



W.P.(MD).No.19436 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.19436 of 2021

A.Vijayakumari

...Petitioner

Vs.

The Managing Director,
Chinthamani Co-operative Stores,
Puthur, Trichy-17.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondent to consider the petitioner reply cum representation dated 25.06.2021 for reinstating into service pending domestic enquiry for nearly 7 years and pay subsistence allowance from the date of suspension i.e. 23.12.2013 to till date, within a period stipulated by this Court.

For Petitioner : Mr.Ananda Samy
For R.Narayanan

For Respondent : Mr.M.Senthil Ayyanar,
Government Advocate



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ORDER

The prayer of the writ petition is as follows:

This writ petition has been filed to direct the respondent to consider the petitioner's reply cum representation dated 25.06.2021 for reinstating into service pending domestic enquiry for nearly 7 years and pay subsistence allowance from the date of suspension i.e. 23.12.2013 to till date, within a period stipulated by this Court.

2. The facts and circumstances which led to the filing of this writ petition are as follows:

2.1. The petitioner was appointed as an Assistant Pharmacist on 02.01.1998 under the respondent. From 01.04.1994 to August 2004, she managed Pharmacy Section with eight employees who assisted her in running the said Pharmacy. From August 2004 onwards, the respondent reduced the staff strength in a phased manner and in 2012, even the last salesman was transferred and the petitioner was forced to work all alone in the said Pharmacy 24/07. In the absence of necessary staff, the petitioner had to carry out all kind of work in the Pharmacy including sales, billing, submitting daily accounts, taking in stock, verification of stocks, taking accounts of time bound medicines etc.,. Hence, she could not manage



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the stock of lapsed medicines that were to be returned to the suppliers. The fault which cannot be attributed to the petitioner but exclusively on the respondent for not providing with adequate staff.

2.2. While so, a memorandum came to be issued against the petitioner by the respondent that there was a deficit in stock to the tune of Rs. 2,92,257.83/- (Rupees Two Lakhs Ninety Two Thousand Two Hundred and Fifty Seven rupees Eighty Three paisa only). Following which, on 23.12.2013, she was placed under suspension and a domestic enquiry came to be initiated against her on 03.01.2015 by the respondent by appointing an Enquiry Officer. The Enquiry Officer proceeded to conclude the enquiry without giving an opportunity of hearing and without furnishing necessary documents to the petitioner and passed an *ex parte* order, concluded the enquiry as against the petitioner by the report dated 20.06.2015. Subsequently, on 11.06.2011, a show cause notice came to be issued by the respondent seeking explanation for the enquiry report dated 20.06.2015. The petitioner duly made a reply-cum-representation on 25.06.2021, requiring the respondent to reinstate her in service irrespective of the domestic enquiry report which was conducted without giving her an opportunity of hearing and also requested to pay subsistence allowance with



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arrears. Since the same was not considered, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner Mr.Anandasamy submitted that, the petitioner was all along from 23.12.2013 till date kept under suspension without reinstatement and without providing subsistence allowance. As a result of which, she has been subjected to penurious condition and was also bedridden due to various ailments, in view of the poverty suffered by her in due course of time. The learned counsel for the petitioner categorically contended that, the respondent ought to have reinstated her and during the period of suspension ought to have provided her with subsistence allowance. As far as her claim for subsistence allowance is concerned, she has crossed her age of superannuation and pressed for allowing the writ petition.

4. The learned Government Advocate Mr.M.Senthil Ayyanar, relying upon the counter affidavit filed by the respondent submitted that, periodical audit came to be conducted as to the financial condition of the respondent cooperative Store and the petitioner being the store authority who was fully in-charge of the 2nd respondent store, a deficit to the tune of Rs.



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7,76,364.54/- (Rupees Seven Lakhs Seventy Six Thousand Three Hundred and Sixty Four rupees Fifty Four paisa only) came to be identified for the period from April 2012 to December 2013. In view of the said deficit, a charge memo came to be issued as against the petitioner on 19.05.2014 requiring the petitioner to make good the loss caused to the respondent stores to the tune of Rs.7,81,173.64/- (Rupees Seven Lakhs Eighty One Thousand One Hundred and Seventy Three rupees Sixty Four paisa only) within a period of 15 days from the date of receipt of a memo.

5. In view of the fact that the petitioner is bound to repay the said amount with interest and since she had not come forward to compensate the loss which she had caused to the respondents store. Though she submitted her reply to the charge memo on 04.09.2014, a domestic enquiry was ordered in a disciplinary proceeding initiated as against the petitioner. In the enquiry held as against the petitioner, the delinquencies were proved and hence, the Enquiry Officer concluded the enquiry by holding that, the charges were proved by a report dated 09.07.2015. Hence, a show cause notice came to be issued on 11.06.2011 calling upon the petitioner to submit her reply. As on 25.06.2021, while her reply was under consideration, she has filed this writ petition. That apart, the petitioner



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failed to produce no employment certificate and certificate of residence in head quarters. In view of the same, the respondent was not able to provide her with subsistence allowance.

6. Heard the learned counsels on either sides and carefully perused the materials available on record.

7. A careful consideration of the arguments made by either parties would reveal that on being visited by a charge memo dated 19.05.2014, the petitioner had submitted her reply on 04.09.2014, despite absence of the documents pertaining to the charges which were framed against her by the respondent. It can also be understood that the petitioner was neither provided with documents relating to the charges framed as against her nor given an opportunity of hearing in the domestic enquiry conducted by the Enquiry Officer which concluded by holding that the charges were proven by an enquiry report dated 09.07.2015. Even if the enquiry report has been submitted for appropriate action to the respondent by the Enquiry Officer as early as 09.07.2015, the show cause notice requiring explanation for the enquiry report dated 09.07.2015 came to be issued by the respondent on the petitioner after a lapse of six years, on 11.06.2021.



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8. The petitioner diligently submitted her reply within a period of 15 days on 26.06.2021 requiring the respondent to reinstate her into service and provide her with subsistence allowance and arrears. Since her reply was not considered for more than a period of six months, she was constrained to file this writ petition requiring the respondent to reinstate her into service with immediate effect. Had the respondent proceeded against her in the manner known to law, she would have been entitled to her service benefits without being imposed with a punishment of removal from service. Having not done the same, now the petitioner has crossed her age of superannuation, in fact at the time of filing this writ petition, she was in the verge of attaining the age of superannuation. The learned Government Advocate submitted that her case could be considered for reinstatement if she comes forward to make good the loss caused to the respondent, for which, the learned counsel for the petitioner submitted that the petitioner had been ready to compensate the loss as alleged by the respondent Society, even at the time of her suspension as early as in the year 2013 itself. Having not considered her request and having not paid the subsistence allowance during the period of suspension, the respondent's callousness has gravely affected the petitioner's existence and survival.



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9. This Court has dealt with a similar issue in Cont.P.No.213 of 2008 dated 01.06.2023. For better appreciation, the relevant portion of the same is extracted as follows:

“6. “5. The Hon'ble Supreme Court, in the judgment reported in the case of JAGDAMBA PRASAD SHUKLA v. STATE OF U.P.(2000) 7 S.C.C.90), has held that the payment of subsistence allowance to an employee under suspension is not a bounty, but it is fundamental right. The payment of subsistence allowance to the employee under suspension is to maintain his family and to attend the departmental enquiry. In such circumstances, we see no reason to interfere with the order passed by the learned Judge. The writ appeal fails and the same is dismissed.”

11.According to the above section “when the period of suspension exceed one-hundred and eighty days, the employee shall be entitled to receive wages in full, which the employee was drawing immediately before his suspension. The above said Act was amended on 15.05.2017, by which, the above provision providing the employees entitle to receive wages in full before his



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suspension was amended. Hence, according to the amended act, the petitioner is entitled only for 75% of the wages, which the employee was drawing immediately before his suspension.

12. .. It is crystal clear and evident that any amendment will have only prospective effect and will not have any retrospective effect. Moreover in this case, the enquiry or criminal proceeding was not prolonged beyond the period of 90 days for the reasons directly attributable to the employee and on this aspect also the petitioner is entitled for full backwages.”

10. Similarly, this Court has held in another W.P.No.43225 of 2016 dated 20.02.2017 and the relevant portion of the same is extracted as follows:

“3. ... Section 3(1) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981. For better appreciation, the same is extracted below:

From the above said provision, it is clear that during the suspension period, an employee is entitled to receive the subsistence allowance equivalent to 50% of the wages which the



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employee was drawing immediately before his suspension for the first ninety days from date of his suspension. ...

... in my view, insisting the third respondent to attend the enquiry for receipt of the subsistence allowance is not in consonance with the object of the above said provision, for, on account of his penury occasioned by non payment of subsistence allowance during the suspension period, he could not undertake journey to attend the proceedings from his home town. Therefore, in my view, nonpayment of subsistence allowance is inhuman act, which has unpropitious effect on the life of an employee. The very object of paying reduced salary to the employee during the period of suspension would be frustrated if the subsistence allowance is not paid, because, the subsistence allowance would mean supporting life especially minimum livelihood.”

11. In view of the same, this Court hereby direct the respondent to consider the petitioner's representation dated 25.06.2021 and notionally reinstate her into service from the next day of enquiry report, that is, from 10.07.2015 and thereafter pay her with subsistence allowance from the date of suspension till 09.07.2015 and provide her with all service benefits,



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deducting an amount of Rs.7,81,173.64/- (Rupees Seven Lakhs Eighty One Thousand One Hundred and Seventy Three rupees Sixty Four paisa only).

However, this Court is of the considered view that the interest to the said amount should be waived, in view of the conscious delay caused by the respondent in concluding the domestic enquiry.

12. With the above observations and directions, this writ petition stands disposed of. There shall be no order as to costs.

24.07.2024

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

To

The Managing Director,
Chinthamani Co-operative Stores,
Puthur, Trichy-17.



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L.VICTORIA GOWRI, J.

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