



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P. (MD)No.6412 of 2011

M.Rajalakshmi

... Petitioner

Vs.

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Child Development Project Officer,
Virudhunagar.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order bearing செ.மு.ந.க.எண் . 870/அ3/2011 dated 13.05.2011 issued by the first respondent and quash the same and consequently direct the respondents to reinstate the petitioner in service with all consequential benefits.

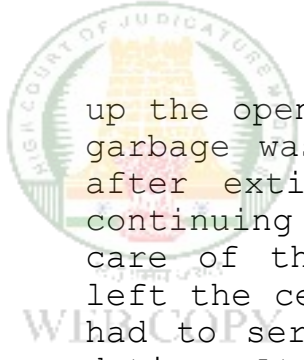
For Petitioner : Mr.I.Irulappan

For Respondents : Mr.J.Gunaseelan Muthiah,
Additional Government Pleader.

ORDER

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order bearing செ.மு.ந.க.எண் .870/அ3/2011 dated 13.05.2011 issued by the first respondent and to quash the same and consequently, directing the respondents to reinstate the petitioner in service with all consequential benefits.

2.The case of the petitioner is that she joined as an Anganwadi Assistant in the Welfare Department and had completed 31 years of service, there was no complaint against her and she was attached to Nadhireddipatti Anganwadi Centre. The said Centre had two employees, namely an Anganwadi worker, who has to maintain and to take care of the children and an Anganwadi Assistant, who has to prepare meals. The petitioner's job has to cook food for the children and to maintain the kitchen. On 16.03.2011, she has cleaned



up the open ground and collected the garbage and lit fire. After the garbage was consumed by the fire completely, she poured water and after extinguishing the fire, she went back to the kitchen for continuing her job. The Anganwadi worker, who is supposed to take care of the children, had signed the attendance register and had left the centre without informing the petitioner. Since the children had to serve food around 12'0 clock, she was busy in the kitchen duties. At that point of time, one child by name Balamani had gone out and played near the garbage and a spark had caught her dress and the child sustained burn injuries. Since the said incident had occurred all of a sudden, the petitioner call on ambulance and the said ambulance did not arrive, they have taken a Taxi and she along with her son and also along with the parents of the child admitted the child at General Hospital, Virudhunagar. Thereafter, the child was taken to Government Hospital, Madurai and the child underwent treatment for 21 days and succumbed to burn injuries.

3.The accident had occurred unfortunate, but the second respondent had issued a charge-memo both to the Anganwadi worker / G.Kamaladevi and to the petitioner and the charges against the petitioner is seven fold and she had dealt with each and every charge and gave her explanation. The petitioner appeared for enquiry on 11.05.2011. As she studied only 5th standard, whatever she told was written by somebody and affixed her signature. The petitioner was suspended from service by the second respondent on 16.03.2011. By order dated 13.05.2011 the first respondent dismissed her from service. Hence, the petitioner filed the Writ Petition stating that the factual aspects were not considered by the respondents, while fixing the liability on her and a cryptic order was passed against her. The charge-memo was not issued to her and only an enquiry was conducted by the respondents and no copy of the enquiry report was furnished to the petitioner. The petitioner is only an Anganwadi Assistant and the responsibility of the Anganwadi Worker is to take care of the children. The petitioner cannot be expected to maintain both the kitchen and 20 children attached to the Centre. The Angawadi Worker had left the place after signing the register and she was not aware that the child was playing there and she prayed for quashing of the impugned order passed by the first respondent and reinstate her into service with all consequential benefits.

4.A counter-affidavit has been filed by the second respondent / Child Development Project Officer, Virudhunagar, in which it is stated that the petitioner joined the duty as an Anganwadi Assistant in the year 1987 and the job responsibilities of Anganwadi Helper has been formulated in Chapter 6.5 of Field Workers Manual Integrated Child Development Scheme, in which 22 responsibilities were assigned. As per Point No.17, it is clearly stated that in the absence of Anganwadi Worker in the scheduled time, it is the mandatory duty of Anganwadi Assistant to take absolute care of the children in the Anganwadi Centre. The Director of Integrated Child Development Scheme, Tharamani, Chennai had already passed a



proceedings in Na.Ka.No.19798/N.C.3/2007 dated 19.10.2007 and observed that if such event happens, then the Anganwadi worker and Helper will be dismissed.

5.It is also further stated that on 16.03.2011, since the dumped garbages found in front of the said Anganwadi Centre, the petitioner lit the garbages around 10.00 a.m., and later on it was not properly extinguished by her. One child by name Balamani went near the place and the child caught by fire and sustained heavy injury to the extent of 90%. Hence, the petitioner cannot claim that it was not the duty of her negligent act and the child had accidentally caught fire. On 05.04.2011, the child died and a criminal compliant has also been registered against the petitioner in Crime No.38 of 2011 on 17.03.2011.

6.The petitioner was placed under suspension by the District Programme Officer, Virudhunagar by proceedings dated 16.03.2011. On 24.03.2011, a charge-memo was issued with six charges and had given her one week time for explanation. On 31.03.2011, the District Programme Officer, Virudhunagar received a letter dated 30.03.2011 from the petitioner seeking two more weeks time for her explanation. During the interregnum period, the child namely Balamani succumbed to injuries and died on 05.04.2011. On 07.04.2011 another charge-memo was issued against the petitioner including seven charges and had given three days time for her explanation. On 18.04.2011, the District Programme Officer, Virudhunagar, received a letter dated 11.04.2011 from the petitioner, in which she has sought 30 days time for giving her explanation. On 11.04.2011, the said Officer appointed one R.Balasaraswathi, Child Development Project Officer, Kariapatti, Virudhunagar as an enquiry officer by proceedings in Se.Mu.Na.Ka.No.870/A3/2011. On 12.04.2011, the said Child Development Project Officer, Virudhunagar District has sent a letter to the petitioner to appear in person before the said enquiry officer on 18.04.2011 at 03.00 p.m., and she appeared on that day, but no explanation has been given by her.

7.On 27.04.2011, the petitioner submitted her written explanation. Again the enquiry was re-posted to 11.05.2011 and she appeared before the enquiry officer and again submitted a written explanation. The enquiry officer, after considering the said written explanation and considering the charges framed against her, gave a final report on 11.05.2011 and the same was forwarded to the first respondent. On 13.05.2011 based on the enquiry report, the first respondent had passed the dismissal order of the petitioner, after giving sufficient opportunity to the petitioner and prayed that the Writ Petition filed by the petitioner has to be dismissed.

8.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the



9.The first charge was that the petitioner without adverting to his work has asked the five years old child Balamani to set right the burning wood, which is used for cooking purpose, for which, the petitioner has given explanation that at about 09.00 a.m., she cleaned the said Centre and all the garbages were collected and she had lit the fire on the said garbage. She further stated that she put up the said fire by pouring water into it and then she went inside the Centre for cooking food for the children. Around 10'0 clock one child Balamani, the deceased victim, was playing near the set fire and accidentally caught fire in her dress and all the persons, who were working outside, had immediately taken precaution to the child.

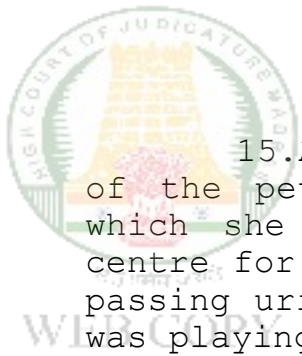
10.From the materials available on record it is clear that it is the duty of the negligent and careless act of the petitioner and it is her duty to take care of the children's safety than any other work, as the said Anganwadi Worker has left the place after signing the register. The petitioner ought to have been more vigilant enough in taking care of the children, who come to the Anganwadi Centre. It is not the case of the petitioner that the child had been made to work inside the kitchen and she has also stated that if the child has caught fire inside the kitchen, she cannot come out as there were three steps and she further submitted that outside the said Centre, the fire has been lit and the child caught fire only accidentally.

11.As against the second charge that she had left the said Centre leaving the children inside the kitchen, for which, she has denied the same.

12.As against the third charge that she has not immediately taken the child to the hospital and she waited for arrival of the parents of the child, for which she has stated that she called for ambulance and waiting for the same. In the mean time, she engaged a taxi and at the same time, the parents of the child also came there.

13.As against the fourth charge that she has not informed the incident to the higher officials immediately, for which, she has stated that she did not have any higher officials phone number, hence, she could not inform the same to the higher officials immediately.

14.As against the fifth charge that she has given wrong information to the officers (the petitioner gave information that she had collected the garbages and lit fire and when she was engaged in the kitchen work, the child went near the lit fire and the child caught fire outside the kitchen) for which she has sated that all these things are true and she has not lit the fire in the kitchen has been substantiated by the Villagers and President evidence and stated that it is a false statement.



15.As against the sixth charge that due to the negligent act of the petitioner, the child sustained 90% grievous injury, for which she has stated that children usually go outside the said centre for passing urine and she think that the child also gone for passing urine and continued her work in the kitchen. When the child was playing near the lit fire, the accident had occurred and she had no intention of causing harm to the child.

16.If the petitioner had real intention to take care of the children, as a true Anganwadi Worker, she would not have lit fire to the garbages. In the absence of Anganwadi Worker, she ought to have been more careful for taking care of the young children and causing a death of a child, cannot be measured in words. A life of a child is precious and the parents, who had trust on the Anganwadi worker, had leave the children in the Centres and they are not in a position to take care of them, as both the parents will be going to some work and the parents, who leave the children in the Anganwadi Centre, are mainly from the down trodden community and those persons losing the child will be a mental agony through their life. It may be an accident, but losing a life by whatever way causes trauma in the mind of the tiny children who had been a witness to the said accident.

17.It is also the case of the petitioner that accidentally the accident has happened. Even though she has extinguished the fire, from the report it is clear that the child sustained 90% burn injuries which will not be caused by simple spark from the extinguished fire. It can be caused only by a fully lit fire for causing such kind of burns. It is clear that this is only due to the negligent and careless act of the petitioner and as such, Anganwadi Worker G.Kamaladevi and the petitioner / Rajalakshmi are liable for the cause of the said incident. Death of a young child, who had suffered for 21 days with burns and died in the hospital, cannot be forgotten, which also cannot be consoled by simple words of consolation. The parents would have got so many dreams for the child's future, which was also shattered.

18.Accordingly, the first respondent / District Collector, Virudhunagar, by impugned order dated 13.05.2011, after enquiry, held that the said Anganwadi Worker G.Kamaladevi and the petitioner / Rajalakshmi are responsible for the said careless act and the first respondent had rightly held that both of them have to be dismissed from service and accordingly, this Court also holds with a heavy heart that loss of life of a young child was due to the careless act of the above said persons and definitely, the Writ Petition has to be dismissed.



19. In view of the above facts, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

ps

To

1. The District Collector,
Virudhunagar District,
Virudhunagar.

2. The Child Development Project Officer,
Virudhunagar.

+1 CC to M/s.SPL.GP (SR-10156[F] dated 05/03/2020)

+1 CC to M/s.I.IRULAPPAN, Advocate (SR-10198[F] dated 05/03/2020)

Order made in
W.P. (MD) No. 6412 of 2011
Dated:
04.03.2020

AP (05/06/2020) 6P 5C