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W.P.(MD)No.4214 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.4214 of 2016

J.Padmavathy

... Petitioner

vs.

The District Elementary Educational Officer,
Karur, Karur District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the Respondent to pay B.T. Assistant salary for the period from 08.05.2008 to 11.11.2013 after adjusting the payments made to the petitioner with consequential annual increments.

For Petitioner : Mr. Murali for Mr.K.Govindarajan

For Respondent : Mr.V.Om Prakash
Government Advocate (Civil side)



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ORDER

This Writ Petition is filed for issuance of a Writ of Mandamus, to direct the Respondent to pay B.T. Assistant salary for the period from 08.05.2008 to 11.11.2013 after adjusting the payments made to the petitioner with consequential annual increments.

2. The petitioner joined the service as Secondary Grade Teacher in Panchayat Union Middle School, Thalavai at Trichy District. After completion of probation, the petitioner was transferred to Karur District. Thereafter, the petitioner was promoted as B.T. Assistant, vide proceedings, dated 30.01.2008. The contention of the petitioner is that due to sudden demise of her husband the petitioner was interested in getting transfer to her native district, i.e., Trichy. The petitioner's children are also studying at Trichy District only with the help of the petitioner's parents. Therefore, the petitioner submitted a representation, dated 20.03.2007, to transfer the petitioner to Trichy District and she has also given an undertaking that in case, if the petitioner is transferred to the native district, i.e., Trichy, she is willing to join as Secondary Grade Teacher by relinquishing B.T.



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Assistant promotion. The petitioner has given willingness to reduce her post for getting transferred to the native district alone. On the contrary, the respondent took the same as a relinquishment and reverted the petitioner from B.T. Assistant to Secondary Grade Teacher through proceedings, dated 08.05.2008 and retained the petitioner in Karur District itself. Aggrieved over the same, the Writ Petition in W.P.(MD)No.4633 of 2008 was filed to quash the order, dated 08.05.2008 and this Court, vide order, dated 22.05.2008, quashed the impugned order and held that the petitioner is entitled to be posted as B.T. Assistant as per original promotion order, dated 30.01.2008. Thereafter, the respondents did not implement the order and hence the petitioner had initiated contempt proceedings.

3.In the meanwhile, the respondents filed a Writ Appeal in W.A.(MD)No.18 of 2011 and the said Writ Appeal was dismissed on 11.01.2011. Before the Division Bench, the respondents produced the original file and the Division Bench had rendered a categorical finding that the order of the demotion is illegal and thereafter, dismissed the Writ Appeal. Then, after the dismissal of the Writ Appeal, the petitioner was not allowed to join as B.T. Assistant instead the



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petitioner was insisted by the respondent to join in the Secondary Grade Teacher post. During the interim period of 2008 to 2011, because of the Writ Appeal, the respondents did not allow the petitioner to join the post. Since the petitioner was not paid any salary and due to financial constraints and circumstances, the petitioner had no other option than to join the Secondary Grade Teacher post and the petitioner joined the post on 07.06.2009 at Karur District itself. In the intervening, i.e., 395 days from 08.05.2008 to 08.06.2009, the petitioner was not paid any salary and also was not paid any increments. In spite of the Division Bench order, the petitioner was not given original post of B.T. Assistant. The petitioner submitted several representations and thereafter, again the petitioner approached this Court in W.P.(MD)No.2158 of 2013 and prayed to grant the original post of B.T. Assistant and consequential benefits. This Court has initiated a suo motu contempt in Contempt Petition (MD)No.1052 of 2013 for disobedience of the orders of the Court. Thereafter, the respondents passed the proceedings, dated 07.11.2013. Once again the petitioner was posted as B.T. Assistant at Middle School, Somur Village and the petitioner was relieved from the Secondary Grade post on 11.11.2013. Thereafter, the Writ Petition was



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disposed of on 09.12.2013, the petitioner was not paid any salary from 08.05.2008 to 07.06.2009, i.e., for 13 months. From 08.06.2009 to 11.11.2013 onwards the petitioner was paid Secondary Grade salary alone. But the petitioner is entitled to receive B.T. Assistant salary from 08.05.2008 to 11.11.2013 after adjusting the amounts already received salary for Secondary Grade Post. The petitioner submitted representations, dated 03.10.2015, 13.11.2015 and 18.12.2015. The petitioner was forced to file this Writ Petition, which is a fourth round of litigation. Hence, the petitioner prayed to direct the respondents to pay the salary for the B.T. Assistant post during the period as specified in the prayer. Pending the Writ Petition, the respondents have paid the salary applicable to B.T. Assistant from 08.06.2009 to 11.11.2013. However, the respondents have declined to pay the B.T. Assistant from 09.05.2008 to 07.06.2009 under the principles of “no work no pay”.

4.The respondent had filed a counter affidavit stating that the petitioner sought transfer from Karur to Trichy District. Since there was no vacancy in the Trichy District, the petitioner was not granted transfer. The petitioner relinquished



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the Primary School Head Master post on 05.07.2007 and she joined as Secondary Grade Teacher on 06.07.2007. Thereafter, the petitioner was promoted as B.T.Assistant on 30.01.2008. The petitioner sought transfer and the same was not considered because there was no vacancy. Moreover, the petitioner sought to demote herself from B.T. Assistant to Secondary Grade Teacher post and she was demoted on 08.05.2008. The petitioner absented herself from 09.05.2008 to 07.06.2009 without prior permission from appointing authority, which amounts to dereliction of duty. On advise of the Director, the petitioner joined the service on 11.11.2013 as B.T. Assistant (History). Thereafter, the petitioner retired from service on 30.11.2018. Based on the orders of this Court, the petitioner was paid B.T. Assistant salary except for the period from 09.05.2008 to 07.06.2009, under the principles of “no work no pay”. The petitioner has accepted Rs.94,026/- on 07.03.2022. The petitioner's request was considered and the order was passed by the Block Educational Officer on 24.12.2021, based on the proceedings of the District Education Officer, dated 28.10.2021. Therefore, there is nothing in this Writ Petition. Hence, the respondents prayed to dismiss the Writ petition.



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5. Heard Mr. Mr. Murali for Mr.K.Govindarajan, learned Counsel appearing for the petitioner and Mr.V.Om Prakash, learned Government Advocate appearing for the respondent.

6. The petitioner was seeking transfer because of sudden demise of her husband and the children are studying at Trichy under their grandparent's guidance. The petitioner submitted an application for transfer from Karur to Trichy District as Trichy being her native District. The respondents have stated that since there is no vacancy in B.T. Assistant post, her transfer application cannot be considered. Therefore, the petitioner has volunteered stating that even if she is posted in the Secondary Grade Teacher post at Trichy, she is willing to serve in Trichy. The respondents mistook her representation and demoted the petitioner from B.T. Assistant post to Secondary Grade Teacher post and retained her in Karur District itself. It is so unfortunate that the Department is very insensitive to the claim of the petitioner. Aggrieved over the same, the petitioner started her battle and requested to allot the Secondary Grade Teacher post at Trichy. The respondents' action is absolutely irresponsible, which had led to the



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complication of the entire situation. Finally, the petitioner had served in Karur District until her retirement at 2018. Since she was demoted, the petitioner refused to join the service from 2008 to 2009 and for a subsequent period due to financial constraints, the petitioner joined the Secondary Grade Teacher post and she was receiving the Secondary Grade Teacher pay. In the fourth round of litigation, the respondents have paid the B.T. Assistant salary for the period from 2009 to 2013. But the respondents still refused to grant the B.T. Assistant salary to the petitioner from 2008-2009 stating that the petitioner unauthorizedly absented herself and therefore, she is not entitled to any pay. The respondents refused to understand that the petitioner could not join the Secondary Grade Teacher post, since the post was allotted in Karur District itself. Already the petitioner was in distress, when she lost her husband, added to her misery, the respondents had acted irresponsibly. The respondent has power to refuse to transfer to Trichy, but the respondent is not having power to demote and post it in Karur itself. Infact this Court directed the respondent official to be present before this Court and submit an explanation. And also granted an opportunity to reverse the order and pay the balance amount in the next hearing. On the day of final



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hearing the respondent did not produce any order of reversal and did not pay the amount. Hence this Court is forced to record the attitude of the respondent and this Court is of the considered opinion that the respondent has acted high handedly with arrogance.

7. Generally, if any employee did not work, the employee would not be getting salary under “no work no pay” principle, but any rule, any principle has exemptions. This case is one such exemption since it is because of the act of the respondent that the petitioner could not join the post.

8. Therefore, the petitioner is entitled to B.T. Assistant salary for the period from 09.05.2008 to 07.06.2009. Because of the irresponsible act of the respondent, this Court is inclined to impose cost of Rs.5,000/- on the respondent and the cost shall be paid to the petitioner. The cost shall be paid by District Education Officer, Chief Education Officer, Joint Director and the Director who served at that point of time. The said order shall be implemented within a period of four weeks from the date of receipt of a copy of this order.



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9.With the above direction, the Writ Petition is allowed with a cost of Rs.

5000/-.

Index : Yes / No

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S.SRIMATHY, J

Tmg

To

The District Elementary Educational Officer,
Karur, Karur District.

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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.

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