



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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W.P(MD)No.14224 of 2014

V.Saraswathi

.. Petitioner

Vs.

1.The Director of School Education,
D.P.I. Campus,
Chennai -6.

2.The District Educational Officer,
Madurai District,
Madurai -2.

3.The Headmistress,
Government Girls High School,
Alanganallur,
Madurai District.

4.The Secretary to the Government
of Tamil Nadu,
Education Department,
Secretariat, Chennai.

.. Respondents

(4th respondent *suo motu* impleaded by this Court, as per the order stated infra.)

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records connected with the impugned order of rejection to rejoin duty passed by the 2nd respondent in Na.Ka.No.2529/A1/2013, dated 13.06.2014 and quash the same and consequently direct the 2nd respondent to permit the petitioner to join duty as Watchman in the existing vacancy and regularize her service with effect from 27.11.2000, the date on which she was regularly appointed as Watchman in the retirement vacancy of Babu Naidu under the control of the 3rd respondent in view of the setting aside of order of reversion passed by the 2nd respondent dated 10.04.2001 in W.P.No.178 of 2007 by this Court.

<https://hcservices.ecourts.gov.in/hcservices/>



For petitioner : Mr.R.Rengaramanujam
For respondents : Mr.N.Shanmugaselvan,
Special Government Pleader

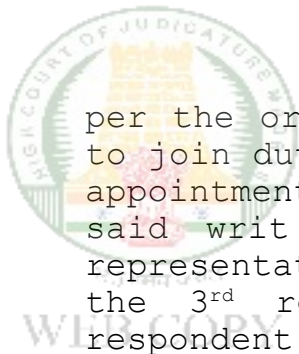
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ORDER

This petition has been filed by the petitioner challenging the order of termination passed by the respondent dated 13.06.2014 and for a consequential direction to the 2nd respondent to permit her to joint duty as Watchman in the existing vacancy and regularise her service with effect from 27.11.2000, on the date on which she was appointed as Watchman.

2.0. The learned counsel for the petitioner submitted that the petitioner was appointed as Part Time Sweeper through Employment Exchange by the second respondent on 06.12.1995 and during the year 2000, her husband died leaving behind herself and her three daughters. On 27.11.2000, she was appointed as Full Time Watchman in the existing vacancy by the 2nd respondent and she joined duty on 04.12.2000. After a lapse of four months, the 2nd respondent, by order dated 09.04.2001, reverted her as Part Time Sweeper, despite the fact that she was appointed in a permanent retirement vacancy. Challenging the reversion order, the petitioner has filed O.A.No.3548 of 2001 and obtained an order of interim stay to the impugned order of reversion. Even after production of the interim order of stay, the 2nd respondent, without obeying the order of stay, compelled the petitioner to work as Part Time Sweeper with meagre salary and as such, she continued till 07.01.2008. The petitioner had worked about 13 years continuously without any interruption. Due to economic condition, she could not maintain her health and she fell in ill and she could not attend duty from 08.01.2008 to 30.09.2011. On 01.10.2011 the petitioner submitted a representation to the Headmaster of the School to permit her to join duty by enclosing a Medical Certificate. Though the Headmaster of the School forwarded the same, the 2nd respondent has not passed any order permitting the petitioner to join duty. Due to abolition of Tamil Nadu Administrative Tribunal, O.A.No.3548 of 2001 was renumbered as W.P.No.178 of 2007 and it was disposed of on 08.02.2012 by setting aside the impugned order of reversion with liberty to pass a fresh order in accordance with law. In the meantime, the juniors to the petitioner were absorbed in terms of G.O.Ms.No.22, P & AR Department, dated 22.08.2006 on completion of 10 years of their service. Even the benefit of the said G.O. has been extended, the service of the petitioner would be regularized and she would be entitled for leave on medical grounds.

2.1. Learned counsel further submit that as the respondents did not pass any order after disposal of W.P.No.178 of 2007, the petitioner has filed W.P.(MD).No.5193 of 2013 praying for a direction to the respondents to post her as Regular Watchman as



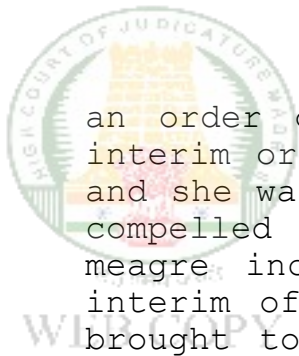
per the order of the 2nd respondent dated 27.11.2011 and permit her to join duty in the above place with effect from her initial date of appointment. By order dated 06.03.2014, this Court disposed of the said writ petition directing the petitioner to submit a fresh representation to the 2nd respondent herein through Headmistress of the 3rd respondent School and on such representation, the 2nd respondent should consider the same within a period of six weeks. Accordingly, the petitioner has submitted her representation. But, the 2nd respondent has rejected the same holding that as the petitioner has not attended duty from 08.01.2008 without any information, her request cannot be considered. Challenging the said order, the petitioner has filed this Writ Petition.

2.3. The learned counsel for the petitioner would further submit that the respondents have not permitted the petitioner to work as Full Time Watchman obeying the interim order of this Court and she was permitted to work only as Part Time Sweeper till 07.01.2008 with meagre income of Rs.925/- per month. The petitioner has worked 13 years continuously without any interruption. Due to ill-health, the petitioner could not attend duty during the period 08.01.2008 to 30.09.2011, for which she also produced Medical Certificate. But, the same has not been considered by the respondents till date. After setting aside the order of reversion, this Court directed the respondents to pass orders after giving sufficient opportunity to the petitioner. But, till date no notice has been issued by the respondents in that regard. He would further submit that the impugned order dated 13.06.2014 has not been served to the petitioner and it was served only to the counsel for the petitioner during the contempt proceedings. Therefore, the impugned order is liable to be set aside. Thus, he prayed to allow this petition.

3. Learned Special Government Pleader appearing for the respondents submitted that the petitioner herself absented from duty for a long time and therefore, no show cause notice need be issued and she was terminated from service. He would further submit that the impugned order sent to the petitioner twice returned with an endorsement "Door Locked" and "Insufficient Address" and therefore, the impugned order could not be served to the petitioner. Thus, he prayed to dismiss this petition.

4. Heard the learned counsel for both sides and perused the records carefully.

5. Admittedly, it is not in dispute that on 06.12.1995 the petitioner was initially appointed as Part Time Sweeper and subsequently, she was appointed as Watchman in the retirement vacancy on 04.12.2000. After four months, the second respondent by order dated 09.04.2001 cancelled the appointment of the petitioner as Watchman and reverted her as Part Time Sweeper. Challenging the



an order of interim stay. It is an unfortunate case where the interim order of this Court has not been obeyed by the respondents and she was not permitted to work as Full Time Watchman and she was compelled to work only as Part Time Sweeper till 08.01.2008 with meagre income. The failure of the respondents to implement the interim of the Court amounts to clear contempt. But, it was not brought to the notice of the Court by the petitioner by filing a contempt petition. It is stated by the petitioner that the economic condition, family circumstances and lack of legal knowledge forced her to obey the order of the respondents for survival and to work as Part Time Sweeper with meagre income till 08.01.2008. It shows that the respondents have failed to act as Model employer and they had done a great injustice to the petitioner, who is a last grade servant and made her to run from pillar to post for her hand to mouth existence.

6. Even according to the respondents, it is not in dispute that the petitioner had worked about 13 years as Part Time Sweeper. Even though the respondents disobeyed the interim order of stay granted by this Court against the order of reversion, as the interim order was in operation from 08.06.2001, the service of the petitioner shall be treated as Full Time Watchman. It is seen that in view of the pendency of the case in O.A.No.3548 of 2001 / W.P.No.178 of 2007, the benefit of G.O.Ms.No.22, dated 22.08.2006 has not been extended to the petitioner. If it had been extended, as stated by the petitioner, her service could have been regularized atleast as Sweeper and she would be entitled to leave on medical grounds.

7. It is stated that the petitioner fell sick during the period 08.01.2008 to 30.09.2011 and therefore, she could not attend duty, for which she also produced medical certificate. The representation given by the petitioner on 01.10.2011 to permit her to join duty with the medical certificate has not at all been considered by the respondents till date. While so, the impugned order of reversion has been set aside by this Court, vide order dated 08.02.2012, with liberty to the respondents to pass orders afresh, after providing sufficient opportunity to the petitioner. At the time of passing the order dated 08.02.2012, it is not brought to the notice of the Court that the petitioner had not attended duty from 08.01.2008 to 30.09.2011 and her representation seeking permission to rejoin duty was pending. It is seen from the record that on 24.03.2014 the petitioner had sent a detailed representation to the respondents enclosing a copy of the order of the Court dated 08.02.2012, leave letter with medical certificate, etc, as directed by this Court in W.P.(MD).No.5193 of 2013, but the second respondent, without considering the leave letter of the petitioner, by the impugned order dated 13.06.2014, rejected the case of the petitioner only holding that the petitioner was absented for duty from 08.01.2009 and thereby, she has violated G.O.Ms.No.1046, dated 13.06.2014. Therefore, her case cannot be considered.



8. It is not in dispute that G.O.Ms.No.1046, dated 13.11.1987, was already set aside by the Tamil Nadu Administrative Tribunal as unconstitutional in O.A.No.1120 of 1989, etc. batch, vide order dated 21.10.1999 and the Government had also amended the provision imposing the punishment of removal alone in the case of Government Servant absent for more than one year and directed to impose lesser punishment after conducting enquiry and after coming to the conclusion as to whether the absence of the petitioner was wilful or not. In this case, the absence of the petitioner was only on medical grounds. As the absence of the petitioner was on compelling circumstances under which it was not possible for her to report or perform duty, it cannot be held to be wilful. The second respondent has passed the impugned order, without conducting any enquiry with regard to the medical certificate produced by the petitioner. Termination of the petitioner without conducting any enquiry is illegal. Though the petitioner was ready work from 01.10.2011, it was not considered by the respondents and hence, it is about nine years the petitioner is out of employment. However, it is seen that the petitioner herself has given a letter requesting to treat the period of her absence as leave period.

9. Considering the facts and circumstances of the case and also considering the injustice done to the petitioner, this Court is of the view that it would be appropriate to order reinstatement of the petitioner without any backwages for the period of her non employment, but with continuity of service. As the service of the petitioner has to be regularised, this Court *suo motu* impleads the concerned authority ie., the Secretary to the Government of Tamil Nadu, Education Department, Secretariat, Chennai, as the 4th respondent in this Writ Petition. The learned Special Government Pleader also accepts notice for the newly impleaded respondents.

10. In view of the above, the impugned order dated 13.06.2014 is set aside. The respondents are directed to regularize the service of the petitioner as Watchman from the date of her joining as Watchman ie., from 04.12.2000 and reinstate her as Watchman with continuity of service but without backwages for the period of her non employment. The respondents are directed to fix the pay of the petitioner as Watchman from 04.12.2000 and give salary till she had given her leave application, after deducting the salary given to her in the post of Part Time Sweeper. The above said exercise shall be completed on or before 21.02.2020.

11. The petitioner may approach the second and third respondents with a copy of this order forthwith for early compliance of this order.

12. This Writ Petition stands disposed of accordingly. No other orders. Consequently, connected miscellaneous petition is closed.



However, Office is directed to list the matter on 24.02.2020 for reporting compliance.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

To

1.The Director of School Education,
D.P.I. Campus,
Chennai -6.

2.The District Educational Officer,
Madurai District,
Madurai -2.

3.The Headmistress,
Government Girls High School,
Alanganallur,
Madurai District.

4.The Secretary to the Government
of Tamil Nadu,
Education Department,
Secretariat,
Chennai.

Copy to: The Section Officer, Writ Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.Special Government Pleader, SR.No.2318

W.P(MD)No.14224 of 2014

31.01.2020

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