



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.7959 of 2017

N.R.Gayathri

... Petitioner

Vs.

1.The Director of Social Welfare,
Corporation School Building,
No.58, Arunachalam Street,
Chintadripet, Chennai 600 002.

2.The Joint Director (Administration),
Social Welfare Department,
Chennai – 600032.

3.The Accountant-General)A&E),
Tamil Nadu, Chennai – 18.

... Respondents

Prayer: Writ Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the second respondent herein in his Proceedings Na.Ka.No.20684/Admn.4(2)/2016 dated 10.03.2017 and Quash the same and consequently direct the respondents herein to treat the period of suspension from 16.12.2010 to 27.01.2011 of 43 days as duty for all purposes as per Fundamental Rule 54(B) and direct the respondents herein to pay the monetary benefits including revised pensionary benefits.



For Petitioner : Mr.S.Ravi Shanmugam
For R1 & R2 : Mr.K.Suresh
Government Advocate
For R3 : Mrs.T.S.Selvarani

ORDER

The proceeding dated 10.03.2017 reinstated the period of suspension as leave on loss of pay is under challenge in the present writ petition.

2. The petitioner states that she was working as Superintendent in the Social Welfare Department and placed under suspension on initiation of departmental disciplinary proceedings dated 08.12.2010. The departmental disciplinary proceedings ended with an order of punishment of stoppage of increment for three years with cumulative effect. The consequential period of suspension from 16.12.2010 to 27.01.2011 was regulated as leave on loss of pay.

3. The learned counsel for the petitioner mainly contended that the petitioner is having Earned Leave in her credit and in respect of regulating the



suspension period as Earned Leave, it would be more beneficial to the writ petitioner. They have unilaterally regulated the period of suspension as leave on loss of pay, which is in violation of FR54 (B) (5) of the Fundamental Rules.

4. The Fundamental Rules stipulates that “In cases other than those falling under sub rules (2) and (3), the Government servant shall, subject to the provisions of sub rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection, within such period which in no case shall exceed sixty days from the date on which the notice has been served, as may be specified in the notice”

5. The learned counsel for the petitioner contented that no such show cause notice was issued to the petitioner before passing the impugned order, enabling the petitioner to establish that she has Earned Leave credited, which would be more beneficial, if the same has been granted for the purpose of



regulating the period of suspension. Thus, the order impugned is in violation of the Fundamental Rules as stated above.

6. When the Fundamental Rules (cited *supra*) contemplates an opportunity to the employee concerned, while regulating the period of suspension and in the present case, 43 days, such an opportunity must be provided by the authorities by issuing a show cause notice, setting out the facts and circumstances, enabling her to submit explanations for the purpose of defending her case. Thus, the order impugned is in violation of principles of natural justice, more so, violation of the Fundamental Rule 54(B)(5).

7. Accordingly, the order impugned passed by the 2nd respondent in his Proceedings Na.Ka.No.20684/Admn.4(2)/2016 dated 10.03.2017 is quashed and the matter is remanded back to the respondents for fresh consideration. The 2nd respondent is directed to issue a show cause notice to the petitioner in consonance with the Fundamental Rules as stated above within a period of four (4) weeks from the date of receipt of a copy of this order. On receipt of the show cause notice, the petitioner is at liberty to submit her explanation, if any, within a period of two (2) weeks from the date of receipt of the show



cause notice to be issued. Thereafter, the 2nd respondent shall consider the case on merits and pass appropriate orders as expeditiously as possible.

8. With these directions, the Writ Petition stands allowed. No costs.

18.10.2022

Jeni
Index : Yes
Speaking order

To

- 1.The Director of Social Welfare,
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S.M.SUBRAMANIAM, J.

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