



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 12.03.2020
CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.724 of 2013
and
M.P. (MD)No.1 of 2013

M.Pushpam

... Petitioner

Vs

- 1.The Secretary to Government of
Tamil Nadu,
Department of Education,
Fort St.George, Chennai - 9.
- 2.The Director of Elementary Education,
Chennai - 6.
- 3.The Joint Director of Elementary Education
(Teacher Transfer)
Chennai -6.
- 4.The District Elementary Educational
Officer, Tirunelveli District,
Tirunelveli.
- 5.The Additional Assistant Elementary
Education Officer,
Nanguneri, Tirunelveli District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for entire records in pursuant to the proceedings issued by 5th respondent in Na.Ka.No.317/A2/11 dated 15.10.12 and quash the same and direct the respondents to process the request of the petitioner seeking retirement on regularization of leave and to pay the terminal benefits with accrued interest within a stipulated time complying with the direction issued by this Court, vide order dated 24.1.11 made in W.P.No.24894/10.

For Petitioner : Mr.T.P.Prabakaran

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



ORDER

The Petitioner has filed this writ petition challenging the proceedings of the fifth respondent, dated 15.10.12 and consequently to direct the respondents to process the request of the petitioner seeking retirement on regularization of leave and to pay the terminal benefits with accrued interest within a stipulated time complying with the direction issued by this Court on 24.1.11 in W.P.No.24894 of 2010.

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

3.The case of the petitioner is that she got appointed as a Secondary Grade Teacher at Panchayat Union Middle School, Shenbagaramanallur, Nanguneri Union, Tirunelveli District, on 12.11.1987. Thereafter, she was transferred to various placed in the same District. Subsequently, she was transferred to the Panchayat Union Middle School, Shenbagaramanallur, where she was initially appointed. Therefore, she sought for transfer to her native place Suryakodu, Vilavankodu Taluk, Kanyakumari District. But her application was rejected. According to the petitioner, she had a serious health problem due to paralytic attack and she took treatment for the same. However, her health condition did not improve and hence, he is continuously taking treatment.

4.It is the further case of the petitioner that earlier she filed W.P.No.29668 of 2008 before this Court and prayed for issuance of a direction to dispose of the representation dated 28.06.2008 seeking for transfer from Tirunelveli to her home District on health ground. This Court directed the respondents therein to consider the representation dated 28.06.2008. But the said representation was not considered by the authorities concerned. It is alleged that the petitioner has given leave applications covering the period from 02.06.2008 to 24.02.2010 and she reached superannuation on 28.02.2010, but the respondents have not issued any retirement order so far and consequently, the respondents have not settled the terminal benefits due to the petitioner. Therefore, she filed another writ petition in W.P.No.24894 of 2010 before this Court praying for a direction to the respondents to issue retirement order and consequentially to settle the terminal benefits due and payable to her. This Court, vide order dated 24.01.2011, had disposed of the said writ petition by observing as follows:-

"Since the petitioner had reached the age of superannuation on 28.02.2010 and the leave application is stated to be pending before the sixth respondent and in view of the fact that the petitioner was also not proceeded with any departmental action as on today, the sixth respondent is directed to consider the leave



application submitted by the petitioner lastly on 25.02.2010 and pass orders within a period of two weeks from the receipt of a copy of the order. The respondents are directed to process the request of the petitioner seeking retirement on regularization of leave and consider the payment of terminal benefits in accordance with law, within a period of two months thereafter."

5. In pursuant to the order of this Court, the fifth respondent by proceedings dated 02.03.2011 directed the petitioner to send a copy of the leave application dated 25.02.2010 and to give explanation for the absence of duty from 02.06.2008 till the date of retirement. In response to the said proceedings, the petitioner sent reply dated 17.03.2011 to the fifth respondent enclosing a copy of the leave application dated 25.02.2010. Since there was no response, the petitioner sent another representation dated 26.04.2011 requesting him to settle the retirement and terminal benefits. Thereafter, by proceedings dated 22.06.2011 the fifth respondent stated that the leave application dated 25.02.2010 for Medical Leave was not accompanied with a Medical Certificate and hence, the petitioner can get the terminal benefits only after obtaining the Eligibility Certificate from the Medical Board and after being relieved from duty. Thereafter, the fifth respondent issued further proceedings stating that the petitioner has not submitted proper leave application; has not replied official letters and has not appeared before the Medical Board and therefore, the petitioner was asked to give an explanation as to why action should not be taken against her under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, within seven days. Aggrieved over the said proceedings, the petitioner has filed this present writ petition.

6. The learned Additional Government Pleader appearing for the respondents would submit that the petitioner was on leave from 02.06.2008 to 31.12.2008 with some medical certificate and from 01.01.2009 to 31.01.2009 without any medical certificate. Further, the petitioner was issued with show cause notice as to why disciplinary action should not be initiated as against her for the reason for going on leave without any intimation to the competent authority, but she has not given proper reply. Further, the petitioner was not working from 02.06.2008 till her age of superannuation and she was absent without proper intimation. During the leave period, the petitioner produced her medical certificate. To ascertain the genuineness of the medical and physical status of the petitioner, the petitioner was asked to appear on 07.10.2008 before the District Medical Board, Kanyakumari District, but she has failed to appear before the Medical Board. Again, the petitioner was asked to appear before the Medical Board on 12.06.2009. Even then, the petitioner refused to appear before the Medical Board. Hence, the fifth respondent sent a communication dated 22.04.2010 to the



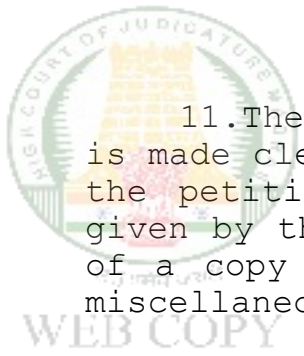
petitioner stating that her claim of medical leave for the period from 02.06.2008 to 31.07.2008 and from 01.11.2008 to 31.01.2009 cannot be considered.

7.The learned Additional Government Pleader would further submit that the petitioner's plea was considered and having dissatisfied with the petitioner's application and having considered the fact that she has not properly attended before the Medical Board, finally, the fifth respondent sent a show cause notice dated 15.10.2012 to the petitioner, which is impugned in this writ petition and thereby initiated action against the petitioner under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules by asking detailed explanation within a period of seven days. He would further submit that it is only a show cause notice and if the petitioner is aggrieved by the same, she can give her explanation and she can very well attend the enquiry to prove her case.

8.It is seen that the Medical certificates of the petitioner were considered by the authorities concerned and the order impugned in this writ petition has been issued by the authorities on 15.10.2012 asking her to submit her explanation, as she has not produced prior leave application and she has not appeared before the concerned Medical Board for conducting a test to find out the disability and not given her explanation. The petitioner has been asked to show cause as to why action should not be taken against her within seven days. On going through the materials, it is seen that the petitioner has not acted in the manner known to law. She has been sending letter after letter without any medical certificates issued by the competent authority or the concerned hospital to prove that she was suffering from Paralytic attack. If she is not in a position to continue her job, she ought to have informed the concerned authority and should have asked for alternative employment. Further, it is only a show cause notice seeking an explanation from the petitioner, as he was not attended duty without prior intimation.

9.With regard to the said show cause notice, the petitioner can very well give a reply. Without doing so, the petitioner has rushed to this Court with the present writ petition. It is a settled proposition that whenever any show cause notice is issued, the same shall be responded by the person who receives the show cause notice and against such show cause notice, no indulgence can be shown by this Court, that too, by invoking Article 226 of the Constitution of India.

10.In view of the settled legal position, this Court is not inclined to accept the plea of the petitioner and entertain this writ petition against the impugned order, which is admittedly a show cause notice. Hence, this writ petition fails.



11.The Writ Petition stands dismissed, accordingly. However, it is made clear that the dismissal of this writ petition will not make the petitioner disentitle to give the reply and the same can be given by the petitioner within three weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (crl. side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

- 1.The Secretary to Government of
Tamil Nadu,
Department of Education,
Fort St.George, Chennai - 9.
- 2.The Director of Elementary Education,
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Tirunelveli.
- 5.The Additional Assistant Elementary
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+1 CC to M/s.T.P.PRABHAKARAN, Advocate (SR-11658[F] dated
13/03/2020)

W. P (MD) No. 724 of 2013
12.03.2020

MK (11.06.2020) 5P 7C