



WEB COPY

W.P.No. 35787 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 35787 of 2019
and
W.M.P.No. 36681 of 2019

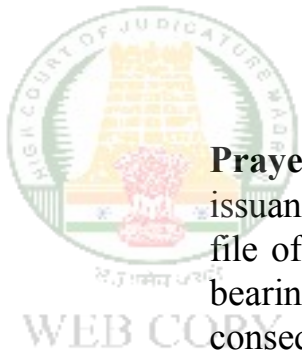
U. Balasudha

... Petitioner

Vs.

1. The Director,
Directorate of Elementary Education,
DPI Complex, College Road,
Chennai.
2. The Joint Director (Administration) cum
Appellate Authority,
Directorate of Elementary Education,
DPI Complex, College Road,
Chennai.
3. The District Elementary Education Officer,
Office of the District Elementary Education Officer,
Vellore, Vellore District.
4. The Assistant Elementary Education Officer,
Sholingur Union, Sholingur,
Vellore District.

... Respondents



Prayer: Writ Petition filed Under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent relating to the impugned order dated 06.12.2019 bearing Ref No. Na.Ka.No.2752/E3/2019 and quash the same and consequently direct the respondents to pay the back wages, give continuity of service and all consequential service benefits to the petitioner.

For Petitioner	: Mr. T. Saikrishnan
For Respondents	: Mrs. S. Mythreyechandru Special Government Pleader for R1 to R4

ORDER

The order of rejection, rejecting the claim of the writ petitioner for grant of back wages for the period from 18.11.2004 to 15.03.2016, is under challenge in the present writ petition.

2. The petitioner was appointed as secondary grade teacher in proceedings dated 17.10.1997 and she joined on 24.10.1997. In the year 2003-04, the petitioner was posted at panchayat union elementary school at Sengalnatham, Sholingur and the petitioner states that during the relevant point of time, her mother died and she applied for medical leave from 01.06.2004 to 17.07.2004. Thereafter, the petitioner extended the medical leave, which was not sanctioned by the competent authorities. The petitioner



not reported for duty admittedly for about 11 years and the petitioner herself has stated that she could not able to pursue the medical leave application for its sanctioning.

3. The learned Special Government Pleader made a submission that in the enquiry, the petitioner has deposed before the enquiry officer that she had submitted medical certificate for the period of her leave upto 17.11.2004. But thereafter, the petitioner had not submitted any leave letter. She remained unauthorizedly absent for about 11 years from 18.11.2004 onwards. During the year 2016, the departmental disciplinary proceedings were initiated against the writ petitioner and enquiry was conducted. Based on the proved charges of unauthorized absence for about 11 years, the petitioner was dismissed from service in proceedings dated 18.07.2016 by the District Elementary Education Officer. The petitioner preferred an appeal before the Joint Director, who in turn set aside the order of dismissal from service and thereafter the petitioner joined duty.

4. The petitioner submitted an application to grant back wages for the period of non service and to re-fix the scale of pay. In this regard, the Director of Elementary Education passed an impugned order in proceedings



dated 06.12.2019, stating that the petitioner is not entitled for the backwages as the principles of 'no work no pay' is to be applied. Regarding the regulations of the intervening period from 18.07.2016 to 20.08.2017, which is the period in which the petitioner was under termination, necessary proposal will be submitted before the Government for appropriate orders.

5. The learned counsel for the petitioner made a submission that even the pay was not revised despite the fact that the order of dismissal from service was set aside by the appellate authority namely the Joint Director of School Education. Therefore, the order impugned is to be set aside.

6. The learned Special Government Pleader objected the said contention by stating that the petitioner was dismissed from service based on the proved charges of unauthorized absence for about 11 years. The benefit of reinstatement granted in the appeal was itself was a concession and the fact remains the petitioner had not served for about 11 years and therefore she is not entitled for any backwages based on the principles of 'no work no pay'. Thus, there is no infirmity in respect of the order passed by the Director of Elementary School Education.



7. This Court is of the considered opinion that the fact regarding the unauthorized absence for about 11 years was established during the course of enquiry. Even as per the counter affidavit, the petitioner deposed before the enquiry officer that she had submitted a medical certificate for the period of her leave upto 17.11.2004. Therefore, the petitioner herself has stated that she has not submitted any leave application beyond the period from 17.11.2004. Based on the deposition, the enquiry officer found that the charge of unauthorized absence was proved against the writ petitioner and the disciplinary authority imposed the penalty of removal from service. However, the appellate authority took a lenient view and set aside the punishment of removal from service. Accordingly, the petitioner was permitted to join duty and serving as of now. While so, the petitioner is not entitled for back wages for the period she has not served in the post of secondary grade teacher. The principles of 'no work no pay' would be applicable, since the petitioner herself admitted that she has not submitted any medical certificate beyond the period from 17.11.2004. Thus, the petitioner is not entitled for any backwages for the period for which she has not performed the duties and responsibilities. Regarding the revision of pay, the authorities competent has to fix the pay in accordance with the Rules in force. Admittedly, the petitioner is now serving in the post of secondary grade



teacher and therefore the fixation of pay and revision as applicable with reference to the pay rules are to be granted to the writ petitioner by following the procedure as contemplated. In this regard, the respondents are directed to take appropriate steps and fix the scale of pay as applicable to the writ petitioner as expeditiously as possible. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

18.10.2022

mrn

Index : Yes / No

Speaking order / Non-Speaking order



To

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S.M.SUBRAMANIAM, J.

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