



W.P.(MD)No.1389 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 1389 of 2016

and

W.M.P(MD)Nos. 1164 & 1165 of 2016

Therasammal

... Petitioner

Vs.

1.The District Collector,
Kanyakumari District,
Nagercoil.

2. The Management, represented by
Child Development Project Officers,
No.92, M.G.L.Bavan,
Sahodara Street, Nagercoil,
Presently at, No.19, Yesudian Street,
Nagercoil, Kanyakumari District.

... 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 impugned order passed by the 2nd respondent in Na.Ka.No.1317/A/95, dated 02.01.1998 and quash the same, consequently direct the 2nd respondent to reinstate the petitioner with continuity of service and full back wages.



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For Petitioner : Mr.C.Sankar Prakash
For Respondents : Mr.M.Lingadurai
Special Government Pleader

ORDER

This writ petition is filed challenging the impugned order, dated 02.01.1998 with consequential relief to direct the 2nd respondent to reinstate the petitioner with continuity of service and backwages.

2. Heard Mr.C.Sankar Prakash, learned counsel appearing for the petitioner and Mr.M.Lingadurai, learned Special Government Pleader, appearing for the respondents. Perused the material documents available on record.

3. The petitioner was appointed on 30.06.1986 as Anganwadi worker and had served for nearly 12 years. The petitioner was kept under suspension on 28.10.1996 and a charge memo was issued alleging that the petitioner had sold the food materials in open market and the food cooked for the children in unhealthy manner and when the food register was verified it was found that there was deficiency of 694 gram of Sooji and the quantity of Soya was 638 gram more



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than the allotted quantity. A charge memo was issued on 06.11.1986. Thereafter, the 1st respondent directed the petitioner, vide letter, dated 17.11.996 to submit an explanation within three days. The petitioner has submitted a letter, dated 13.11.1996 stating the charges are baseless and false and also requested to submit the relevant documents in support of which the charges were framed. The respondents replied that the petitioner has accepted the charge, hence there is no necessity for circulating the relevant documents. Since the documents were not circulated the petitioner did not attend the enquiry. Therefore, an exparte report was submitted and based on the same the petitioner was dismissed from service on 02.01.1998. Aggrieved over the same, the petitioner has filed an application before the Assistant Commissioner of Labour (Conciliation) and a failure report was submitted.

4. Thereafter, the petitioner has preferred an Industrial Dispute in I.D No.43 of 2003 before the Labour Court, Tirunelveli. The Labour Court has set aside the dismissal order and granted continuity of service with backwages. Aggrieved over the same, the respondents have preferred a writ petition in W.P(MD)No.12439 of 2010 and the same was partly allowed, confirming the



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reinstatement and continuity of service and the backwages is modified of 50%.

Aggrieved over the same, the respondents have preferred writ appeal in W.A(MD) No.884 of 2014. The Hon'ble Division Bench vide order dated 30.11.2015 has held that the Integrated Child Development Project is part of social welfare and it is not an industry and the Labour Court has no jurisdiction and liberty was granted to the petitioner to seek remedy as per law. Therefore, the petitioner has filed this present writ petition, challenging the order of punishment.

5. The respondents have filed counter stating that the charge against the petitioner is serious in nature. The petitioner has sold the food item in open market and the petitioner has earned illegal gratification from selling the food to the 3rd persons. The 3rd respondent submitted the charge memo was issued to the petitioner, but the petitioner without giving any explanation sought for the basic report. Since the petitioner accepted the guilt on the date of suspension itself on 28.10.1996, her request for furnishing the basic report was not complied with. The relevant portion is extracted hereunder:

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“10. It is submitted that in order to give further opportunity, the charge memo was again sent on 13.01.1997. The petitioner without giving explanation, asked for basic report. As the petitioner accepted the guilty on the date of her suspension itself i.e., 28.10.1996, her request for furnishing the basic report was not complied with. Reminder was sent to the petitioner on 09.05.1997 for giving reply to the charge memo. As there was no reply from the petitioner again notice was issued on 16.09.1997, wherein it is clearly indicated that if no reply is received within stipulated time, it would be presumed that the petitioner has no explanation for the charges and on that basis she would be dismissed from service. ”

Therefore, the respondents have prayed to dismiss the writ petition. Moreover, in the writ appeal, the order passed by the Labour Court was set aside, therefore, there is no merit in the writ petition.

6. After hearing rival submissions, this Court has given anxious consideration on the issue. The contention of the respondents is that since the writ appeal was allowed in their favour, the present writ petition cannot be considered. It is seen that the Hon'ble Division Bench has allowed the writ appeal which is in



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favour of the respondents, but the Hon'ble Division Bench has granted liberty to the petitioner to seek her remedy as per law. Therefore, this Court is of the considered opinion that the writ petition is not maintainable and it has to be considered in accordance with law.

7. The contention that was raised by the respondents is that since the petitioner accepted the guilt at the time of suspension order and hence it is not necessary to circulate the basic report to the petitioner. The respondents have clearly failed in conducting free and fair enquiry against the petitioner, the petitioner cannot be directed to defend the case without any materials, more so without the basic report. The basic documents which respondents relied on ought to be circulated to the petitioner. Moreover, when the issue serious in nature, the petitioner is having every right to access the relevant documents, therefore, the enquiry proceedings is clearly violating the principles of natural justice.

8. When the writ petition was filed, the petitioner was aged about 57 years. The petitioner has attained superannuation in the year 2017 itself. Therefore, at this relevant point of time, the petitioner cannot be reinstated and



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also the case cannot be remitted back to the authorities to conduct fair enquiry.

The petitioner was appointed on 30.06.1986 and dismissed from service on 02.01.1998. The petitioner immediately approached the Labour Officer for conciliation proceedings. The Labour court has passed the order on 13.10.2009.

9. Therefore, this Court is inclined to fix the period of service of the petitioner is from 30.06.1986 to 13.10.2009. Since this Court has already held that the respondents had clearly violated the principles of natural justice, this Court is inclined to grant punishment as Compulsory Retirement by fixing the period of service from 30.06.1986 to 13.10.2009 and the respondents are directed to grant terminal benefits for the aforesaid period of service.

10. On perusal of the I.D. order, it is seen that the respondents have not paid any Subsistence allowance for the period of suspension and hence the respondents are directed to pay subsistence allowance for the period of suspension. The said exercise shall be completed within a period of 8 weeks from the date of receipt of a copy of the order.



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11. With the above observations and directions, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes
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To

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S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No.1389 of 2016**

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