



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .Nos.4236 of 2016, 2254 and 7876 of 2017

and

W.M.P. (MD) .Nos.3775, 4868 of 2016, 1867, 6107 and 10977 of 2017

W.P. (MD) .No.4236 of 2016

Meenalochani

... Petitioner

Vs.

1.The District Elementary Educational Officer,
Thoothukudi.

2.The Assistant Elementary Educational Officer,
Vilathikulam,
Thoothukudi District.

3.The Headmistress (In charge),
Hindu Nadar Middle School,
Kulathur,
Vilathikulam Taluk,
Thoothukudi District.

4.The Directorate of Secondary Education,
Chennai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in Na.Ka.No.786/A2/2015 dated 15.02.2016 on the file of the second respondent and quash the same and further directing the respondents to grant permission to join duty w.e.f. 15.02.2016 and to regularize the petitioner's service during the leave period from 23.11.2015 to 14.02.2016.

W.P. (MD) .No.2254 of 2017

Meenalochani

... Petitioner

Vs.

1.The District Elementary Educational Officer,
Thoothukudi.



2.The Assistant Elementary Educational Officer,
Vilathikulam,
Thoothukudi District.

3.The Headmistress (In charge),
Hindu Nadar Middle School,
Kulathur,
Vilathikulam Taluk,
Thoothukudi District.

4.The Directorate of Elementary Education,
Chennai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned memo in Na.Ka.No.3538/A3/2015 dated 01.02.2017 on the file of the first respondent and quash the same.

W.P. (MD) .No.7876 of 2017

Meenalochani

... Petitioner

Vs.

1.The District Elementary Educational Officer,
Thoothukudi.

2.The Assistant Elementary Educational Officer,
Vilathikulam,
Thoothukudi District.

3.The Headmistress (In charge),
Hindu Nadar Middle School,
Kulathur,
Vilathikulam Taluk,
Thoothukudi District.

4.The Directorate of Elementary Education,
Chennai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in Na.Ka.No.786/A2/2015 dated 12.12.2016 on the file of the second respondent and quash the same and further directing the respondents to regularize the petitioner's service by treating the entire leave period of 83 days as unearned leave on private affairs and the period from 15.02.2016 to 17.03.2016 as the period of attendance and to pay the applicable salary for both periods.



(In all Writ Petitions)

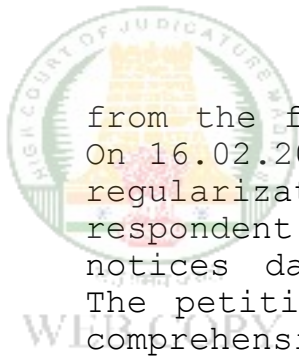
For Petitioner : Mr.G.Prabhu Rajadurai
For R-1, R-2 : Mr.V.Omprakash
and R-4 : Government Advocate(Civil Side)
For R-3 : Mr.M.Jerin Mathew

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COMMON ORDER

Three Writ Petitions are filed by the same petitioner. The Writ Petition in W.P.(MD).No.4236 of 2016 is filed to quash the impugned order dated 15.02.2016 and further to direct the respondents to grant permission to join duty with effect from 15.02.2016 and to regularize the petitioner's service during the leave period from 23.11.2015 to 14.02.2016.

2. The brief facts of the case are that the third respondent is a private aided non-minority school. On 21.04.2007, the petitioner was appointed as a BT Assistant in the said school. In view of the dispute between the members of the Society, the administration of the school was brought under direct control of the Government in accordance with Section 18(A) of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the official respondents, namely, the first and second respondents are entrusted with such administration. The petitioner's daughter is married and is living in Australia and she was expected to give birth to a child in the month of November 2015. As there was no one to take care of her, the petitioner's daughter insisted the petitioner to be with her. Therefore, the petitioner applied for leave for a period of 3 months vide application dated 07.09.2015. The then Secretary sanctioned leave for 3 months i.e. from November 2015 to February 2016 on half pay by letter dated 07.09.2015. On the basis of pre-sanctioned leave, the petitioner submitted a leave letter to the then newly elected Secretary on 21.11.2015. Besides that, the petitioner has also sent the leave letter through registered post. It is seen that there was a dispute in the election and in view of the same, the administration has come to a standstill. The petitioner returned on 12.02.2016 and submitted a joining report. Since the school was taken over by the Government for administration, the joining report was handed over to the first respondent / the District Elementary Educational Officer, wherein the first respondent directed the petitioner to appear before the second respondent/the Assistant Elementary Educational Officer and submit a joining report. The petitioner sent the joining report by registered post. Thereafter, the petitioner tried to meet the second respondent but could not meet him. On 15.02.2016, the second respondent, on receiving the joining report, served a copy of the order dated 15.02.2016 stating that the petitioner could join duty only after obtaining permission



from the fourth respondent, i.e. the Director of School Education. On 16.02.2016, the second respondent received the representation for regularization of leave and forwarded the same to the fourth respondent. On 15.02.2016, the second respondent served two other notices dated 27.01.2016 and 10.02.2016 calling for explanation. The petitioner sent a reply dated 16.02.2016 and have submitted a comprehensive explanation. While these proceedings were pending, the second respondent prevented the petitioner from joining duty. Aggrieved over, the present Writ Petition in W.P.(MD). No. 4236 of 2016 is filed.

3. When this case came up for admission, this Court has passed an order, wherein, it has been stated as follows:

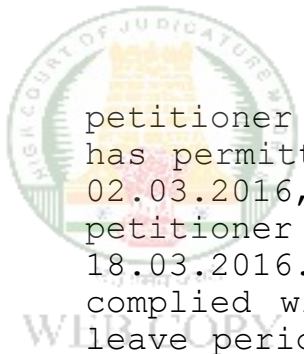
"It is a settled principle of law that an employee working under statutory body cannot be prevented from joining duty without an order of suspension. In this case, it seems that the petitioner has got permission to go to abroad from the school authority and when she went to join duty on her return, she was not allowed to join duty without an order prohibiting her to join duty. Hence, the respondents are directed to permit the petitioner to report duty immediately on receipt of a copy of this order."

4. The second Writ Petition in W.P.(MD).No.2254 of 2017 is filed challenging the impugned charge memo issued in Na.Ka.No.3538/A3/2015 dated 01.02.2017. The charge memo was issued framing 5 charges. 4 charges are pertaining to the failure to get prior permission from the first respondent to visit Australia and for not obtaining sanction of leave from the first respondent. The fifth charge is that the petitioner had approached this Hon'ble Court by filing Writ Petition and has obtained interim orders in W.P.(MD).No.3774 of 2016 and in W.P.(MD).No.4236 of 2016.

5. The third Writ Petition in W.P.(MD).No.7876 of 2017 is filed challenging the impugned order in Na.Ka.No.786/A2/2015 dated 12.12.2016 with a consequential prayer to direct the respondents to regularize the petitioner's service by treating the entire leave period of 83 days as unearned leave on private affairs and the period from 15.02.2016 to 17.03.2016 as the period of attendance and to pay the applicable salary for both periods.

6. The official respondents produced the proceedings in Na.Ka. No.5310/A1/2021 dated 29.11.2021 stating that the school was brought under direct payment and still, it is continuing in the direct control.

7. As far as W.P.(MD).No.4236 of 2016 is concerned, the petitioner has challenged the impugned order restraining the



petitioner from joining duty, unless and until the fourth respondent has permitted to join duty. Since through the interim order dated 02.03.2016, this Court has directed the respondents to permit the petitioner to join duty, the petitioner has already joined duty on 18.03.2016. Confirming the said fact, a part of the prayer is complied with. The next part of the prayer is to regularize the leave period and for the same relief, another Writ Petition in W.P. (MD).No.7876 of 2016 is also filed.

8. The contention of the petitioner is that the petitioner has submitted a leave application to the Principal of the School. The school has sanctioned the leave for three months. After sanctioning of leave, the petitioner has submitted a leave application and has left for abroad to assist her daughter during her maternity period.

9. The contention of the official respondents is that permission should have been obtained from the official respondents while the teacher is travelling abroad.

10. It is the duty of the school management to further forward the application to the official respondents for getting permission to travel abroad. Since, in the present case, there was a management dispute for administering the school, the school has not properly forwarded the application of the petitioner which has resulted in not getting prior permission from the official respondents. Since it is not a mistake of the petitioner, the same cannot be put against the petitioner to deny her rights to take leave to travel abroad. Therefore, the impugned order dated 15.02.2016 is set aside.

11. Since the petitioner was already granted permission to join duty through an interim order of this Court and the said order of this Court is confirmed in the final hearing also.

12. As far as the regularization of the leave period from 23.11.2015 to 14.02.2016 is concerned, the said period shall be treated as unearned leave on private affairs. As far as the period from 15.02.2016 to 17.03.2016 is concerned, it is the respondents who have not allowed the petitioner to join duty. Since it is not a mistake of the petitioner, the said period shall be considered as duty period and the petitioner is eligible for monetary benefits for both the periods by treating them as unearned leave on private affairs and as duty period. Therefore, the impugned order challenged in W.P.(MD).No.7876 of 2017 dated 12.12.2016 is set aside and the respondents are directed to treat the entire leave period of 83 days as unearned leave on private affairs and the period from 15.02.2016 to 17.03.2016 as duty period and consequentially, the respondents are directed to pay the monetary benefits applicable to the petitioner. The above directions shall be implemented within a period of six (6) weeks from the date of receipt of a copy of this



13. Since the petitioner has not obtained prior permission from the official respondents, a charge memo was issued against the petitioner. Since this Court has already held that due to management dispute, the petitioner's leave application to travel abroad was not presented before the authorities and since it is not a mistake on the part of the petitioner, the same cannot be put against the petitioner. Hence, the charge memo dated 01.02.2017 is also quashed.

14. With the above directions, all the Writ Petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

Lm

To

1.The District Elementary Educational Officer,
Thoothukudi.

2.The Assistant Elementary Educational Officer,
Vilathikulam,
Thoothukudi District.

3.The Directorate of Secondary Education,
Chennai.

4.The Directorate of Elementary Education,
Chennai.

+ 1 cc TO Mr.The SPL.GP, Advocate in SR No.22060

+ 1 cc TO Mr.G.PRABHU RAJADURAI, Advocate in SR No.22144 DATED
28/04/2022

**W.P. (MD) .Nos.4236 of 2016, 2254 and 7876 of 2017
27.04.2022**

RK(14/06/2022) 6P 7C