



W.P.(MD)No.6201 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.6201 of 2024 &
W.M.P.(MD)No.5806 of 2024

N.Banumathi

... Petitioner

vs.

1.The District Collector,
Dindigul District,
At Dindigul.

2.Personal Assistant to District Collector,
Development Section,
Dindigul district.

3.The Block Development Officer,
Ottanchathiram Block,
Dindigul District.

4.The Panchayat President,
Ellapatti Panchayat,
Ottanchathiram Block,
Dindigul District.

5.Thi Panchayat President,
Puliyoor Natham Panchayat,
Ottanchathiram Block,
Dindigul District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the second respondent in Na.Ka.No.2243/2023 Ct9 dated 28.12.2023 and quash the same as illegal and consequently direct the respondents to disburse all the monetary benefits inclusive of arrears of salary, back wages and other benefits from the date of revocation of suspension (i.e.) 05.09.2008 till the joining date (i.e.) 02.06.2019, by regularizing her service for the above period.

For Petitioner : Mr.A.Balakrishnan

For Respondents : Mr.M.Lingadurai,
Special Government Pleader

ORDER

The petitioner has filed this writ petition praying to issue a Writ of Certiorarified Mandamus calling for the records in Na.Ka.No. 2243/2023 Ct9 dated 28.12.2023 on the file of the second respondent and quash the same and consequently direct the respondents to disburse all the monetary benefits inclusive of arrears of salary, back wages and other benefits from the date of revocation of suspension (i.e.) 05.09.2008 till the joining date (i.e.) 02.06.2019, by regularizing her service for the above period.



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2. The petitioner was kept under suspension for a period from 01.11.2007 to 05.09.2008 in view of certain allegations made against her. Even though the earlier suspension order was revoked on 05.09.2008 itself, the petitioner was transferred and directed to join duty in Ellapatti Panchayat and therefore she has filed a writ petition before this Court in W.P.(MD)No.9607 of 2008, challenging the transfer order and the same came to be dismissed on 17.11.2008. Thereafter, she has been continuously making representations to the respondents. She has also filed W.P.(MD)No.1537 of 2010 before this Court praying to reinstate her in service as Village Assistant at the Office of Ellapatti Panchayat, Dindigul District and this Court vide orders dated 17.04.2018 passed the following directions.

"9.In view of the said submission made by the learned Special Government Pleader, this Court is inclined to dispose of the writ petition with the following direction:-

"that the second respondent is directed to comply with the orders of the first respondent, dated 05.09.2008 in Na.Ka.No.



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4306/2007/A4 and correspondingly posting orders to be given to the petitioner at the third respondent village Panchayat, if such exercise has not already been undertaken. “

10.Needful as indicated above shall be done by the second respondent, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such order to be passed by the second respondent, the petitioner shall immediately report to the third respondent Panchayat and to join duty thereon.

11.With regard to the non-working period for all these years, it is open to the respondent especially the first and second respondents to consider the request of the petitioner as to how such non-working period shall be regularized as per the rule, which governing service conditions of the petitioner and such exercise also shall be taken by the first and second respondents, within a period of eight weeks thereafter. No costs. Consequently, M.P. (MD)No.1 of 2010 is also closed. ”



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3. Mr.A.Balakrishnan, learned counsel for the petitioner submitted that though this Court in W.P.(MD)No.1537 of 2010 has directed the respondents 1 and 2 therein to consider the request of the petitioner as to how such non-working period shall be regularized as per the rules, the impugned order has been passed stating that the petitioner did not have any leave to her credit and the period of absence from duty between 01.11.2007 and 01.07.2019 cannot be regularized.

4. At this juncture, it is to be noted that though W.P.(MD)No. 1537 of 2010 was numbered in the year 2010 itself, orders have been passed by this Court after a lapse of eight years and the petitioner did not show any urgency in that matter. Despite the petitioner was kept under suspension, so far, no disciplinary action has been taken by the respondents. Based on the allegations made in the suspension order, the petitioner was not even served with a Charge Memo. No criminal case is pending against the petitioner. However, the respondents have kept quiet for nearly 15 years.



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5. Mr.M.Lingadurai, learned Special Government Pleader appearing for the respondents submitted that the respondents are contemplating to initiate departmental action against the petitioner.

6. Such a submission on the side of the respondents cannot be countenanced and there is no reason attributed to the delay on the part of the respondents for initiating any fulfilled departmental action.

7. The learned Special Government Pleader further submitted that the period of absence cannot be regularized unless prior permission or leave has been obtained from the authorities concerned.

8. The petitioner's case will not fall under availing leave by giving previous notice, because, it is obviously for the reason that the petitioner was kept under suspension. Had the respondents initiated any departmental action and the allegations against the petitioner came to be proved, then it is possible for the respondents to consider the suspension period as 'out of service' or leave without loss of pay. The respondents



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also attributed to the decade old delay. When charges against the petitioner were not proved and no order of punishment is passed by the respondents, the period of suspension has to be regularized and at this remote point of time, the respondents cannot initiate departmental action only for the reason that the petitioner has come to this Court and prayed for some relief. Since the inaction on the part of the respondents also contributed to the huge delay, the petitioner cannot be penalized and her service has to be regularized, however, only with 50% of back wages.

9. In view of the above observations, this writ petition is **disposed of** and the respondents are directed to re-consider the issue and regularize the service of the petitioner. However, it is made clear that the petitioner is entitled to only 50% of the back wages. No costs. Consequently, the connected Miscellaneous Petition is closed.

03.04.2024

NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order
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R.N.MANJULA, J.

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