



W.P.No.17631 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.17631of 2017
and
W.M.P.No.19128 of 2017

G.Nagarani

... Petitioner

Vs.

1.The District Collector,
District Rural Development Agency,
Salem.

2.The Project Director,
District Rural Development Agency,
Salem District,
Salem - 636 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing to the respondents to sanction and disburse the annual increments due



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to the petitioner as on 01.10.2015 and on 01.10.2016 and also to disburse the duty pay for the period from 26.07.2014 to 06.10.2014 and disburse all monetary benefits with interest within a time frame.

For Petitioner : Mr.S.Balakrishnan
for Mr.Ravi

For Respondents: Mr.T.M.Rajangm
Government Advocate

ORDER

This Writ Petition has been filed seeking for a direction to the respondents to sanction and disburse the annual increments due to the petitioner as on 01.10.2015 and on 01.10.2016 and to disburse the duty pay for the period from 26.07.2014 to 06.10.2014 and all monetary benefits with interest within a time frame.

2.It is the case of the petitioner that she was initially appointed as Overseer in the Engineering Division of Panchayat



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Union, Attur on 17.12.2007. She is permanently disabled by 60%.

As the post of Overseer was not suitable to her she made a representation dated 08.03.2008 to the respondents to post her as Draughting Officer. Accordingly, she was posted as Junior Draughting Officer on 04.08.2018 in Magudanchavadi, Sankagiri and Attur Sub Division, Attur. Thereafter, by an order dated 31.05.2011 of the 1st respondent, the petitioner was transferred and posted as Overseer. Therefore, she filed W.P.No.13094 of 2011 and obtained an order of interim stay on 07.11.2009. Even while the interim stay was in force the petitioner was once again transferred and posted as Overseer. Therefore, the petitioner filed another W.P.No.20151 of 2014 and an order of interim stay was granted on 30.07.2014. While the interim stay is in force and the said Writ Petition is pending, the annual increments due to the petitioner on 01.10.2015 and on 01.10.2016 have not been sanctioned. Hence, this Writ Petition has been filed.



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3.The 1st respondent filed their counter stating that the disability of the petitioner was duly considered and as per proceedings dated 04.08.2008, she was transferred from Nangavalli Block to Sub-Division Office, Magudanchavadi and she joined as Junior Draughting Officer on 19.08.2008. As per Foreign Services Rules of the Tamil Nadu State and Subordinate Service, a Government Servant cannot permit to work in the foreign service for more than three years. Further, she was transferred to another foreign service establishment, viz., office of the Assistant Executive Engineer, Attur Sub Division. She joined as Junior Draughting Officer at Attur Sub Division Office on 26.11.2012. Later, she was transferred to Panamarathupatty Block which is very near to her residence. The 1st respondent further stated that the petitioner knowing about the transfer order stayed away from duty without any information to the head of the office. Thereafter, she filed W.P.No.20151 of 2014 for quashing the transfer order of the 1st respondent. This Court granted interim stay and based on the



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request of the petitioner, she was given reposting at Attur Sub Division office. It is very clear that the aim of the petitioner is to evade the duty in the Panchayat Union Office and to abstain from service to the rural people. Further, the petitioner went on over-stayal of leave during the transfer period for 73 days from 25.07.2014 to 06.10.2014. The period of over-stayal of leave is not yet regularised as per Rule 26(b) of the Fundamental Rules. Therefore, the petitioner was sanctioned periodical increments for the years 2015-2016 as per proceedings dated 08.09.2017. Again she has been sanctioned periodical increments for the year 2017 and she is receiving pay in accordance to the sanctioned basic pay. Only the pay and the increments for 73 days is pending for sanction as those days are over-stayal leave availed by the petitioner.

4.The learned counsel appearing for the petitioner would submit that while the Writ Petitions are pending and the interim



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stay is in force, the annual increments due to the petitioner as on 01.10.2015 and on 01.10.2016 have not been sanctioned. Therefore, the petitioner sent a representation dated 02.05.2017 to the respondents, the annual increment due to the petitioner as on 01.10.2015 and on 01.10.2016 have not been sanctioned.

5.The learned Government Advocate appearing for the respondents would submit that the period of over-stayal of leave is not yet regularised as per Rule 26(b) of the Fundamental Rules. As per proceedings dated 08.09.2017, the petitioner was sanctioned periodical increments for both the years 2015-2016. Again she has been sanctioned periodical increments for the year 2017 and she is receiving pay in accordance to the sanctioned basic pay. Only the pay and the increments for 73 days is now pending for sanction as those days are over-stayal leave availed by the petitioner.

6.Heard the learned counsel appearing on either side and



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perused the materials available on record.

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7. On a perusal of the documents, it is seen that the petitioner is a disabled person and she was initially appointed as Overseer in the Engineering Division of Panchayat Union, Attur. Thereafter, she was posted as Junior Draughting Officer at Attur Sub Division. The 1st respondent passed the order of transfer dated 23.07.2014 transferring the petitioner from Attur Sub Division to Panamarathupatty Panchayat Union in the post of Overseer. Further, it is seen that the Government issued G.O.Ms.No.70, dated 20.03.2000 stating that the post of Junior Draughting Officer and Overseer are equivalent post and interchangeable carrying equal scale of pay. Therefore, this Court passed an order in W.P.No.20151 of 2014 dated 23.06.2022 stating that there is no infirmity in respect of the order of transfer by the 1st respondent which is in consonance with the Government order. Further, the



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order of transfer was issued on administrative grounds which need

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not be interfered with by this Court now after a lapse of eight years from the date of passing of the impugned order of transfer. If at all any grievance exists as of now, the petitioner is at liberty to approach the competent Authority for the purpose of redressal of her grievance. The petitioner went on over-stayal leave during the transfer period for 73 days. The petitioner knowing about the transfer order stayed away from duty without any information to the head of office, apart from disobeying the transfer order. Thereafter, the petitioner filed W.P.No.20151 of 2014 for quashing the transfer order of the 1st respondent.

8.Rule 26(b) of the Fundamental Rules states as follows:

“(1)A period of over-stayal of leave does not count towards increments under the Fundamental



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Rules unless under Rule 85(b), it is commuted into extraordinary leave and under Rule 26(b) or 26(bb) extraordinary leave is allowed to count for increments.”

9. Thereafter, she has been granted periodical increments for the year 2017 and she is receiving pay in accordance to the sanctioned basic pay. Therefore, the transfer period for 73 days is only pending for sanction of periodical increments, as those days are over-stayal leave availed by the petitioner. The only question is whether the petitioner is entitled to pay and increments for 73 days as per Rule 26(b) of the Fundamental Rules?. The petitioner pleaded to consider the representation and seeks for a direction to the respondents to issue pay and increments for 73 days within a time frame.

Accordingly, this Writ Petition is disposed of with a direction



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to the 1st respondent to consider the representation of the petitioner and pass appropriate orders in accordance with Law within a period of twelve weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

No costs.

09.10.2023

Index : Yes/No

Speaking order :Yes/No

Neutral citation :Yes/No

mps

To

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2.The Project Director,
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Salem - 636 001.



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