



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2021

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NO.13953 OF 2010

AND

MP.NO.1 OF 2010

K.Uma Maheswari

...Petitioner

Vs

The Commissioner of Town and Country Planning,
No.807, Anna Salai,
Chennai-600 002.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of the respondent dated 26.04.2009 in O.M.No.4787/2009/J1 and Roc.No.15459/2008/J1 dated 21.11.2008 and quash the same and consequently direct the respondent to treat period from 22.07.2008 to 10.10.2008 as duty period and credit the leave period to the account of the petitioner.

For Petitioner : Mr.A.R.Balaji
for Mr.S.Balasubramaniam

For Respondent : Mr.S.John J.Raja Singh
Government Advocate

O R D E R

The petitioner had been employed as a Typist in the office of the Commissioner of Town and Country Planning, having obtained the appointment through the Tamil Nadu Public Service Commission (TNPSC). She was originally posted in Chengalpattu



WEB COPY

from 08.06.1990 and thereafter transferred to the Head Office in Chennai. While this is so, the petitioner suffered an order of transfer on 21.07.2008 transferring her to Vellore Local Planning Authority citing administrative reasons.

2.At this juncture, it may be material to refer to the background of the petitioner, who states under affidavit that she was a single parent and after being deserted by her husband, was residing along with her parents. At the time of her transfer, she was holding sole custody and care of her son, who was aged then about 9 years. On account of the untold difficulties that the transfer would have brought upon her, the petitioner, evidently with a view to challenging the order of transfer, applied for leave of two weeks vide her representation dated 22.07.2008.

3.On 28.07.2008, WP.No.18184 of 2008 was filed by the petitioner before this Court challenging the transfer order and seeking a direction for retention in any vacant post in Chennai. The writ petition came up for admission on 30.07.2008 when an order of interim stay was granted. The very next date i.e. on 01.08.2008, the order of stay came to be communicated by the petitioner to the respondent. Since the transfer had been stayed, she also sought accommodation in any other vacant post in Chennai in order that she may resume duty, pending writ petition.

4.Since there is no acknowledgment for receipt of letter dated 01.08.2008, Mr.S.John J.Raja Singh was directed to verify the original records and confirm receipt of the same. He has filed written instructions today to the effect that communication dated 01.08.2008, conveying the interim protection granted by this Court and requesting accommodation in a vacant post in Chennai, has indeed been duly received by the respondent.

5.No reply was issued to the communicated dated 01.08.2008 and instead, the petitioner was visited with charge memo dated 28.07.2008, issued under Rule-17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules ('Rules'). Proceedings for insubordination continued under the aforesaid charge memo and learned counsel for the petitioner, on instructions, would confirm that the charges stand proven.



6. Be that as it may and since the petitioner not received favour of reply to her communication dated 01.08.2008, she issued a contempt notice to the respondent on 30.08.2008 for not accommodating her / permitting her to resume duty at Chennai, despite an order of stay having been granted by this Court. There was no response to the aforesaid contempt notice as well, though the notice has been received by the respondent.

7. On 24.09.2008 the writ petition filed by the petitioner came to be dismissed and the petitioner was permitted to join duty on 13.10.2008 in Vellore. It is only at that juncture that the miscellaneous petition under which the interim protection had been granted to the petitioner came to be closed. The petitioner duly reported for duty at Vellore on 13.10.2008. On 21.11.2008, the respondent passed the impugned order on the basis that the petitioner had availed of unsanctioned leave for the period 22.07.2008 to 10.10.2008 (period in question) and treating the same as Earned Leave.

8. A representation was made thereafter by the petitioner seeking regularisation of the period in question as leave period and the period 30.07.2008 to 10.10.2008, when she enjoyed an interim stay by this Court as duty period with all consequential benefits. The representation was rejected on 26.04.2009 and both orders dated 21.11.2008 and 26.04.2009 have come to be challenged in the present writ petition.

9. On the anvil of the aforesaid factual matrix, the arguments advanced by the learned counsel for the petitioner are that the petitioner should be treated to be on leave only for the period 22.07.2008 to 29.07.2008 and for the period 30.07.2008 to 10.10.2008, she should be treated as 'on duty'. Firstly, she argues, she has been granted interim protection by this Court and secondly, she had specifically brought fact of grant of interim protection to the knowledge of the respondent and sought resumption of duty / accommodation in any other vacant post in Chennai.

10. Per contra, learned counsel for the respondent would rely on Rule 108 of the Fundamental Rules of the Tamil Nadu Government (FR), as per which, a Government servant who does not join the sanctioned post within the time granted is entitled to no pay or leave salary upon the conclusion of joining time. The



Rule goes on to state that willful absence from duty after the expiry of joining time is liable to be treated as misbehaviour for the purpose of Rule-15 of the F.R.

WEB COPY

11. The counter also refers to various impediments posed by the petitioner in the process of computerisation of the respondent Department and failure on her part in not discharging her official duties in a proper manner. There is reference to insubordination to the order of superiors. As far as the aforesaid allegations are concerned, proceedings appear to have been taken in this regard that are separate and have no bearing on the decision to be taken in this writ petition.

12. The issue to be decided would turn upon the proper period to be reckoned as 'on duty' and leave. The petitioner had, vide representation dated 22.07.2008, sought for leave of 15 days. However, upon the grant of stay by this Court in WP.No.18184 of 2008 on 30.07.2008, the purpose for which she had sought leave stood achieved and she was, in fact ready to resume duty the very next day.

13. This has been communicated to the respondent by letter dated 01.08.2008, admittedly, received by the respondent. Despite this request and a subsequent contempt notice dated 30.08.2008, also admittedly received by the respondent, there has been no move by the respondent to permit her to resume duty. Thus, Rule-108 pressed into service by the respondent would have no application in the present case.

14. There is no willful absence from duty and on the contrary, the petitioner has been requesting resumption of duty. If at all, there is only willful denial by the respondent in permitting the petitioner to join duty. The period of interim stay stretched between 30.07.2008 and 24.09.2008, when on dismissal of the writ petition, the petitioner had been permitted to join in Vellore by 13.10.2008.

15. In the light of the narration as aforesaid, I am of the view that the period 22.07.2008 to 29.07.2008 and 25.09.2008 to 10.10.2008 would not qualify as 'on duty' period. However, the period 30.07.2008 to 24.09.2008 when the petitioner enjoyed interim protection from this Court would qualify as 'on duty'.



16.I draw support in this regard from a judgment of the Hon'ble Supreme Court in the case of Electronics Corporation of India Ltd. and others vs. Sateesh S.Rao Sonawalkar (2004 11 SCC 550). The challenge in that matter related to regularising a period of absence covered by an order of stay granted by the Court and effecting payment of salary for that period. The prayer of the petitioner was accepted with the Court holding that the consequence of the order of interim stay of transfer would be that period in question would have to be treated as 'on duty'. Applying the ratio of the aforesaid judgment to the present matter, the period 30.07.2008 to 24.09.2008 would be liable to be considered as 'on duty' and the petitioner entitled to all consequential benefits of this decision.

17.This writ petition is allowed in the aforesaid terms and to the extent indicated. The period both prior to and after the period in question treated as 'on duty', will be adjusted as against the earned leave available to the credit of the petitioner. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

vs

To

The Commissioner of Town and Country Planning,
No.807, Anna Salai,
Chennai-600 002.

+1cc to Mr.B.Vijay, Advocate, S.R.No.46431

+1cc to the Government Pleader, S.R.No.46495

W.P.No.13953 of 2010 and
MP.No.1 of 2010

NK(CO)
RLP(17/11/2021)