



W.P.(MD)No.19787 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.19787 of 2019

J.Rajeswari

... Petitioner

vs.

1.The District Collector,
Collectorate,
Madurai-625 020.

2.The Commissioner,
Thirumangalam Panchayat Union,
Thirumangalam-625 706.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings Na.Ka.No.774/09/A5, dated 19.07.2019, on the file of the 2nd respondent herein and consequently, to direct the respondents to settle the service benefits of the petitioner with



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interest at the rate of 8% per annum from the date of entitlement till the date of payment of entire amount within a time frame as may be fixed by this Court.

For Petitioners : Mr.P.Jessi Jeeva Priya
For R1 : Mr.S.R.A.Ramachandran
Additional Government Pleader
For R2 : No appearance

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned proceedings dated 19.07.2019 of the 2nd respondent and consequently, to direct the respondents to settle the service benefits of the petitioner with interest at the rate of 8% per annum from the date of entitlement till the date of payment of entire amount within a time frame as may be fixed by this Court.

2. The brief facts of the case are that the petitioner was appointed



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as Noon-Meal Organizer under the Special Programme on 19.02.1983. Thereafter in terms of G.O.Ms.No.370, Backward Classes Welfare and Noon Meal Programme, dated 16.04.1989 the petitioner became an employee under 2nd respondent Panchayat. The first respondent on the basis of the audit report submitted by the Assistant Examiner of Local Fund issued show cause notice, dated 20.11.1981, directing the petitioner to submit why a sum of Rs.74,901/- being a shortage of rice, dhal and oil should not be recovered. Pending enquiry, the petitioner was suspended from service, vide order, dated 22.01.1993. Thereafter, the 2nd respondent issued an order, dated 08.02.1993, stating that they are contemplating to initiate revenue recovery proceedings. The petitioner filed W.P.No.9359 of 1993 and this Court, vide order, dated 25.06.1994, directed the respondents to pay subsistence allowance at half the rate of honorarium per month. Challenging the suspension order, dated 22.01.1993, the petitioner preferred O.A.No.4462 of 1999 and by an order, dated



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17.08.1999 the O.A. was allowed along with batch on similar issues with a finding that the noon meal organizers are persons holding Civil posts under the State and they are entitled to be governed by the provision of Tamil Nadu Civil Service (Discipline and Appeal) Rules, Since the procedure under Rule 17(e)(1) was not followed the suspension order was set aside and liberty is given to the respondents to pass fresh orders. Aggrieved over the government had preferred an appeal in W.P.4650 of 2001 and the same was dismissed. Thereafter the suspension was revoked, but threatened the petitioner to give an undertaking to pay a sum of Rs.250/- per month from salary and the petitioner left with no option had given an undertaking, then the petitioner was reinstated into service vide proceedings dated 16.12.2001 and the petitioner joined the service on 23.12.2001 and has served until March 2004. Then the petitioner availed medical leave and extended by sending letters. After the health condition is improved the petitioner sought permission to



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rejoin duty and the certificate of fitness dated 15.03.2006 was enclosed with the letter dated 15.03.2006. But the petitioner was not allowed to join on the ground that the petitioner had to reimburse the value of the alleged shortage based on the audit objection for the year 2001-2002 to the tune of Rs.26,404.80p despite the fact that proper recovery proceedings were not passed against the petitioner as per law. The respondent issued notice dated 08.05.2007 as if that there had been shortage in the stocks based on the audit for the year 2001-2002, but the petitioner was not at all in the service during that period and the alleged shortages prior to the period of petitioner joining the service on 23.12.2001. The petitioner had submitted a reply dated 12.06.2007 stating the above facts. In the meanwhile since the petitioner's family had financial distress, the petitioner left with no option had offered a sum of Rs.250/- for recovery.



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3. Thereafter the respondent issued show cause notices dated 08.05.2007 for recovery of amount, followed by reminder dated 05.06.2007, for which the petitioner submitted reply dated 12.06.2007. Again the respondent without considering the reply dated 12.06.2007, had issued reminder letter dated 25.07.2007 and the petitioner had submitted reply on 16.08.2007. The 2nd respondent submitted a report dated 17.09.2007 and requested the 1st respondent to pass orders to allow the petitioner to join duty. But the 1st respondent had not passed any order, hence the petitioner submitted representation dated 09.06.2008 and filed W.P.(MD)No.1449 of 2009 with a prayer to reinstate her and this Court, vide order, dated 05.11.2009, disposed the writ petition with a direction to consider the petitioner's representation, dated 09.06.2008. thereafter the respondent issued charge memo dated 24.12.2009 and the petitioner submitted his explanation dated 29.01.2010, thereafter the 2nd respondent had passed an order dated 15.10.2010 rejecting the



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application to allow the petitioner to join the service, which was challenged in W.P.(MD)No.2111 of 2011. This Court after considering the rival contentions, directed the respondents to conduct fresh enquiry. Aggrieved over the petitioner filed a writ appeal in W.A.(MD)No.646 of 2013 and the same was dismissed with an observation. The Hon'ble Division Bench after taking the fact that pending writ appeal, the petitioner had attained superannuation on 31.05.2005 had held that issue raised in the writ appeal has become infructuous, but the same would not preclude the petitioner from working out her right to receive the other service benefits in the manner known to law.

4. Hence the petitioner had submitted a representation dated 30.01.2018 to settle the retirement benefits and consequential benefits based on the direction in writ appeal. Since the representation was not



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considered the petitioner filed writ petition in W.P.(MD)No.6447 of 2018 and this Court vide order dated 28.02.2009 allowed the writ petition in the line with the observation made in W.P.(MD)No.20107 of 2018. Hence the contention of the petitioner is that the impugned order is against the orders passed by this Court in earlier writ petitions and prayed to quash the same and consequently direct the respondents to disburse the pension and other benefits. and directed the respondents to pay the benefits along with 8% interest.

5. The Learned Counsel appearing for the respondents submitted that in the impugned order the respondents have relied on the audit objection, wherein it is stated that the petitioner has committed certain irregularities, which has caused loss of Rs.1,29,976/- to the Government and the said amount ought to be recovered from the petitioner. Based on



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this order, the respondents have already recovered Rs.6,250/- from the petitioner.

6. It is seen from the records that the petitioner refused to join the transferred post at M.Kallupatti since the respondents have insisted to pay Rs.250/- per month. But later on, the petitioner had accepted reluctantly due to financial constraints faced by her and the family. When the petitioner again availed medical leave and extended periodically, the respondents refused to allow her to join the service. The respondents failed to direct the petitioner to appear before the Medical Board when the petitioner sought permission to rejoin after medical leave. But the respondents did not allow the petitioner to rejoin citing the audit objections and the prolonged litigation among the petitioner and the respondents. The respondents have taken inconsistent stand, at one point



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of time, the respondents stated that the petitioner was suspended from service and also states that the petitioner did not rejoin the said post since the petitioner refused to accept the proposal to repay the amount in installment of Rs.250/- per month. Because of this inconsistent stand, the petitioner has lost the chance to continue in the said service. Now, the petitioner has attained superannuation and hence the petitioner is seeking the service and monetary benefits for the entire period including the non-employment period.

7. Therefore, this Court in order to give a quietus to the litigation, is passing the following order:

- i) The impugned order of audit objection is modified to the extent that the petitioner is liable to pay 50% of the amount.
- ii) Since the impugned order is passed without any proper



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enquiry, without giving any opportunity to the petitioner, the respondents are directed to pay the service benefits for the period from 19.02.1983 to until her superannuation, dated 31.05.2015.

iii) The petitioner did not work from 17.01.2004 to 31.05.2015 and under the principle of no work no pay, the petitioner may not be entitled to any monetary benefits for this period. But the respondents had not allowed to join the service due to audit objection. Hence the petitioner is entitled to 50% of the salary to this period.

iv)The respondents shall implement this order within a period of eight weeks from the date of receipt of a copy of this order.

v)The impugned order is modified to the extent stated supra.



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vi)The petitioner is entitled to special pension as stated in G.O.Ms.No.847, Special Welfare and Nutritious Meal Programme Department, dated 13.09.2013 and the respondents shall pay the same to the petitioner.

8.With the above said observation, the writ petition is disposed of.

No costs.

Index : Yes / No
Internet : Yes
NCC : Yes / No

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To

The District Collector,
Collectorate,
Madurai-625 020.



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