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W.P.No.34248 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2024

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.34248 of 2012

R.Sithalakshmi

... Petitioner

Vs.

1.Government of Tamil Nadu,
Rep. by Secretary to Government,
School Education Department,
Secretariate,
Chennai – 600 009.

2.The Commissioner,
Chennai Corporation,
Ripon Buildings,
Chennai – 600 003.

3.The Deputy Commissioner (Education),
Chennai Corporation,
Chennai – 600 003.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the order in Pro.Na.Ka.No.E6/2513/97 dated 01.11.2000 of the second respondent (2) G.O.(ID).No.176, School Education (S2) Department



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dated 19.05.2008 of the first respondent (3) G.O.(1D).No.184, School Education (S2) Department, dated 08.06.2011 for the first respondent, to quash the same and to issue consequential directions to reinstate the petitioner in service with service benefits and all other monetary benefits.

For Petitioner : Mr.A.R.Suresh
for Mr.V.Thirupathi

For Respondent 1 : Mr.T.M.Rajangam,
Government Advocate

For Respondents 2 & 3 : Mr.S.Gopinathan,
Standing Counsel

ORDER

The petitioner has filed this writ petition to call for the records relating to the order in Pro.Na.Ka.No.E6/2513/97 dated 01.11.2000 of the second respondent (2) G.O.(ID).No.176, School Education (S2) Department dated 19.05.2008 of the first respondent (3) G.O.(1D).No.184, School Education (S2) Department, dated 08.06.2011 for the first respondent, to quash the same and to issue consequential directions to reinstate the petitioner in service with service benefits and all other monetary benefits.



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2. The case of the petitioner is that the petitioner was initially appointed as Secondary Grade Teacher (Junior Grade) on a consolidated monthly pay of Rs.800/- and posted at Corporation Primary School, Anjananagar by memorandum E.D.C.No.C2/8811/90 dated 10.12.1990 of Education Department, The Corporation of Madras and her service was regularized in the said post from 01.09.1992.

3. The petitioner was suffering from indifferent health condition due to delivery of pre-matured child in the year 1996 and other health complications. Hence, she had submitted a leave application on loss of pay for all the leave periods on 18.07.1998. In this regard, Education Department, Zone, Corporation of Chennai has issued a memo vide Na.Ka.No.Mu.9/25/3/97 dated 22.09.1998, calling to explain about her absence for more than six months from 03.06.1996. She has also submitted her reply dated 10.10.1998 and requested the authority concerned to extend her leave from 18.10.1998 on loss of pay, due to her deteriorating health condition. However, due to her continued ill health, she has submitted her resignation with effect from



05.02.1999. But the same was not accepted and rejected on 28.01.2000 vide Na.Ka.No.Ma.9/952/2000.

4. The second respondent issued a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (D&A) Rules for her absence from 03.06.1996 and she has submitted her explanation on 28.09.1999 and 12.10.1999 respectively, narrating the circumstances under which she had to be on leave from 03.06.1999. However, without considering the explanation, the second respondent has conducted an enquiry and based on the enquiry report dated 14.10.1999, the second respondent has concluded that the charge against the petitioner was held proved. Thereafter, the petitioner was issued with a show cause notice vide Na.Ka.No.E6/2513/97, dated 10.03.2000. Even before she could submit her explanation to the said show cause memo, the second respondent passed final order in the matter, imposing the punishment of removal from service vide Pro.Na.Ka.No.E6/2513/97 dated 01.11.2000.

5. Challenging the aforesaid order of removal from service dated 01.11.2000, the petitioner has submitted her appeal dated 08.08.2002 to the



Government and the same was rejected vide G.O.(ID)No.176, School Education (S2) Department, dated 19.05.2008. Meanwhile, it is pertinent to mention here that pending the order on the appeal, the first respondent/Government/Appellate Authority by letter No.7778/S2/2003-1, School Education Department dated 13.06.2003, instructed the third respondent to reinstate the petitioner in service and the same was not complied with. Thereafter, she submitted a representations dated 01.04.2010 and 24.11.2010 to the Government requesting to reinstate her into service and the same was rejected by Government in G.O.(ID)No.181, School Education (S2) Department dated 08.06.2011.

6. The petitioner has applied for mercy petition dated 18.11.2011 to the Government requesting to reconsider the matter and issue an order of reinstatement by considering the sincere and unblemished service from 1990 to 1996 as Secondary Grade Teacher. However, no order has been received thereon. Hence, the petitioner has come forward with the present writ petition.

7. Learned counsel for the petitioner would submit that the petitioner had not absented herself unauthorisedly but had submitted an applications for



the period from 03.06.1996 onwards till the issuance charge memo dated 06.04.1999. The respondents have failed to consider the leave application submitted by the petitioner and there was no order refusing the leave applied for. Further, the respondents ought to have seen that the petitioner had applied for leave on bonafide and genuine reasons viz., her continued ill health. Hence, she cannot be faulted as having neglected her duty or that she was not interested to discharge her duties. Moreover, there was also no evidence that due to her absence, the normal functioning of the school or the interests of the students were affected.

8. Learned counsel for the petitioner would further submit that though an enquiry officer was appointed and enquiry date was fixed, no enquiry was conducted on 14.10.1999 by examining the witnesses and marking documents to prove the charges. The enquiry officer has simply perused the files and recorded his unwarranted comments without any basis in the guise of findings. Therefore, the report of the enquiry officer is perverse and not based on evidence. Moreover, the Disciplinary authority failed to consider the explanation of the petitioner for her absence in a proper perspective and erred in holding without basis that the charges had been proved. The first



respondent as Appellate Authority failed to consider the factors stipulated in Rule 23(1) of the Tamil Nadu Civil Services (D & A) Rules and hence, the Appellate order dated 19.05.2008 as well as 08.06.2011 are liable to be set aside.

9. Learned counsel for the petitioner further submit that even assuming without admitting that the charges had been proved, the punishment imposed is shockingly disproportionate to the nature of charges framed. In this regard, the respondents have failed to follow the principles laid down by the Hon'ble Supreme Court of India and this Court. The act of the respondents is highly arbitrary and unjustified besides being violative of Articles 14 and 16 of the Constitution of India. Hence, he prayed for allowing this writ petition.

10. The counter affidavit has been filed by the third respondent on 09.09.2017. Learned counsel appearing for the respondents 2 & 3 submitted that the petitioner went on leave from 03.06.1996 onwards without giving any intimation letter to the concerned department. The petitioner herein has given a representation only on 18.07.1998, after two years from the date of availing leave stating that she has went on Maternity Leave and due to her child health



problems, she cannot join the duty and requested to further extend the leave for a further period of three months from 18.07.1998. As per the Chennai Corporation Class III and IV Service Rules, the employees were eligible for Medical Leave after 5 years for a period of 90 days only with intimation to the concerned department/zone within 7 days by enclosing the Medical Certificate from the date of availing Medical Leave. Whereas, the petitioner herein has availed leave without giving any intimation or submitted any Medical Certificate while availing Medical Leave and she has only intimated the concerned department after 2 years from the date of availing Medical Leave. Hence, the petitioner's representation for granting leave for 3 more months was rejected by order dated 22.09.1998 directing the petitioner to submit the medical certificate within 7 days from the date of receipt of the letter.

11. Learned counsel appearing for the respondents 2 & 3 would further submit that the petitioner has sent a reply letter dated 10.10.1998 without enclosing medical certificate as directed and further requested to grant 3 months leave on loss of pay and stated that she will appear before the Medical Board after joining the service. Since the petitioner has failed to comply with



the earlier communication dated 22.09.1998 and also she has not joined the duty as stated in her letter dated 10.10.1998, a Charge Memo was issued to the petitioner on 06.04.1999 and the petitioner was directed to submit the explanation within 15 days from the date of receipt of the same, failing which disciplinary action will be initiated against her as per the Chennai Corporation Class III and IV Service Rules. A reminder letter dated 25.04.1999 has also been addressed to the petitioner. But, the petitioner has failed and neglected to submit the explanation as sought for. On the other hand, she has sent a representation dated 22.07.1999 requesting to permit her to resign from the service and to settle the monetary benefits to her. The petitioner's representation permitting her to resign from the service was rejected vide order dated 28.01.2000 in Ka.Thu.Na.Ka.No.Ma9/952/2000.

12. Learned counsel appearing for the respondents 2 & 3 would further submit that even after giving adequate opportunity to the petitioner, she has failed and neglected to appear before the Enquiry Officer, hence, all the charges against the petitioner were considered proved and the petitioner was terminated from the service by order dated 01.01.2000 vide Ka.Thu.Na.Ka.No.E6/2513/1997. Aggrieved by the termination of her



service, the petitioner has filed an Appeal before the Tamil Nadu Public Service Commission (TNPSC) on 08.08.2002 and after carefully considering the same, the Tamil Nadu Public Service Commission (TNPSC) has recommended the Government to reject the appeal of the petitioner since the petitioner was unauthorizedly absent from 03.06.1996 and has neither submitted any Medical Certification nor appeared before the Medical Board and due to the negligence of the petitioner, administration of the school and the education of the children was affected. The Government after carefully considering the recommendation of the Tamil Nadu Public Service Commission (TNPSC) has passed an order vide G.O.(1D).No.176 School Education (S2) Department dated 19.05.2008 by rejecting the appeal of the petitioner.

13. Learned counsel appearing for the respondents 2 & 3 would further submit that as against the rejection of the appeal, the petitioner herein has filed the present writ petition with an ulterior motive to get order from this Court in her favour. The petitioner's service was terminated only because of the unauthorized absent and irresponsible behaviour which caused administrative difficulties besides putting the children education to jeopardy.



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14. Heard the learned counsel on either side and perused the materials available on record.

15. It is an admitted fact that the petitioner was absented from duty from 03.06.1996. It is also pertinent to note that the petitioner has given representation only on 18.07.1998, after two years from the date of availing leave stating that she has went on maternity leave and due to her child , health problems, she cannot join duty and requested further extension of leave for a period of three months from 18.07.1998. From the above, it is clear that from 03.06.1996 to 18.07.1998 for nearly two years, the petitioner has not sent any intimation letter to the concerned department in regard to her absence and the same is also evident from the typed set of papers filed by the petitioner in support of the present writ petition. Thereafter, the petitioner has given a requesting letter dated 10.10.1998, requesting three months leave on loss of pay and subsequently, she has applied for resignation on 05.02.1999, which was received by the Head Master on 12.02.1999 and forwarded to the Education Department on 22.07.1999. Subsequently, the second respondent issued a charge memo dated 06.4.1999 for the petitioner's unauthorized



absence and for not appearing before the Medical Board and non disclosure of her whereabouts and thereafter, she was removed from service vide proceedings of the second respondent dated 01.11.2000.

16. The appeal filed by the petitioner dated 08.08.2002 was sent to the appointment committee of the Corporation of Chennai, however, committee has confirmed the order of removal from service dated 01.11.2000. Thereafter, the petitioner made a revision petition dated 30.04.2010 to the Mayor of Chennai Corporation and the Government requesting to reinstate in her service, but, the Government has rejected the revision of the petitioner on 08.06.2011.

17. It is also pertinent to note that the petitioner resigned as early as on 05.02.1999 due to health grounds but the same was not acted upon by the respondents and it was rejected only on 28.01.2000, after nearly one year and during that period, the charge memo dated 06.04.1999 was issued to the petitioner and the enquiry officer submitted his report on 20.12.1999 and all these happened before the rejection order dated 28.01.2000. There was no impediment for the respondents to accept the



resignation letter of the petitioner and the same was not accepted for the reasons best known to the respondents 2 & 3. No doubt, the petitioner was on unauthorized absence from 03.06.1996 without producing any medical certificates and for the first time, she had given a representation only on 18.07.1998, which is after a delay of two years from the date of availing leave stating that she has went on maternity leave.

18. It is also an admitted fact and not in dispute that the petitioner was having some health issues during delivery of the second child and she also requested for maternity leave. Hence, her unauthorized absence is due to this bonafide reason and not for any other reason. If the respondents 2 & 3 would have accepted the resignation of the petitioner dated 05.02.1999, it would have given quietus to the issue and the petitioner would have gone in search of job in any other institutions since, she is having the requisite qualification for the post of teacher.

19. It is crystal clear and evident from the perusal of the records that the resignation letter was not accepted by the respondents 2 & 3 only



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for the reason to initiate disciplinary proceedings against the petitioner for her unauthorized absence from 03.06.1996 and to terminate her from service, even though she has given a resignation letter dated 05.02.1999, there is no reason adduced by the third respondent for the delay of one year in rejecting the resignation letter of the petitioner dated 05.02.1999. Hence, the punishment of removal of service imposed on the petitioner is disproportionate to the charges/delinquency committed by her.

20. In view of the above factual matrix of the case, this Court is of the considered view that the order passed by the second respondent in Pro.Na.Ka.No.E6/2513/97 dated 01.11.2000, G.O (ID) No.176, School Education (S2) Department dated 19.05.2008 of the first respondent and G.O(1D)No.181, School Education (S2) Department, dated 08.06.2011 of the first respondent are liable to be quashed and the same is hereby quashed.

21. In the result, this writ petition is allowed and the respondents are directed to reinstate the petitioner in service with all service benefits and all



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other monetary benefits. No costs.

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

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