



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.15902 of 2018

and

W.M.P. (MD)Nos.14234 of 2018 and 2254 of 2019

C.V.Kavitha Abirami

... Petitioner

vs.

1.The Secretary,

Ministry of Food Processing Industries (MOFPI),
Panchsheel Bhawan, August Kranti Marg,
New Delhi - 110 049.

2.The Director,

Indian Institute of Food Processing Technology,
Ministry of Food Processing Industry (MOFPI),
Pudukkottai Road, Thanjavur - 613 005.

3.The Director (Institutions),

Ministry of Food Processing Industry (MOFPI),
Panchsheel Bhawan, August Kranti Marg,
New Delhi - 110 049.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 2nd respondent in his proceedings in No. IIFPT/Admin./Office Order-Part -II/2018, dated 28.06.2018 and to quash the same and to direct the respondents to issue experience certificate and other entitled benefits with all the consequential benefits.

For Petitioner

: Mr.V.Panneer Selvam

For Respondents

: No appearance

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the 2nd respondent in his proceedings in No. IIFPT/Admin./Office Order-Part -II/2018, dated 28.06.2018 and to direct the respondents to issue experience certificate and other entitled benefits with all the consequential benefits.

2.The brief facts of the case are that the petitioner has
<https://hcservices.ecourts.gov.in/hcservices/>



qualified with B.E. (Agri) in Agricultural Engineering College and Research Institute, Kumulur, Trichy with 82% in the year 1997 and then completed M.E., (Agri. Processing) in Coimbatore with 93.4% and Ph.D. (Agri. Processing) with gold medal. The petitioner worked as Research Associate at Post Harvest Technology Centre, AEC and RI in Coimbatore and Trichy till March 2008. While the petitioner was working at Karunya University, the second respondent institution published notification, dated 04.02.2009, calling for application to fill up the post of Senior Scientist and the petitioner applied for the same. She was selected and appointed as Senior Scientist on 27.07.2009. She joined the respondent institution on 05.08.2009. The contention of the petitioner is that the respondent institution was established in the year 1972. The academic programme were started first time in August 2009 and the petitioner is the first academician to join in the second respondent institution. The academic courses like B.Tech., M.Tech. and Ph.D. were started and nearly 300 students are studying. The petitioner has put her entire service in the growth of the Institution.

3. The contention of the petitioner is that the institution called for application from the eligible candidates in February 2016 under Career Advancement Scheme. The petitioner is fully qualified and has applied by enclosing relevant documents in March 2016 itself. The same was not considered. The contention of the petitioner is that for the past three years she was under unrecorded mental pressures and harassments. She underwent huge mental agony and she represented the same to the Head of the Institution various times. Since the petitioner's parents are in Mettur, she alone stayed in Thanjavur and because of the continued stress, her health was affected. Therefore, she decided to resign from the post and submitted the resignation letter to the second respondent in person on 25.01.2008 and requested to relieve the petitioner from service with effect from 31.08.2008. In continuation of the said letter, the petitioner submitted another letter, dated 29.01.2018, to waive 3 months notice period. The respondents accepted the resignation letter and relieved the petitioner with effect from 14.02.2018 and relieved on 14.02.2018 itself.

4. Thereafter, on 27.03.2018, the petitioner requested to provide experience certificate and other benefits like gratuity, leave salary, employee provident fund, etc. However, the petitioner received the impugned letter, dated 28.06.2018, wherein, the second respondent treated the petitioner and relieved the petitioner as termination of service, as per the decision of the Governing Board on 04.05.2018. The contention of the petitioner is that after accepting the resignation, the respondents cannot issue the termination order, since the same would attach stigma to it.

5. The respondents have not filed any counter affidavit, so, <https://hcservices.ecourt.gov.in/hcservices/> available records the following orders are passed.



6. Heard Mr.V.Panneer Selvam, learned Counsel appearing for the petitioner.

7. It is seen from the records that the petitioner has submitted a resignation letter, dated 25.01.2018 and another letter, dated 29.01.2018, requesting to waive the notice period. Considering the requisition, the respondents have passed an order, dated 14.02.2018, and the relieving order contents are extracted under:

"In pursuance of Ministry's letter No. F No 1-12028 (12)/2/2015- Institution Division dated 07.02.2018 and in exercise of power delegated to the Director, IIFPT Bye-Law in clause 16 para 2 of Service Regulations, the notice of termination of service submitted by Dr.C.V.Kavitha Abirami is hereby accepted and she is relieved from services of IIFPT Society with effect from 14.02.2018 (AN)."

8. On seeing this, based on the Minister's letter and in exercise of power under Bye law in Clause 16 para 2 of service regulation, the notice submitted by the petitioner was accepted and the petitioner was relieved with effect from 14.02.2018. Having relieved the petitioner, the respondents have issued the impugned order after placing the same before the governing body and it states as under:

"In supersession to this Institute Office Order cited at reference (1) above, Dr.C.V.Kavitha Abirami, Former Associate Professor, who was relieved from this Institute on the afternoon of 14th February 2018, is hereby informed that her relief is treated as termination of services as per the decision of 71st Governing Board meeting of IIFPT held on 04th May 2018."

It says that the respondents have treated the resignation as termination. The By-laws of the Institute was circulated. Clause 16 and 17 states as under:

"16. NOTICE OF TERMINATION OF SERVICE BY AN EMPLOYEE:

No temporary employee other than a person on deputation from the Central Government or any State Government or Institution shall leave or discontinue his service in the society except after giving one month's notice in writing of his intention to do so to the Director. Provided further that where an employee has completed the period of probation, the period of such notice shall be three months.



Provided that the Director may for reasons to be recorded in writing, waive, either wholly or in part, the above notice period or the requirement as to payment of such compensation.

17. TERMINATION OF SERVICE BY THE SOCIETY:

a) The society may at any time and without assigning any reason terminate the services of any employee who has not completed his probation after giving one month's notice in writing or a month's pay in lieu thereof.

b) The society may terminate the service of any employee who has completed his probation after giving such employee three month's notice or three month's pay lieu thereof.

Provided that the society shall give to an employee whose services are so terminated, pay for the period by which the notice actually given falls short of the prescribed period.

c) Nothing contained in this Regulation shall affect the right of the appointing authority to retire, remove or dismiss an employee without giving notice or pay in lieu of notice in accordance with the provision of Regulation 17."

9. In the By law, there is no word "resignation". Even when an employee has submitted resignation letter the institute has considered it as termination letter only. The impugned order specifically says that the resignation of the petitioner is treated as termination. If it is so, under Clause 17, the respondents ought to have issued 3 months notice, in case of employee, who completed probation. Admittedly, the respondents have not issued any notice at all. Moreover, when an employee has an option to resign from the post, the same cannot be considered as termination.

10. Hence, the impugned order is set aside. The petitioner is claiming benefits like gratuity, leave salary and employee provident fund, which she is entitled to. Even if it is termination, the petitioner is entitled to leave salary and employee provident fund.

11. Since the impugned order is set aside, this Court is of the considered opinion that the petitioner is entitled to experience certificate as well as gratuity. The respondents are directed to issue the experience certificate to the petitioner for the period from 5th August 2009 to 14th February 2018. The respondents are also directed to pay the gratuity to the said period along with interest applicable and also pay the Leave Salary and Employee's Provident Fund. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.



12. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-)

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// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

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2. The Director,
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+1 CC to M/s.V. PANNEER SELVAM, Advocate (SR-19095[F] dated 18/04/2022)

W.P. (MD) No.15902 of 2018
12.04.2022

sg (CO)

TR(25.05.2022) 5P 5C