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WP.No.19891 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.09.2022

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

WP.No.19891 of 2010

Chenthamarai Srinivasan

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary to the Government,
Department of Social Welfare
(Mother & Child Welfare)
Chennai.
- 2.The District Collector of North,
Arcot District, Vellore
Office of the Collectorate,
Vellore (North Arcot District).
- 3.The District Project Officer,
Integrated Child Welfare Project,
Vellore District.
- 4.The Project Nutrition Officer,
Jolarpettai Block Jolarpettai,
North Arcot District.

... Respondents

Page No.1/13



WP.No.19891 of 2010

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for records relating to the impugned order dated 28.06.2010 passed by the 3rd respondent in letter No.1303/A1/2008 and quash the same and direct the respondents to give continuity of service to the Petitioner in the post of Child Welfare Organizer and also to pay the back wages from 2005 on wards.

For Petitioner : Mr.H.Adaikala Arockiaraj
For Respondents : Mr.M.Bindran
Additional Government Pleader

ORDER

The writ petition is filed by the petitioner challenging the order of the third respondent, dated 28.06.2010, wherein the request of the petitioner for wages from 2005 onwards was rejected on the ground of "no work no pay". The petitioner was engaged as Anganwadi worker by the 4th respondent. The petitioner was engaged as Child Welfare Officer by the Block Development Officer on 02.03.1982. According to the petitioner, the functions of the Block Development Officer vested with the 4th respondent from 1992. By order dated 28.03.1997, the petitioner was transferred from Madanancheri to Yelagiri Village, Jolarpet. She was initially engaged in



WP.No.19891 of 2010

Yelagiri Village, Jolarpet and was employed as C.W.O. (Child Welfare Organizer). The petitioner was suspended in June 1998 for a period of 4 months and thereafter the petitioner was reinstated in service by order dated 29.06.1998. According to the petitioner, on 02.02.2005, for personal reasons, she took leave from 03.02.2005 to 01.04.2005 for a period of 57 days.

2. It is the petitioner's case that she submitted a letter on 02.02.2005 enclosing medical certificate seeking medical leave but her superior Officer instructed her orally to take medical leave. According to the petitioner, when she went to join duty after 01.04.2005, the superior Officer told her that she had enough leave and she could take leave for another 4 months. Believing the words of the superior Officer, the petitioner did not give any leave letter in April 2005 and from July 2005, she was prevented from joining the duty.

3. In the said circumstances, the petitioner filed W.P.No.14885 of 2006 for issuance of a Writ of Mandamus to consider the representation



WP.No.19891 of 2010

dated 28.09.2005 and this Court, vide order dated 12.06.2006, directed the 2nd respondent therein to consider the petitioner's representation and pass orders on merits within a period of 6 weeks from the date of receipt of the copy of the order. As respondents failed to comply with the said order, the petitioner filed contempt petition against the 2nd respondent in Contempt petition No.36 of 2008 and during the pendency of the said contempt petition, the 2nd respondent passed an order of reinstatement on 27.03.2008, but without any continuity of service and back wages and the contempt petition was closed on 30.04.2008. The petitioner stated that, she had put in 27 years of service as Child Welfare Organizer and on reinstatement, without continuity of service, she lost her seniority. The petitioner therefore submitted another representation on 21.07.2008, requesting the respondents to give continuity of service and back wages from July 2005 onwards.

4. As the second respondent did not reply to her representation, the petitioner was constrained to file W.P.No.27784 of 2008 for issuance of a Writ of Mandamus to direct the respondents to give continuity of service in the post of Child Welfare Organizer and also to pay backwages from July



WP.No.19891 of 2010

2005 onwards. This Court on 21.11.2008, directed the 2nd respondent therein to dispose of the petitioner's representation within a period of 8 weeks from the date of receipt of the copy of the order. The respondents failed to comply with the order of the petitioner and again, the petitioner filed Contempt Petition before this Court in Contempt Petition No.79 of 2010 and during the pendency of the said contempt petition, the 3rd respondent passed the impugned order dated 28.06.2010. Aggrieved by the same the petitioner has approached this Court.

5. The respondents have filed counter affidavit, wherein they denied all the contentions raised by the petitioner in the writ petition. The respondents submitted that as the petitioner had gone on unauthorised leave she was disengaged and in pursuance of the order of this Hon'ble Court she was reinstated into service. The respondents submitted that the Service Rules of the Government were not applicable to the petitioner as she was an Anganwadi worker and worked under the Integrated Child Welfare Project. The respondents further contended that the petitioner is not entitled for any back wages on the principle of "no work no pay". The respondents



WP.No.19891 of 2010

therefore submitted that the impugned order is justified and the writ petition deserves to be dismissed.

6. The learned counsel for the petitioner vehemently argued that the petitioner was entitled for back wages, as she was not allowed to join duty and further the termination order itself was illegal, as the order was passed by the 4th respondent without any notice or an enquiry. The learned counsel submitted that in any event, on reinstatement, the petitioner ought to have been paid the back wages for the period from July 2005 onwards. He further submitted that in the order dated 21.11.2008 in W.P. No.27784 of 2008, this Hon'ble Court had directed the 2nd respondent i.e. the District Collector, Vellore District to pass orders on the petitioner's representation, whereas the impugned order was passed by the 3rd respondent which is ex-facie illegal. On the said submissions the learned counsel prayed for allowing the writ petition.

7. The learned Additional Government Pleader appearing for the respondents submitted that the petitioner is an Anganwadi worker and as



WP.No.19891 of 2010

such, she is not governed by any Service Rules and further Anganwadi employees were covered under the Integrated Child Welfare Service Scheme and therefore, there is no question of continuity of service, seniority and payment of back wages etc. He further denied that the petitioner had informed the superior before availing the medical leave. The learned Additional Government Pleader therefore submitted that for the period during which the petitioner did not attend work she was not entitled to back wages on the principle of "no work no pay".

8. I have heard both the learned counsels and perused the materials on record.

9. According to the petitioner, she went on medical leave from 03.02.2005 to 01.04.2005 for a period of 57 days and by letter dated 02.02.2005 she asked for medical leave by enclosing the Medical Certificate but she was orally informed by the superior Officer that she could take medical leave for another 4 months and believing the said words of the superior Officer she did not submit her leave letter in April and from July

Page No.7/13



WP.No.19891 of 2010

2005 she was not allowed to join duty by the Project Nutrition Officer, Jolarpettai Block, Jolarpettai. From the averments made in the affidavit it is clear that the petitioner took unauthorised leave for a period from 03.02.2005 to 01.04.2005, and for the subsequent period it was her contention that she was prevented from joining duty. The petitioner filed a writ petition in W.P.No.14885 of 2006 for a Writ of Mandamus to consider her representation dated 28.09.2005 and to reinstate her to the post of Child Welfare Officer at Yelagiri Village, Jolarpet. In the said W.P.No.14885 of 2006, this Court passed an order directing the 2nd respondent therein to consider the petitioner's representation dated 28.09.2005 within the time stipulated therein. The respondents did not comply with the order and thereafter, on the threat of Contempt the respondent reinstated the petitioner vide order dated 27.03.2008 but without continuity of service and backwages. The petitioner thereafter submitted a representation on 21.07.2008 to give her continuity of service and to pay backwages from July 2005 onwards. As the respondent did not reply to the representation she filed W.P.No.27784 of 2008 for a Writ of Mandamus directing the respondents to give her continuity of service for the post of Child Welfare



WP.No.19891 of 2010

Officer and to pay her back wages from July 2005 onwards. This Hon'ble Court on, 21.11.2008, directed the 2nd respondent to consider the petitioner's representation dated 21.07.2008 and pass appropriate orders within the time stipulated therein and even in the second round, as the respondents did not consider the representation within the time stipulated by this Court, the petitioner filed the Contempt Petition in Contempt Petition No.79 of 2010 and thereafter, the impugned order was passed by the 3rd respondent rejecting the petitioner's claim for continuity of service and back wages from July 2005 onwards.

10. Admittedly, the petitioner was an Anganwadi worker and therefore the Service Rules of Government servant are not applicable to the petitioner. The Anganwadi workers are project based workers and are not covered by any Service Rules, and therefore the issue of granting continuity of service and restoring seniority will not arise in so far as the petitioner is concerned. The learned counsel for the petitioner fairly admitted that the writ petitioner is not covered by the Service Rules as applicable to the Government servants. The learned counsel for the petitioner has not given



WP.No.19891 of 2010

any justifiable reason as to why the principle of "no work no pay" cannot be applied to the petitioner when admittedly she was engaged on daily basis and she did not work during the period for which she claims backwages.

11. The counsel for the petitioner submitted that the impugned order is passed by the 3rd respondent but the direction in W.P.No.27784 of 2008 was given to the 2nd respondent to pass orders on the petitioners representation. The counsel therefore sought for a remand of the matter to the 2nd respondent.

12. I am of the view that no purpose will be served by remanding the matter to the 2nd respondent as more than 12 years have lapsed, since the impugned order was passed and further admittedly the Service Rules and regulations of Government employees is not applicable to the petitioner who is an Anganwadi worker. Useful reference can be made to the judgment of the Hon'ble Supreme court in **(2007) 11 SCC 681**, in **State of Karnataka and Others Vs. Ameerbi and Others**. The following Para's are relevant.

"13. The posts of anganwadi workers are not statutory posts.



They have been created in terms of the scheme. It is one thing to say that there exists a relationship of employer and employee by and between the State and anganwadi workers but it is another thing to say that they are holders of civil post.

14. We are not oblivious to the fact that their presence in their respective villages is extremely important. They are supposed to make significant contribution to the society. They, we understand, are required to carry out a large number of activities, primary amongst them being the welfare of the children.

20. Anganwadi workers, however, do not carry on any function of the State. They do not hold post under a statute. Their posts are not created. Recruitment rules ordinarily applicable to the employees of the State are not applicable in their case. The State is not required to comply with the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. No process of selection for the purpose of their appointment within the constitutional scheme exists. We do not think that the said decision has any application in the instant case."

13. As the petitioner was engaged as an Anganwadi worker on daily wage basis, I am of the view that the principle of "no work no pay" applies



WP.No.19891 of 2010

to the petitioner.

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In the light of the above I find no merit in the petitioner's contentions and for all the above reasons the Writ Petition is dismissed as devoid of merits. There shall be no order as to costs.

29.09.2022

Speaking Order: Yes/No
dsn

To

- 1.The Secretary to the Government,
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Page No.12/13



WEB COPY



WP.No.19891 of 2010

N.MALA, J

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WP.No.19891 of 2010

29.09.2022

Page No.13/13