



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2020

CORAM:

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD).No. 11431 of 2014

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, to issue a Writ of Mandamus, to direct the respondent to sanction medical leave from 02.06.2008 to 28.02.2010 and to pay the consequential leave salary for the un-availed medical leave of 192 days and to treat the remaining period as leave without pay and to grant her Secondary Grade Teacher (Special Grade) Post from 12.11.2007 to 28.02.2010 and also grant her special increment for completion of B.Ed., Degree and M.A. Degree from April 1996 within stipulated time.

For Petitioner : Mr.T.P.Prabakaran

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



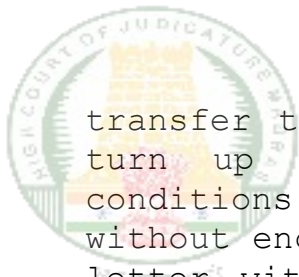
ORDER

The relief sought for in the present writ petition is to direct the respondents to sanction medical leave from 02.06.2008 to 28.02.2010 and to pay the consequential leave salary for the un-availed medical leave of 192 days and to treat the remaining period as leave without pay and to grant her Secondary Grade Teacher (Special Grade) Post from 12.11.2007 to 28.02.2010 and also grant her special increment for completion of B.Ed., Degree and M.A. Degree from April 1996.

2.The petitioner filed the present writ petition after a lapse of two years from her date of retirement. The petitioner was working as a Secondary Grade Teacher at Panchayat Union Middle School and retired from service on attaining the age of superannuation on 28.02.2010. The grievances of the writ petitioner is that the leave period has not been sanctioned as medical leave. This apart, the petitioner is seeking the relief of incentive increment for acquiring additional qualification and during the remaining period as leave without pay.

3.A perusal of the affidavit reveals that the co-related to the year 2008-10 and the other benefit is also sought for from the period from 2007 to 2010. The writ petition itself was filed after a lapse of two years from the date of retirement in the year 2014. Regulating the leave period is to be made in accordance with the procedures contemplated. Earlier, the writ petitioner had filed a writ petition in W.P.(MD)No.24894 of 2010 before this Court and this Court passed an order to consider the representation. However, the writ petitioner has not enclosed any such order passed by the respondents. Under these circumstances, the petitioner has not pursued her remedy even during the year 2010, after filing the writ petition. The present writ petition was filed on 11.07.2014 again after a lapse of four years from the date of passing of the order of this Court. However, the respondents are bound to consider the case of the writ petitioner for regulating the leave period, if not regulated as per the rules in force, if the period of leave had already been regulated in accordance with the rules, then the benefits are to be calculated and accordingly to be disbursed with the writ petitioner by following the procedures contemplated.

4.The counter affidavit filed by the fourth respondent reveals that the petitioner was not attending the school from 02.06.2008 onwards till her retirement on 28.02.2010. Her request for transfer to Kanyakumari District was not materialised. This Court passed an order, in W.P.(MD)No.29668 of 2008, directing the respondents to dispose of her representation, dated 28.06.2008 for



transfer to Kanyakumari District. However, the petitioner did not turn up for duty from 02.06.2008 onwards citing her health conditions. The petitioner is accustomed to apply for medical leave without enclosing the medical certificate. She used to submit leave letter without medical certificate from 02.06.2008 to 24.02.2010. The petitioner was directed to appear before the Medical Board for examination. She evaded to appear before the Medical Board, Kanyakumari. In the absence of any certification from the Medical Board, the medical leave cannot be sanctioned by the competent authorities. Thus, she is not entitled to claim medical leave. In fact, the petitioner absented from duty from the year 2008 onwards without any leave. Even on the date of her retirement on 28.02.2010, she was not on duty. Thereafter, the writ petitioner filed W.P.(MD)No.24894 of 2010 before the High Court and this Court was passed an order, dated 24.01.2011, directing the authorities to process the request of the petitioner seeking retirement on regularisation of leave and consider the payment of terminal benefits in accordance with law within a period of two months thereafter. Accordingly, the District Elementary Educational Officer, Tirunelveli, in his proceedings RC.No.1003/B5/2011, dated 16.05.2013, regulated the period of her absence from 02.08.2008 to 28.02.2010 as non-duty and ordered to make payment of terminal benefits based on the period of services rendered by her. Accordingly all the terminal benefits legitimately due to the writ petition were drawn and paid to her.

5.The disciplinary actions were initiated against the petitioner for not submitting proper leave applications and challenging the said proceedings, the writ petitioner again filed W.P.(MD)No.724 of 2013 and an interim stay was granted. However, the respondents have already sanctioned all the terminal benefits due to the petitioner and the same were settled and there is no due to the petitioner from the department.

6.The petitioner remained unauthorisedly absence from the year 2008 to 2010, the departmental disciplinary proceedings are initiated and due to the pendency of the writ petition, the authorities are unable to proceed further. Meanwhile, the period of absence was regulated as non-duty and the terminal and pensionary benefits were also settled in favour of the writ petitioner.

7.This being the factual position, the writ petitioner cannot seek any further remedy and her period of absence were already regulated as non-duty and the terminal and pensionary benefits were also settled. This being the factum, the writ petitioner has not established any acceptable ground for the purpose of granting the relief as such sought for.



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8. Accordingly, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS)

sjj

To

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Department of Education,
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- +1 CC to M/s.GP (SR-21444[F] dated 06/11/2020)

W.P. (MD) .No. 11431 of 2014
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ARK(CO)
TR(23.11.2020) 4P 7C