



W.P.(MD)No.3962 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.3962 of 2018

K.Susila

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Environment and Forests Department,
Secretariat,
Chennai -9.

2.The Managing Director,
Arasu Rubber Corporation Limited,
Vadasery,
Nagercoil.

3.The Divisional Manager,
Arasu Rubber Corporation Limited,
Mylar Division,
Mylar,
Kanyakumari District.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for



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the records pertaining to the impugned order passed by the 2nd respondent vide Na.Ka.No.P1/14451/17 dated 25.11.2017 and set aside the same and direct the respondent to issue all the service and monetary benefit to the petitioner from 05.10.2013 to 25.09.2014.

For Petitioner : Mr.K.P.Narayanakumar
For R1 : Mr.S.R.A.Ramachandran
Additional Government Pleader
For R2 : Mr.A.K.Manikkam

ORDER

This writ petition has been filed challenging the impugned order passed by the 2nd respondent, dated 25.11.2017 and to set aside the same and consequently direct the respondents to issue all service and monetary benefits to the petitioner from 05.10.2013 to 25.09.2014.

2. The case of the petitioner is that she was appointed as Junior Assistant in Arasu Rubber Corporation Limited, Mylar Division, Kanyakumari District on 29.09.2008, through employment exchange. As per Rule 19 of the Tamil Nadu Arasu Rubber Corporation Service Rules, the



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petitioner has to complete two tests viz., (i) Accountancy Lower (ii) Factory and Lower Department Test Part A and B within the probation period. Since the petitioner has not completed the above said two tests within the said period, she was considered deemed to have been terminated from service, as per Clause 20(ii) of the Service Rules. Challenging the said termination order dated 05.10.2013, the petitioner has filed a writ petition before this Court in W.P.(MD).No.17749 of 2013. This Court, by order dated 18.01.2017, allowed the writ petition and directed the respondents to reinstate the petitioner into service. Accordingly, the petitioner was reinstated into service. Thereafter, she has made a representation on 23.10.2017, to regularise the service period and pay the wages. Pursuant to which, the Divisional Manager has passed an order dated 17.04.2017, regularising the petitioner's service. However, in the order, the period of service from 05.10.2013 to 25.03.2014 has been considered as extraordinary leave. Challenging the same, the petitioner has filed an appeal before the second respondent. But the second respondent has rejected the same vide order dated 25.11.2017. Challenging the same, the present writ petition has been filed.



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3. The learned counsel appearing for the petitioner would submit that since the petitioner has not completed the departmental tests within the period of probation, she was terminated from service. Challenging the same, the petitioner has filed a writ petition before this Court and this Court, by order dated 18.01.2017 allowed the writ petition and directed the respondents to reinstate the petitioner into service. Pursuant to which, the petitioner was reinstated into service. However, the period of service from 05.10.2013 to 25.03.2014 has been considered as extraordinary leave, which is not sustainable one. Hence, he prayed for appropriate orders.

4. Heard the learned counsel for the petitioner, the learned Additional Government Pleader appearing for the first respondent and the learned counsel appearing for the second respondent.

5. The facts in the present case are not in dispute. Admittedly, the petitioner was appointed as Junior Assistant in the respondent Corporation in the year 2008 and before completing the probation period, the petitioner has not passed out the departmental test. Therefore, she was terminated from



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service and the same was challenged before this Court. This Court, vide order dated 18.01.2017, allowed the writ petition and directed the respondents to reinstate the petitioner into service. Pursuant to the same, she was reinstated into service.

6. However, the issue arise in the present writ petition is whether the petitioner is entitled for back wages for non-employment period. Already the Hon'ble Apex Court as well as this Court, in a catena of decisions, held that a person, who is not in employment not entitled for any back wages, since he is not physically employed at the relevant point of time. Further, the termination order was issued stating that the petitioner has not passed out the departmental examination, as per Clause 20(ii) of the Service Rules. However, this Court has allowed the writ petition. Hence, claiming back wages for the above said period is not sustainable one, since she is not in service and this Writ Petition is dismissed. No costs.

15.02.2023

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M.DHANDAPANI,J.

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