



W.P.No.20213 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.04.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.20213 of 2013

P.Kalaiselvi

.... Petitioner

VS

The District Elementary Educational Officer,
Town Hall Road (Near Manikoundu),
Coimbatore-1

.... Respondent

Writ Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the respondent in Na.Ka.1630/A2/2012 dated 22.04.2013 and quash the same and direct the respondent to treat the period from 22.03.2010 to 30.04.2011 as duty period in the post of Middle School Headmaster and grant her all consequential benefits including annual increments due on 01.10.2010 and 01.10.2011, revision of pay, pongal bonus for the year 2010.

For Petitioner : Mr.P.Manoj Kumar

For Respondent : Mr.M.Rajendran
Additional Government Pleader



W.P.No.20213 of 2013

WEB COPY

ORDER

This writ petition has been filed challenging the order passed by the respondent, in which, the petitioner's service was treated from 08.03.2010 to 28.03.2010 as earned leave and the period from 29.03.2010 to 28.04.2011 as leave on loss of pay and the period from 08.03.2010 to 28.04.2011 as service rendered in the post of Tamil Pandit.

2. The brief facts of the case of the petitioner are as follows:

i) The petitioner was working as Headmistress in the Panchayat Union Middle School, Pannimedu I Division, Valparai, Coimbatore District. She was initially appointed as Secondary Grade Teacher on 03.10.1996 and thereafter, she was promoted as Primary School Headmistress on 27.06.2001 and further, promoted as Tamil Pandit on 27.11.2006. Thereafter, she was promoted to the post of Middle School Headmistress by order of the District Elementary Educational Officer, Coimbatore-1 dated 10.10.2009 and she joined duty in the said post on 12.10.2009 and worked continuously without any blemish whatsoever. While so, she was reverted from the post of Middle School Headmistress to the post of Tamil Pandit by proceedings dated 09.03.2010 and posted in the Panchayat Union Middle School, Murgaili. The respondent has passed the said order of reversion in order to accommodate one Mrs.Chellammal who was working as Assistant Elementary Educational Officer,



W.P.No.20213 of 2013

Kinathukadavu, Pollachi Taluk and appointed her in the post of Middle School Headmistress, Pannimedu-I Division, where she was working. Against the said order of reversion, the petitioner approached this Court by filing W.P.No.5341/2010. This Court granted stay of the order of reversion. However, the said order was not implemented by the respondent and the petitioner was not permitted to continue in the post of Middle School Headmaster. Thereafter, final order was passed to consider the representation of the petitioner in accordance with law. The stay order was in force till the final disposal of the writ petition dated 16.09.2010. The petitioner filed an appeal in W.A.No.2176/2010 against the order passed in the writ petition. In the said Appeal, by order dated 12.01.2011, the order was passed in W.P.No.5341/2010 and the order of reversion dated 09.03.2010 passed by the respondent were stayed. Thereafter, the petitioner submitted representation to the respondent on 23.02.2011 requesting the respondent to permit her to continue in the post of Middle School Headmistress. However, she was not permitted. Only on 29.04.2011, she was permitted to join the said post of Middle School Headmistress. She was not paid the salary for the period from 01.03.2010 to 10.03.2010 and from 22.03.2010 to 30.04.2011 and other consequential benefits were also not paid to the petitioner. The petitioner made repeated representations to the respondent and the last representation



W.P.No.20213 of 2013

WEB COPY

was made on 20.07.2012. Since no order was passed, the petitioner filed W.P.No.27970/2012 directing the respondent to pay salary for the period from 01.03.2010 to 10.03.2010 and 22.03.2010 to 30.04.2011, and to pay annual increment due on 01.10.2010 and 01.10.2011, revision of pay and pongal bonus for the year 2010. In the said writ petition, a final order was passed on 15.10.2012 directing the respondent to pass orders on the petitioner's representation dated 20.07.2012 on merits and in accordance with law and in the light of the judgment of the Hon'ble Supreme Court of India reported in 2004 (11) SCC 550. However, the respondent has passed the impugned order, treating the period from 8.3.2010 to 28.3.2010 as earned leave and the period from 29.03.2010 to 28.04.2011 as leave on loss of pay and the period from 08.03.2010 to 28.04.2011 as service rendered in the post of Tamil Pandit. Aggrieved over the same, this writ petition has been filed seeking the aforesaid relief.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent.

4. Learned counsel for the petitioner would submit that the order dated reverting the petitioner from the post of Middle School Headmistress to the post of Tamil Pandit was stayed by this court in W.P.No.5341/2010 on 22.03.2010 and the final order was passed in the said writ petition on



W.P.No.20213 of 2013

WEB COPY

16.09.2010. Till the disposal of the writ petition, the stay order was in force. Against the order passed in the said writ petition, the petitioner preferred an appeal in W.P.No.2176/2010 and in the said writ appeal, the order of reversion dated 09.03.2010 and order of the learned single Judge passed in the writ petition, were stayed. Thereafter, the petitioner was permitted to join duty as Middle School Head Mistress on 29.04.2011. There is no dispute to the above said facts. Though the petitioner was promoted as Middle School Headmistress, she was not paid any salary for the period from 01.03.2010 to 10.03.2010 and from 22.03.2010 to 30.04.2011 and was also not paid the other consequential benefits. The order of stay granted by this Court was not vacated in the mean time. In the writ appeal also, stay order was granted and thus, the petitioner is entitled to get salary during the period when the stay was in operation. The impugned order is contrary to the orders of the Hon'ble Supreme Court reported in 2004(11) SCC 550. Even in W.P.No.27970/2012, this Court directed the respondent to consider the representation of the petitioner in the light of the judgment of the Hon'ble Supreme Court referred to above. However, the respondent has not considered the case of the petitioner in the light of the said judgment of the Hon'ble Supreme Court. Hence, the impugned order is liable to be set aside.

5. Per contra, the learned Additional Government Pleader would submit



W.P.No.20213 of 2013

WEB COPY

that as per the order dated 23.02.2011 passed in W.A.No.2176/2010 preferred by the petitioner, she was accommodated in the post of Middle School Headmistress, Pannimedu Division-I on 29.04.2011 and she was duly paid salaries for the period from 01.03.2010 to 10.03.2010 actually she had worked. With regard to the increment, revision of pay and pongal bonus, the petitioner's request will be considered only after the final order was passed in the present writ petition. As per the final order passed in W.P.No.27970/2012 in the light of the judgment reported in 2044(11) SCC 550, the respondent regulated the period of absence with the available leave in the petitioner's account. The period from 29.03.2010 to 28.04.2011 was unauthorized absence as she did not submit any leave letter and she is not eligible for pay for the said period as there was no work and no pay by application of natural justice. Hence, he would pray to dismiss the writ petition.

6. This Court considered the submissions made on either side and perused the materials available on record.

7. It is not in dispute that as against the order of reversion dated 09.03.2010 passed by the respondent, this Court granted stay in the writ petition filed by the petitioner in W.P.No.5341/2010 vide order dated 22.03.2010. However, the petitioner was not permitted to join duty by the respondent. Till the final order was passed, the stay order was in force.



W.P.No.20213 of 2013

However, the respondent did not comply with the said stay order. Only on 16.09.2010, final order was passed in the said writ petition directing the petitioner to make appropriate representation to the concerned authority and the competent authority was directed to consider the same in accordance with law as expeditiously as possible. Further, the petitioner has also preferred writ appeal against the order passed in the said writ petition in W.A.No.2176 of 2010 and this Court vide order dated 12.01.2011, granted stay of the reversion order dated 09.03.2010 and also stayed the order passed by the learned single Judge. The stay order granted in the writ petition was not vacated in the meantime till the final disposal of the writ petition and in the writ appeal also, stay was granted. Thus, the petitioner is entitled to get salary during the period when the stay was in operation as per the principle laid down by the Hon'ble Supreme Court reported in (2004) 11 SCC 550 (*Electronics Corporation of India Limited and others Vs. Satheesh S.Rao, Sonawalkar*). Therefore, the impugned order treating the said period as leave on loss of pay is contrary to the order passed by the Hon'ble Supreme Court. Further, in the writ petition W.P.No.27970/2012, this Court directed the respondent to consider the representation of the petitioner in the light of the aforesaid Supreme Court judgment. However, the respondent has not considered the petitioner's case in the light of the said judgment of the Hon'ble Supreme Court. Therefore, this



W.P.No.20213 of 2013

WEB COPY

Court is of the opinion that the impugned order of the respondent is liable to be set aside and the petitioner is entitled to get the relief as prayed for in the writ petition.

8. Accordingly the Writ Petition is allowed. The impugned order dated 22.04.2013 is hereby set aside. The respondent is directed to treat the period from 22.03.2010 to 30.04.2011 as duty period in the post of Middle School Headmaster and grant the petitioner all consequential benefits within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

18.04.2023

Index:Yes/No
Speaking/Non-speaking order
vsi

To

The District Elementary Educational Officer,
Town Hall Road (Near Manikoundu),
Coimbatore-1



WEB COPY



W.P.No.20213 of 2013

J.NISHA BANU,J.

vsi

W.P.No.20213 of 2013

18.04.2023