



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.7570 of 2013

WEB COPY

S.Sivagama Sundari

... Petitioner

Vs.

The District Collector,
Collectorate,
Thoothukudi District,
Thoothukudi.

... Respondent

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.A6/21980/2010, dated 31.01.2012 issued by the respondent and quash the same as illegal and consequently to direct the respondent to regularize the period from 29.05.2009 to 28.01.2010 as the duty period in the cadre of Deputy Tahsildar with all monetary benefits within the time stipulated by this Court.

For Petitioner: Ms.Tamil Malar
for Mr.T.Lajapathi Roy

For Respondent: Mr.P.Mahendran
Additional Government Pleader

ORDER

The order of rejection rejecting the claim of the writ petitioner to regulate the entire period of absence, as duty with full pay and other consequential monetary benefits is under challenge in the present writ petition.

2. The writ petitioner was included in the panel for promotion to the post of Deputy Tahsildar for the year 2007 and was promoted on 10.01.2008. The petitioner was serving as Deputy Tahsildar and the order of reversion was passed by the Commissioner of Revenue Administration in proceedings dated 27.04.2009. The consequential order passed by the District Collector reverting the petitioner to the post of Assistant on 28.05.2009. The petitioner admittedly had not joined the reverted post and approached this Court by filing a writ petition in W.P.No.4520 of 2009 challenging the order of reversion. This Court granted an order of interim stay of reversion order.



3. Learned Counsel appearing on behalf of the writ petitioner reiterated that the petitioner was not allowed to join duty even after the grant of interim stay by this Court. Subsequently a contempt petition was filed and thereafter, the petitioner was allowed to join duty on 29.01.2010. The intervening period during which the petitioner had not worked as Deputy Tahsildar or in the post of Assistant was regulated as leave without salary. Contesting the said order, the learned Counsel appearing on behalf of the petitioner is of an opinion that the interim stay was granted by this Court and the respondents had not allowed the petitioner to rejoin in the post of Deputy Tahsildar and therefore the petitioner is entitled for full salary for the period in which interim stay was in force.

4. Learned Additional Government Pleader appearing on behalf of the respondents made a submission that admittedly, the order of reversion was challenged by the writ petitioner and interim stay was granted. However before getting appropriate instructions and for the implementation of the interim order, the petitioner is bound to serve in the post of Assistant. However, she had refused to join duty in the post of Assistant and remained in absence. The petitioner was insisted to allow her to join duty as Deputy Tahsildar. Thus she was not willing to join in the post of Assistant till the interim order is implemented. Subsequently the contempt petition was filed and an order was passed by the authorities and the petitioner was allowed to continue in the post of Deputy Tahsildar with effect from 29.01.2010.

5. The claim of the writ petitioner to treat the entire period as duty with fully salary was rejected mainly on the ground that the petitioner had not served in the post of Deputy Tahsildar or in the post of Assistant and remained absence. Therefore, she was not at all served in the department and she is not entitled for the salary for the said period.

6. Counter affidavit filed in support of the writ petition also reveals that the writ petitioner went on earned leave on medical certificate and stayed away from duty without giving any intimation. Thus the authorities have taken a decision not to regulate the period as Deputy Tahsildar with full salary and passed the order impugned.

7. This Court is of the considered opinion that public servants are expected to serve in the interest of the public at large. Staying away from duty without giving any intimation due to the delay in implementation of the interim order may not be a ground to regularize the entire period with full salary. Admittedly the writ petitioner had not served in the post of Deputy Tahsildar and stayed away from duty. She had not even worked as Assistant. Contrarily, she brought the matter before the Court of law by filing the



Tahsildar. Admittedly, the petitioner had not worked in the post of Assistant. Thus no work no pay must be the principle to be adopted in the present case. A public servant had not worked in a particular post and stayed away on account of the pendency of the litigation or the ground of interim stay, then they cannot claim full salary for that period, in which they have not served in the particular post. However, the period had already been regulated as leave without salary. Thus the said period is to be taken into account for all purposes including for grant of pensionary benefits by treating the period as qualifying service. Thus the period which was regulated as leave without salary is to be taken into account for counting of services and the claim of the writ petitioner for full salary for the period of absence cannot be granted at all. No work no pay principle is applied in such cases and a public servant had not worked in a particular post and stayed away from the duty cannot claim full salary for the period in which they have not served. Thus the relief as such sought for full salary cannot be granted. However, the period of absence already regulated is to be treated as qualifying services for all purposes including the service benefits, except monetary benefits.

8. With the above observations, the Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

SSL

To

The District Collector,
Collectorate,
Thoothukudi District,
Thoothukudi.

+1 CC to M/s.T. LAJAPATHI ROY, Advocate (SR-20331[F] dated 16/10/2020)

+1 CC to M/s.GP (SR-20460[F] dated 16/10/2020)

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NA (CO)

NR (28/10/2020) 3P : 4C

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