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W.P.No.11033 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.11033 of 2016

and

W.M.P.No.9601 of 2016

R.Lakshmi

...Petitioner

-Vs-

1.General Foreman,
Government Automobile Workshop,
Villupuram District.

2.The Director,
Tamilnadu Motor Vehicles
Maintenance Department,
Velachery, Chennai - 600 042.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent in proceedings No.A1/243-2015 dated 15.10.2015 and quash the same and consequently direct the 2nd respondent to regularize the period from 24.09.2014 to 14.04.2015 for the benefit of encashment of leave.



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For Petitioner : Dr.S.Padma

For Respondents : Mr.M.Shahjahan,
Special Government Pleader

ORDER

Heard Dr.S.Padma, learned counsel appearing for the petitioner and Mr.M.Shahjahan, learned Special Government Pleader for the respondents.

2. The petitioner herein originally joined as Junior Assistant in the year 1978 in the Motor Vehicles Maintenance Department at Chennai. Thereafter, she was promoted as Assistant in the year 1986. While serving as an Assistant, the Director of Motor Vehicles Maintenance Department, Chennai, was requested by the Director of Environment to spare some experienced Assistant for the newly formed Department of Environment and accordingly, the petitioner was posted as an Assistant in the Department of Environment, as per the order dated 17.08.1998. The petitioner joined duty in the Department of Environment on 02.09.1998 as an Assistant. Thereafter, since the Department of Environment was of the view that the service of the petitioner was no longer required, she was reverted back to her parent department on 28.03.2008.



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3. Challenging the reversion, the petitioner had filed a writ petition before this Court and by an order dated 29.03.2012, the writ petition came to be dismissed by observing that she was not permanently absorbed in the Department of Environment and therefore, the Department of Environment was granted liberty to repatriate the individual to her parent department. As against the orders of the learned single Judge, the Department of Motor Vehicles Maintenance Department have preferred an appeal in W.A.Nos.377 and 378 of 2014, which came to be dismissed on 09.09.2014. While dismissing the writ appeal preferred by the department, the Hon'ble Division Bench had observed that the petitioner cannot be denied her due seniority and her entitlement in the parent department. In this background, the petitioner was reverted back to her parent department at Chennai on 23.09.2014. After the repatriation, the petitioner had made a request on 23.09.2014 to the Director of Motor Vehicles Maintenance Department to issue necessary posting orders, which was followed by a reminder on 17.10.2014. Since there was no action on the part of the respondent in issuing the posting orders, the petitioner had filed a contempt petition before this Court in Cont.P.No.5 of 2014 on 08.12.2014. In this background, the Director of Motor Vehicles Maintenance Department had ultimately passed orders on 09.04.2015,



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posting the petitioner as an Assistant in the Government Automobile Workshop, Villupuram. Since the petitioner was at the verge of retirement and also since the respondent had issued posting orders posting her at Villupuram instead of Chennai, she had joined at Villupuram on 15.04.2015 and thereafter tendered her voluntary resignation, which was accepted by the respondent on 31.07.2015.

4. In this background, when the petitioner sought for regularization of the break period between 24.09.2014 and 14.04.2015, when she was not issued with the posting orders, the same came to be disposed of on 15.10.2015, treating this 203 days of absence as Earned Leave.

5. The learned counsel for the petitioner submitted that the respondents have not regularized the period between 24.09.2014 and 14.04.2015 as duty period. According to the learned counsel, since the petitioner was posted at Villupuram instead of Chennai at the verge of retirement, she was not in a position to comply with the posting orders and therefore had tendered her resignation.



6. The learned Special Government Pleader for the respondents placed reliance on the averments in the counter affidavit and submitted that after 23.09.2014, when the petitioner was reverted, she had not reported for duty and therefore, the period between 24.09.2014 and 14.04.2015 cannot be regularized.

7. It is not in dispute that after the petitioner was reverted back to her parent department on 23.09.2014, they had not issued the necessary posting orders enabling the petitioner to join duty. This is evidenced from the representations made by the petitioner on 23.09.2014 and 17.10.2014, as well as the subsequent contempt petition filed by her in Cont.P.No.5 of 2014 for non-compliance of the orders of this Court in posting the petitioner in the parent department. In this background, the second respondent had issued the posting orders on 09.04.2015, posting her in Government Automobile Workshop at Villupuram and the petitioner had joined in the workshop at Villupuram on 15.04.2015.

8. The impugned proceedings of the first respondent in denying regularization of the period between 24.09.2014 and 14.04.2015 when they



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had not issued the posting orders, is opposed to Ruling 3 of Fundamental Rule 9. By G.O.Ms.No.235, Finance Department, dated 14.03.1977, the Government had ordered that, in all cases where a Government servant has to compulsorily wait for orders of posting, such period of waiting shall be treated as duty. During such period, the Government servant would be eligible to draw the pay plus special pay which he would have drawn had he continued in the post he held immediately before the period of compulsory wait or the pay plus special pay which he will draw on taking charge of the new post, whichever is less. For this purpose, no temporary post need to be created. The Government Order further states that the Government servant shall be entitled for compensatory allowances reckoned at the rates admissible at the station in which he was on compulsory wait.

9. When the respondents have not disputed that they have not issued the posting orders between 24.09.2014 and 09.04.2015, after the order of reversion was passed, reverting the petitioner to her parent department, such a period is deemed to have kept the petitioner on compulsory wait. In other words, when the petitioner was already reverted from the Motor Vehicles Maintenance Department to her parent department and no posting orders



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have been issued permitting her to join duty, she has no other option but to compulsorily wait for posting orders. By applying Ruling 3 of Fundamental Rule 9 applicable to the Tamil Nadu Government, this period is required to be regularized as duty period, since the petitioner was on compulsory wait. As such, the impugned order, denying regularization of the services of the petitioner between 24.09.2014 and 14.04.2015, cannot be sustained.

10. The petitioner has now retired from service with effect from 31.07.2015. However, she has been denied all the service and monetary benefits between 24.09.2014 and 14.04.2015. Such a denial cannot be sustained.

11. In the light of the above findings, the impugned order dated 15.10.2015 passed by the first respondent herein is quashed. Consequently, there shall be a direction to the second respondent herein to pass appropriate orders, notionally regularizing the services of the petitioner for the period between 24.09.2014 and 14.04.2015 as duty period for all other purposes and thereby disburse all the service and other monetary benefits arising therefrom. Such orders shall be passed by the second respondent, atleast



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within a period of six (6) weeks from the date of receipt of a copy of this order.

12. The Writ Petition stands thus allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
hvk

To

- 1.The General Foreman,
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Villupuram District.
- 2.The Director,
Tamilnadu Motor Vehicles
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M.S.RAMESH,J.

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