



W.P.No.12615 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.12615 of 2023

A.Rajeswari

... Petitioner

Vs

1.The District Educational Officer (Elementary),
Namakkal District,
Namakkal.

2.The Block Educational Officer,
Erumapatty Union,
Namakkal District.

3.The Head Master,
Panchayat Union Elementary School,
Perumapatty,
Erumapatty Union,
Namakkal District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent in Proceedings dated 14.03.2023 in Na.Ka.No.901/A1/2023 and quash the same and consequently direct the



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second respondent to regularise the period from 19.02.2022 to 11.07.2022 and disburse all the service and other monetary benefits.

For Petitioner : Ms.P.Rajalakshmi

For Respondents : Mr.P.Gurunathan,
Additional Government Pleader
for R1 & 2

No appearance for R3

ORDER

Heard Ms.P.Rajalakshmi, learned counsel for the petitioner and Mr.P.Gurunathan, learned Additional Government Pleader for respondents 1 and 2.

2.Challenging the Proceedings dated 14.03.2023 in Na.Ka.No.901/A1/2023 and seeking for a direction to the second respondent to regularise the period from 19.02.2022 to 11.07.2022 and disburse all the service and other monetary benefits, the writ petition has been filed.

3.While the petitioner was serving as a Secondary Grade Teacher, she was transferred to the Panchayat Union Primary School, Pudukottai through the transfer order dated 05.01.2022. This order came to be



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challenged before this Court in W.P. No.1217 of 2022 and the transfer order came to be set aside by this Court through its order dated 18.02.2022. The respondents had preferred an Appeal in W.A. No.829 of 2022, which was dismissed on 04.04.2022. Thereafter, when the respondents had not permitted the petitioner to join duty in the original school, she had filed Contempt Petition No.1215 of 2022. Pending the Contempt Petition, the first respondent herein had cancelled the transfer order and permitted the petitioner to continue in the same place through his Proceedings dated 08.07.2022. Based on this order, the second respondent had also issued orders on 11.07.2022 permitting the petitioner to join duty and she had also joined duty on the same day. The intervening period from the date of quashing of the transfer order by the Single Judge of this Court in W.P. No.1217 of 2022 and till the date of petitioner joining duty, namely from 18.02.2022 to 11.07.2022 has been declined to be taken as a duty period through the impugned order.

4.Learned counsel for the petitioner, by placing reliance on Fundamental Rule 9(3), submitted that since the respondents had made the petitioner to compulsorily wait without permitting her to join duty in



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the original school even after the transfer order was quashed, such a period should be treated as a compulsory wait and hence, as a duty period.

5.Learned Additional Government Pleader for respondents 1 and 2, on the other hand, places reliance on the averments made in the impugned order and submits that since the petitioner had not joined duty even after the transfer order was passed and had actually joined duty only on 11.07.2022, her period of non- employment should be treated as non-duty period and therefore, there is no infirmity in the impugned order.

6.As rightly pointed out by the learned counsel for the petitioner, Tamil Nadu Government Fundamental Rule 9(3) provides that when a Government servant has to compulsorily wait for orders of posting, such period of waiting shall be treated as duty. During such period, he shall be eligible to draw the pay plus special pay which he would have drawn had he continued in the post he held immediately before the period of compulsory wait or the pay plus special pay which he will draw on taking charge of the new post, whichever is less. For this purpose, no temporary



7. When the transfer order issued to the petitioner was quashed by this Court on 18.02.2022 and the Writ Appeal was also dismissed on 04.04.2022, the respondents ought to have permitted the petitioner to join duty in the original school from where she was transferred. When the petitioner had preferred a Contempt Petition, she was permitted to join duty on 11.07.2022 by respondents 1 and 2. Thus, non joining of duty for the period between 18.02.2022 to 11.07.2022 was not on the fault of the petitioner, but owing to the failure of the respondents in not permitting her to join duty.

8. In similar circumstances, in the case of R.Lakshmi vs. General Foreman and another, passed in W.P. No.11033 of 2016 dated 13.12.2022, I had an occasion to consider the scope of Fundamental Rules 9(3) in the following manner:

'8. The impugned proceedings of the first respondent in denying regularization of the period between 24.09.2014 and 14.04.2015 when they had not issued the posting



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orders, is opposed to Ruling 3 of Fundamental Rule 9. By G.O.Ms.No.235, Finance Department, dated 14.03.1977, the Government had ordered that, in all cases where a Government servant has to compulsorily wait for orders of posting, such period of waiting shall be treated as duty. During such period, the Government servant would be eligible to draw the pay plus special pay which he would have drawn had he continued in the post he held immediately before the period of compulsory wait or the pay plus special pay which he will draw on taking charge of the new post, whichever is less. For this purpose, no temporary post need to be created. The Government Order further states that the Government servant shall be entitled for compensatory allowances reckoned at the rates admissible at the station in which he was on compulsory wait.'

9.The aforesaid extract is self explanatory. As such, the mistake committed by the respondents in not permitting the petitioner to join duty even after the transfer order was quashed, cannot be put against the petitioner herein. Consequently, the service of the petitioner for the period between 18.02.2022 to 11.07.2022 requires to be regularized as duty period under Fundamental Rule 9(3).

10.For all the foregoing reasons, the impugned Proceedings dated



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14.03.2023 issued by the second respondent is quashed and the writ petition stands allowed. Consequently, the first respondent herein shall pass appropriate orders regularizing the petitioner's service between 18.02.2022 to 11.07.2022, within a period of four weeks from the date of receipt of a copy of this order. No costs.

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Index:Yes/No

Speaking order/Non-speaking order
vga

To

1.The District Educational Officer (Elementary),
Namakkal District,
Namakkal.

2.The Block Educational Officer,
Erumapatty Union,
Namakkal District.



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M.S.RAMESH,J.

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