



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2023

CORAM

THE HON'BLE Mr. JUSTICE **C. V. KARTHIKEYAN**

W.P.No.23550 of 2019
and
W.M.P.No.23367 of 2019

R. Madhana

.. Petitioner

Vs.

1.The State of Tamil Nadu
rep. by its Principal Secretary,
Social Welfare & Nutritious Programme Department,
Fort. St. George,
Chennai – 9.

2.The Commissioner,
Social Welfare Department,
Kilpauk, Chennai – 600 010.

.. Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to orders of the 1st respondent made in G.O.No.91, Social Welfare and Nutritious Program (Sa Na 8(2)) dated 14.05.2018 and that of the consequential order made in Letter No.9346/Sa.Na.8(2)/2018-5 dated 21.05.2019 to quash the same and to consequently direct the respondents to



regularize the period between 27.12.2006 & 10.08.2008 (593) days as Duty for all purposes as per Fundamental Rules and the Rulings there under and to extend all benefits with revision of pay and pension thereto.

For Petitioner .. Mr. L. Chandrakumar
For Respondents .. Mr. U. Bharanidharan, AGP

ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus seeking interference with the order of the 1st respondent in G.O.No.91, Social Welfare and Nutritious Program [Sa.Na.8(2)] dated 14.05.2018 and consequential order in Letter No.9346/Sa.Na.8(2) / 2018 – 5 dated 21.05.2019 and to quash the same and direct the respondents to regularize the period between 27.12.2006 and 10.08.2008 (593 days) as duty for all purposes in accordance with the Fundamental Rules.

2. The petitioner was working as a cook. The petitioner and another individual Arumugam were directed to be transferred by an order of the 2nd respondent / the Commissioner, Social Welfare Department, Kilpauk, Chennai. Questioning the transfer, the petitioner filed W.P.No.6040 of 2008 and the other individual filed W.P.No.6041 of 2008. Finally, a learned Single Judge had quashed the transfer order and had also imposed costs of



Rs.2,000/- on the respondents. Aggrieved, the respondents filed W.A.Nos.917 and 918 of 2008. The Division Bench confirms the opinion of the learned Single Judge that the order of transfer was not in accordance with rules and to quash the same, but however, set aside the imposition of costs. The Division Bench also permitted the disciplinary proceedings to be proceeded against the petitioner herein.

3. The learned counsel for the petitioner stated that subsequently, the period of absence with respect to the other persons namely, Arumugam of 601 days had been regularized and had been treated as duty by the respondents. However, the period on which the petitioner was not on duty namely, 593 days, between 27.12.2006 and 10.08.2008, by way of the impugned order was treated as extraordinary leave without pay and allowance. In the disciplinary proceedings, the punishment of censure was imposed on the petitioner herein.

4. It is trite in law to point out that punishment of censure is imposed only in the case of minor penalty and would not have any monetary effect. The respondents can withhold utmost promotion for a period between six months to one year, but there would not be any further monetary consequences imposed on the petitioner herein.



5. In the counter affidavit, it had been stated that the petitioner herein did not co-operate during enquiry proceedings and as a matter of fact, took a stand quite hostile to the respondents for having initiated the disciplinary proceedings, since in the writ appeal, the order of quashing of the order of transfer had been confirmed. But if that it be the attitude, then it should reflect on the nature of order passed during the disciplinary proceedings. The punishment imposed was only censure. Quite independent of that, when examining the period of absence, if the period is treated as duty for the other individual, who was also similarly transferred with the petitioner and had filed a writ petition along with the petitioner herein and was also a respondent in the Writ Appeal, and contested the writ appeal against the respondents herein, there should be parity in treating the period of absence. It cannot be treated for one who was also absent an extraordinary leave without pay and for the other as period on duty. One of the fundamental concepts in service jurisprudence is that, when two delinquents are charged with the same offence and proceedings are practically identical or similar, then there should be parity maintained in the nature of punishment imposed. I find no justification for treating the period of leave of the petitioner as extraordinary leave without pay and allowance,



particularly when the respondents had taken a conscious decision to consider the period of absence of Arumugam as one on duty.

6. The impugned order is therefore interfered with and is set aside. It is directed that the period of absence between 27.12.2006 and 10.08.2008 should be treated as one on duty for all purposes in accordance with Fundamental Rules and the Service Rules. Necessary proceedings may be issued within a period of twelve weeks from the date of receipt of a copy of this order.

7. With the above observations, this Writ Petition stands allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

22.08.2023

Index:Yes/No
Internet:Yes/No
Neutral Citation:Yes/No
Speaking order: Yes/No
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To

1.The Principal Secretary,
Social Welfare & Nutritious Programme Department,
Fort. St. George,
Chennai – 9.



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C.V.KARTHIKEYAN,J.

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2.The Commissioner,
Social Welfare Department,
Kilpauk, Chennai – 600 010.

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