



WEB COPY



W.P.No.5994 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.5994 of 2023
& WMP Nos.6009 of 2023

1. K.Thilagavathy (Deceased)

2.S.Rekha

(2nd petitioner substituted as
LR of deceased sole petitioner
vide order dated 14.09.2023
made in WMP 24606/2023 in
WP No.5994 of 2023 by NSKJ)

.... Petitioners

-Vs-

1.The Managing Director
Tamil Nadu Housing Board
Anna Salai, Chennai 600 035.

2.The Administrative Officer
CMDA Building, Market Complex
Koyambedu, Chennai 600 107.

3.The Executive Engineer & ADO
Annanagar Division, TNHB Office
Cum Shopping Complex,
Thirumangalam, Chennai 600 101.

4.The DCAO (Pension), CMDA Building
Market Complex, Koyambedu
Chennai 600 107.

5.Mrs.Thulasi, W/o Kuppusamy

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the



W.P.No.5994 of 2022

issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent pertaining to the proceedings No. DC- 5/ 44966/ 2006 dated 9.01.2010 and to quash the same with respect to treating the period of suspension (25.01.2005 to 4.03.2005) and period of removal (4.03.2005 to 17.01.2010) as break in service and to direct the 1st respondent to treat the period of suspension (25.01.2005 to 4.03.2005) and period of removal as continuity in service (4.03.2005 to 17.01.2010) with all consequential benefits.

For Petitioner : Mr.S.Sridevi
For Respondents : Mr. V.Logesh
Standing Counsel - for R1 to R4
R5 - No appearance

ORDER

This writ petition has been filed challenging the impugned order dated 09.01.2010 insofar as treating the period between the date of suspension till the date of reinstatement as break in service, and for a consequential direction to the respondents to regularize the said period with all attendant benefits.

2. The case of the petitioner is that she was working as a Typist in the second respondent office from the year 1996. She suffered heart ailment and was on medical leave from 21.09.2004. When she was about to join duty on 24.01.2005, she suffered cardiac arrest and she was rushed to a private hospital. She gave a requisition letter requesting to extend her leave from 24.01.2005 along with the medical certificate.



W.P.No.5994 of 2022

3. A memo dated 04.03.2005 came to be served on the petitioner placing the petitioner under suspension with immediate effect for the reason that the petitioner had unauthorisedly absented herself and for not obeying the orders of transfer and joining the head office.

4. The petitioner initially challenged the charge memo before this Court and this Court was not inclined to interfere with the same and gave time to the petitioner to submit her explanation. Accordingly, the petitioner submitted her explanation.

5. The disciplinary proceedings ultimately resulted in a punishment of removal from service through the proceedings of the Managing Director dated 27.06.2006. The petitioner filed an appeal against the punishment order. Through proceedings dated 09.01.2010, the punishment imposed against the petitioner was modified and it was converted into one of stoppage of increment for a period of five years with cumulative effect and reinstatement of the petitioner into service. The impugned proceedings also had another component, whereby the period between removal from service and the reinstatement was directed to be treated as break in service. This portion of the order has been made a subject matter of challenge in the present writ petition.

6. Initially, the writ petition was filed by K.Thilagavathi and during the



W.P.No.5994 of 2023

pendency of this writ petition, she died and her daughter was impleaded and was permitted to prosecute this writ petition by an order dated 14.09.2023.

WEB COPY

7. The first respondent has filed a counter affidavit. The first respondent has taken a stand that the petitioner had absented herself unauthorisedly and the medical ground that was pleaded by the petitioner is a sham in order to evade the transfer order passed against her. The first respondent has also taken a stand that the transfer order was passed on 17.09.2004 transferring the petitioner to the head office and the petitioner did not join the head office. She immediately went on leave and subsequently it was extended from time to time. Therefore, the charge against the petitioner was sufficiently proved. However, considering the facts and circumstances of the case, the first respondent had modified the punishment to one of stoppage of increment for a period of five years with cumulative effect. That apart, the petitioner was not in service from 04.03.2005 till the reinstatement order was passed by the first respondent in the year 2010. Hence, this period was treated as a break in service and the petitioner was reinstated only on humanitarian grounds. Accordingly, the first respondent has justified the order and has sought for the dismissal of this writ petition.

8. Heard Ms.S.Sridevi, learned counsel for the petitioner and Mr.V.Logesh, learned Standing counsel for the respondents 1 to 4.



W.P.No.5994 of 2022

9. The short issue that arises for consideration is as to whether the period from the date of suspension till the date of reinstatement must be considered to be break in service or this period can be regularized.

10. The grievance against the petitioner is that she did not obey the transfer order passed by the Managing Director of Tamil Nadu Housing Board and did not join the head office. In order to evade the order of transfer, she applied for Unearned leave on medical grounds on different spells for a total period of 105 days. That apart, even after the issuance of the fitness certificate by the duly constituted Medical Board, she did not join duty. Hence, the Board has taken a stand that the conduct of the petitioner clearly amounts to indiscipline and the medical grounds raised by the petitioner is only a ruse to get over her indiscipline in not complying with the order of transfer.

11. The first respondent has dealt with the charges against the petitioner and the reply given by the petitioner for those charges. The first respondent also considered the original order of removal from service passed by the disciplinary authority. Ultimately, the first respondent on considering the decision taken by the Board in the resolution passed on 18.12.2009, passed the order of modifying the punishment to stoppage of increment for a period of five years with cumulative effect. The first respondent also directed reinstatement of the petitioner into service of TNHB with immediate effect. However, the period between the date of removal and the



W.P.No.5994 of 2022

date of reinstatement was directed to be treated as break in service.

WEB COPY

12. The first respondent having ordered for reinstatement and having imposed a major penalty against the petitioner by directing stoppage of increment for a period of five years with cumulative effect, has virtually imposed punishment for the second time for the very same misconduct by directing the period between the date of suspension till the date of reinstatement to be treated as break in service. This portion of the order passed by the first respondent tantamounts to imposing yet another major punishment against the petitioner. If both the major punishments are taken into consideration, the very reinstatement of the petitioner into service will have no meaning and the petitioner will not be entitled to get any benefits.

13. In the light of the above discussion, this Court holds that the second portion of the order passed by the first respondent treating the period of suspension till the period of reinstatement as break in service amounts to second punishment for the same misconduct and it is disproportionate to the charges framed against the petitioner for which already a major punishment has been imposed by stoppage of increment for a period of five years with cumulative effect. In view of the same, the impugned proceedings of the first respondent dated 09.01.2010 is interfered insofar as the last portion of the order treating the period of suspension till the period of reinstatement as break in service, and the same is hereby set aside. As a sequitur, the said period shall be regularized and the attendant benefits shall be extended.



W.P.No.5994 of 2023

Appropriate orders shall be passed by the first respondent in this regard within a period of six weeks from the date of receipt of a copy of this order and the attendant benefits shall be paid to the daughter of the petitioner, who has been substituted as the petitioner, in the light of the demise of the original petitioner.

14. With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions is closed.

23.09.2024

Index : Yes/No
NCS : Yes/No
KST



W.P.No.5994 of 2022

To

- 1.The Managing Director
Tamil Nadu Housing Board
Anna Salai, Chennai 600 035.
- 2.The Administrative Officer
CMDA Building, Market Complex
Koyambedu, Chennai 600 107.
- 3.The Executive Engineer & ADO
Annanagar Division, TNHB Office
Cum Shopping Complex,
Thirumangalam, Chennai 600 101.
- 4.The DCAO (Pension), CMDA Building
Market Complex, Koyambedu
Chennai 600 107.



WEB COPY



W.P.No.5994 of 2023

N.ANAND VENKATESH, J.

KST

W.P.No.5994 of 2023

23.09.2024