationship is still in existence and her services had not been terminated for the aforesaid absence, she claims that she is entitled to the relief sought for in this Writ Petition.

3. The respondent has filed a counter affidavit, wherein it has been stated that the petitioner stayed away continuously for more than six months and on the basis of the order of the District Collector, she was terminated from service by proceedings dated 27.10.2005 in K.Dis.No.2172/A/04. It was further stated that the petitioner was appointed on temporary basis with the following conditions:

- a) Age should be 20 to 35 years
- b) Married
- c) Residence should be within the same Village during the time of appointment
- d) The appointment is purely temporary one
- e) If any default found during her service, she will be terminated from service without prior intimation."

4. In the counter affidavit, it was described that since the petitioner absented herself from duty from 01.11.2003 to 13.06.2004 as per her own volition and she availed leave for more than six months, as per G.O.No.4 SW & NMP Department dated 09.01.1995, she was terminated from service and therefore, the petitioner is not entitled to any relief in this Writ Petition.

5. Learned counsel for the petitioner submitted that the petitioner was terminated from service without conducting any disciplinary proceedings, which is in violation of the principles of natural justice. He further submitted that there is no justification on the part of the respondent in not permitting the petitioner to join duty despite her representation dated 14.06.2004 along with a fitness certificate.

6. Learned Government Advocate contended that the appointment of the petitioner in the post of Community Nutrition Helper is purely temporary in nature and the question of following usual formalities like that of a regular employee does not arise in the case of a temporary employee, as a clear pre-condition was laid that in case of any default found during her service, she would be terminated from service without prior intimation. He further contended that there is no iota of evidence to show that the petitioner had submitted a representation on 14.06.2004 and the question of appointment does not arise, as she did not prove the factum of her reporting

for work. He also contended that since the petitioner had violated the condition of service on temporary basis, the Writ Petition is liable to be dismissed.

7. Heard the learned counsel on either side and perused the material documents available on record.

8. The question whether the petitioner had submitted the representation on 14.06.2004 or not cannot be gone into in the present Writ Petition, as it is a disputed question of fact. Unless or otherwise the petitioner is able to produce categorical evidence to defend her case, it cannot be said that she was permitted to join duty orally based on her representation. The respondent has produced a document dated 27.10.2005, from which it is evident that she was terminated from service for her continuous absence from duty as per the direction of the District Collector. Therefore, the plea raised by the petitioner that the employer-employee relationship is still in existence and that she was not terminated from service, has no legs to stand and this Court cannot grant the relief sought for by the petitioner and the Writ Petition lacks merit acceptance. Since the petitioner had worked for nearly 20 years before her absence, she will be automatically entitled to all the terminal benefits upto 2003 for the services rendered and the same has got to be paid to her within a period of three months from the date of receipt of a copy of this order. The materials produced before this Court, coupled with the averments of the petitioner clearly reveal that the petitioner was a absentee for the period between 01.11.2003 to 13.06.2004 and therefore, she is not entitled to any wages for the said period on the principle of 'No Work No Pay'.

9. In the result, the Writ Petition is dismissed as devoid of merits. It is needless to mention that if the petitioner has got any alternative remedy, it is open to her to approach the appropriate Forum and the Writ Court is not an alternative Forum for redressal of her grievance. No costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

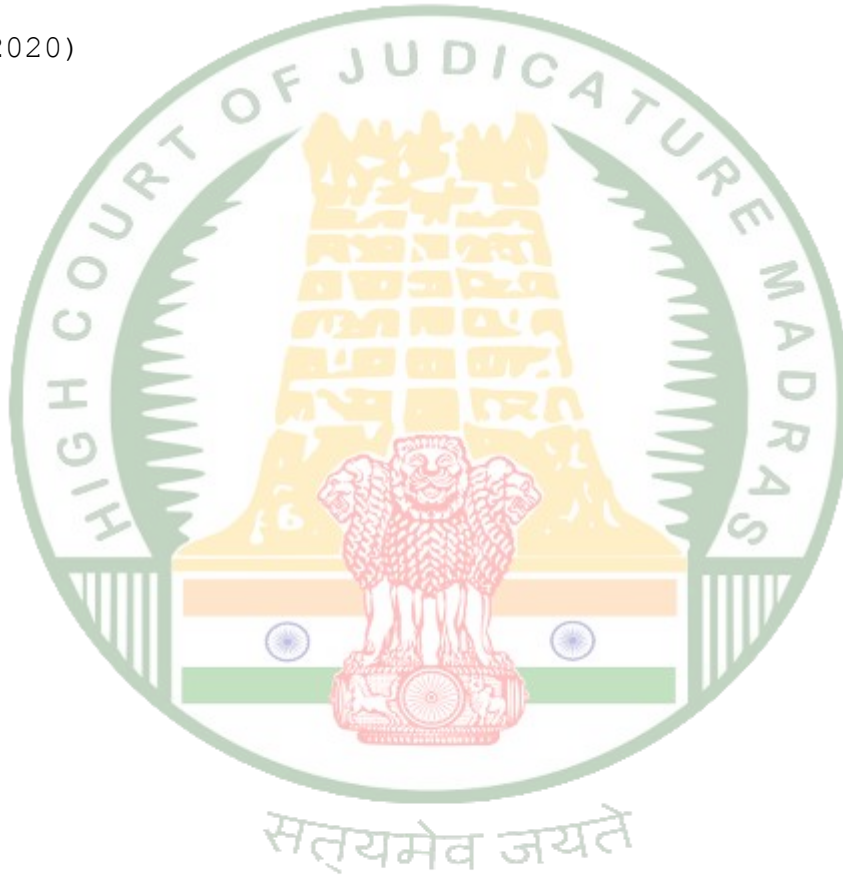
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To:

The Child Development Project Officer,
Pernambattu,
Vellore District.

W.P.No.37834 of 2005

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SP(08/12/2020)



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