

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No.26811 of 2014

and

MP No.1 of 2014

Esther Kirubavathy

...Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by Principal Secretary,
Higher Education Department,
Fort St. George, Chennai - 9.
2. The Director of Collegiate Education,
College Road, Chennai - 6.
3. The Regional Joint Director,
Collegiate Education,
Saidapet, Chennai - 15.
4. The Principal Secretary,
Meenakshi College for Women,
Autonomous,
C/o. IIET Arcot Road,
Kodambakkam, Chennai - 25.
5. The Principal Accountant General,
Office of the Accountant General,
Teynampet, Chennai - 18.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for records relating to the first respondent G.O. (3D) No.9 Higher Education (E2) Department dated 27.05.2014 to quash the same and consequently direct the respondents to treat the period between 24.05.2002 and 18.06.2006 as duty for all purposes under Fundamental Rules and to extend all benefits both service and monetary thereto, including revised pension and pensionary benefits with accrued interest therein from the date on which the same fell due till the date of realisation.

For petitioner : Mrs.Esther Kirubavathy
Party-in-person

For respondents : Mr.Karthikai Balan
Government Advocate

ORDER

Petitioner has come up with this writ petition seeking to quash G.O. (3D) No.9 Higher Education (E2) Department dated 27.05.2014 issued by the 1st respondent and for a consequential direction to the respondents to treat the period between 24.05.2002 and 18.06.2006 as duty, for all purposes under Fundamental Rules and to extend all benefits both service and monetary thereto, including revised pension and pensionary benefits with accrued interest therein from the date on which the same fell due till the date of realisation.

2. According to the petitioner, she completed M.A. English and secured Grade B and thereafter completed M.Phil. in first class. As she possessed the requisite qualification, she was appointed as Lecturer in English Department in an evening College in the year 1989. While so, she worked on a temporary basis in a day College and later, she was granted appointment as a Lecturer in Loyola College and thereby, her pay was extended with UGC scales. While so, due to non-fulfilment of requisite marks prescribed in G.O.Ms.No.111, dated 24.03.1999 issued by the 1st respondent, the Petitioner's appointment was cancelled, as she secured 52.9 marks, whereas the minimum requirement was 55% marks. Accordingly, the order of dismissal was issued to her with effect from 24.05.2002. Challenging the same, the Petitioner filed a Writ Petition before this Court and pursuant to the order passed in the Writ Petition, based on the 'B' Grade, secured in M.A. English, which was equivalent to the requisite marks prescribed in G.O.Ms.No.111, dated 24.03.1999, the Petitioner was reinstated into service on 19.06.2006.

3. The grievance of the Petitioner is that, the period of dismissal from 24.05.2002 to 18.6.2006 has been treated as Non-duty period and hence, she has come up with this Writ Petition seeking to quash the impugned order and for a consequential direction to the respondents to extend both service and monetary benefits.

4. Today, the Petitioner/Party-in-Person appeared before this Court through video conferencing. She reiterated the averments made in the Affidavit and prayed for an appropriate relief.

5. On the other hand, learned Government Advocate appearing for the respondents submitted that, in the light of the order passed in W.P.No.17129 of 2002, approval of appointment of the petitioner was considered and proceedings were issued on 14.06.2006 and salary was paid to her during the period from 07.03.2001 to 23.05.2002. The said approval was given to the petitioner with a condition that, benefits due to

her during the said period of dismissal will be decided subject to the orders of the Government. After analysing the same, the Government passed the impugned order, which is legally sustainable, as no work was rendered by the Petitioner and no pay was awarded. Hence, it was argued by the learned Government Advocate that, the Petitioner's plea of extension of accrued service benefits may be rejected by this Court.

6. Heard the learned counsel on either side and perused the materials and records placed before this Court.

7. Admittedly, the petitioner was appointed as a Lecturer on temporary basis and thereafter, her services were regularised as per UGC norms with effect from 07.03.2001. It is not in dispute that, she secured B Grade in her post-graduate degree. Though, G.O.Ms.No.111, dated 24.03.1999 stipulates 55% marks as requisite minimum qualification for the post of Lecturer, in the light of the order passed in W.P.No.17129 of 2002, her appointment was approved taking note of the fact that, she secured 'B' grade in post-graduation and she was reinstated in service. Though, it is claimed by the petitioner that non-duty period has to be taken into consideration, this Court is of the view that, salary and other benefits like increments cannot be granted, as she has not rendered any service during such period. However, taking note of the fact that, there is no fault on the part of the petitioner, the said period of dismissal can be counted for grant of pension.

8. Accordingly, the impugned order dated 27.05.2014 passed by the 1st respondent vide G.O. (3D) No.9 Higher Education (E2) Department is hereby quashed and the respondents are directed to count the services of the petitioner during the period of dismissal for the purpose of granting pension and other terminal benefits. However, it is made clear that, the Petitioner is not entitled to claim salary or increments during such period of dismissal.

With the above direction and observation, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

vsi2

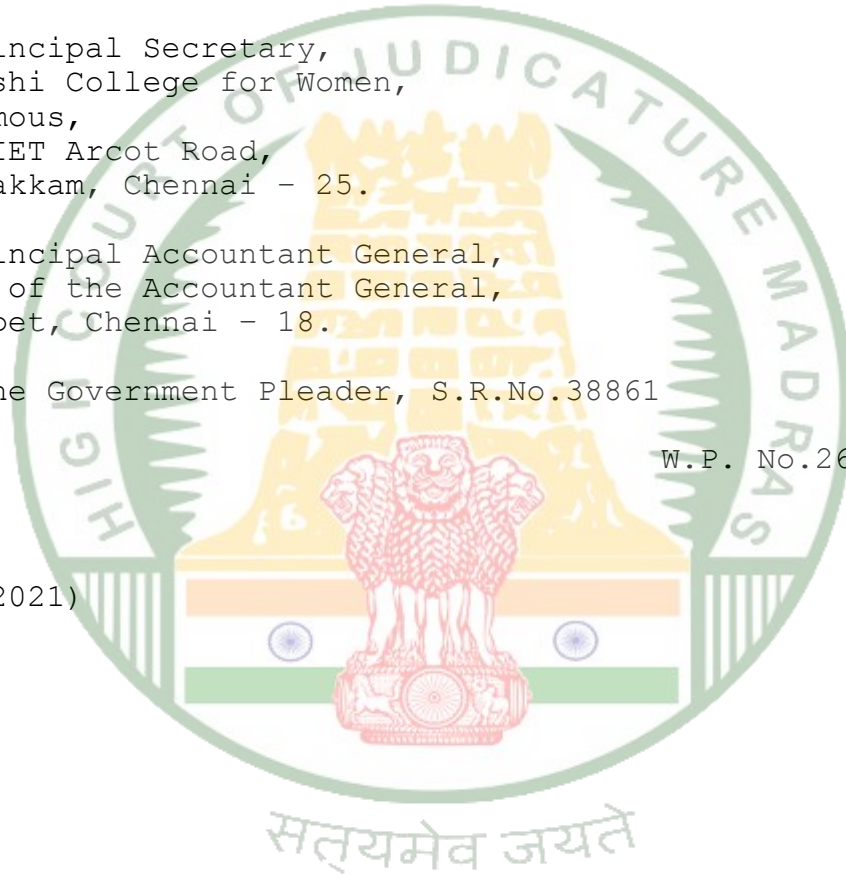
To

1. The Principal Secretary,
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+1cc to the Government Pleader, S.R.No.38861

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BR(CO)
rv(07/01/2021)



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