



W.P.(MD)No.9071 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2025

CORAM

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

W.P.(MD)No.9071 of 2019

and

W.M.P.(MD)No.7060 of 2019

K.Veluthai

... Petitioner

Vs.

1.The District Collector,
Collectorate,
Theni District, Theni.

2.The Child Development Project Officer,
Andipatti Panchayat Union,
Andipatti, Theni District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the first respondent order passed in Se.Mu.Naa.Kaa.No. 4586/अ/12014 dated 23.05.2016 and quash it consequently direct the respondents to pay the accumulated retirement benefits of 35 years within the time limit as fixed by this Court.

For Petitioner : Mr.G.M.Xavier

For Respondents : Mr.G.V.Vairam Santhosh,
Additional Government Pleader.



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ORDER

Under assail is the termination order passed by the first respondent dated 23.05.2016.

2.It is the case of the petitioner that he had worked as Anganvadi Worker initially and drawn remuneration of Rs.90/-. She was made as permanent worker and paid Rs.200/- per month with effect from 01.04.1991. Thereafter, her service was regularized with effect from 01.06.2004 as temporary Anganwadi Worker, in the Anganwadi Centre situated in Usilampatti village, Andipatti Panchayat Union. She was terminated from service vide order of the first respondent dated 23.05.2016 for the only reason of long absence from duty more specifically absence from 12.09.2015 onwards. Except long absence, no other charge memo involving any moral turpitude was issued on her during her 35 years of entire service. She informed her immediate supervisor and requested them to grant leave to take care of her daughter's prenatal period and leave the head quarters. But, she was shocked to note that in a period of her absence, various letter dated 22.01.2016, 03.02.2016, 07.03.2016 and 24.03.2016 were sent sent to he



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residential address and based on the said communications which were not served on her, she was terminated from service. Hence, writ petition.

3.The learned counsel appearing for the petitioner would submit that G.O.(Ms.)No.4 dated 05.01.1995 enumerates that to terminate the service of temporary service of employee who is absenting more than 6 months, but, it is subject to the Rule 18 of the Tamil Nadu State Employees (Discipline and Appeal) Rules. Therefore, terminating the services without conducting any departmental enquiry and without furnishing enquiry proceedings to the writ petitioner, passing a termination order is illegal and the same is liable to be set aside. He would submit that ex-parte enquiry proceedings is bad in law since non compliance of principles of natural justice and the order impugned needs to be set aside in the interest of justice.

4.Per contra, the learned Additional Government Pleader appearing for the respondent would submit that the petitioner absented herself unauthorizedly from 12.09.2015 and the same was causing problems to the Anganwadi Centre. Though the petitioner was directed to appear for enquiry, the petitioner did not appear before the authorities



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concerned. He would submit that summons were sent through postal and the same was returned back with an endorsement stating that the petitioner is not residing in the address. Even the enquiry conducted by the Village Administrative Officer revealed that the petitioner was not residing in the address for more than 7 months. He would submit that after following due procedure contemplated under law, the departmental action was initiated and during disciplinary proceedings, the petitioner has not availed the opportunity to defend her case and therefore, the order impugned came to be passed.

5.This Court has considered the rival submissions made on either side and perused the materials on record.

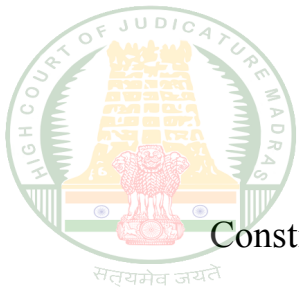
6.It is seen from the records that the petitioner was absent from 12.09.2015 onwards. In the order impugned dated 23.05.2016, it has been stated that the petitioner was summoned vide orders dated 22.01.2016, 03.02.2016 and 07.03.2016 and there was no information about the petitioner and thereafter, a letter dated 24.03.2016 was sent to the petitioner directing her to appear before the second respondent on 04.04.2016 at 03.00 pm. The petitioner did not turned up. Thereafter,



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postal letter was also returned stating that the petitioner is not residing in the address. It is further stated in the impugned order that based on G.O. (Ms.)No.4 dated 05.01.1995 and as per Rule 18 of the Tamil Nadu State Employees (Discipline and Appeal) Rules, the employee, who has absented for more than six months, he/she has to be terminated from the service. Accordingly, the writ petitioner has not turned up for more than six months and order of termination has been passed.

7.It is the main contention of the learned counsel for the petitioner that in the order impugned, it has not been mentioned that whether charge memo has been issued or whether enquiry officer was appointed to conduct departmental enquiry and the departmental enquiry was conducted in ex-parte. There is no second show cause notice issued to the petitioner before passing the order impugned as per the service Rules applicable to the petitioner. The learned counsel for the petitioner vehemently would submit that non-availability of the address for serving letter and the report submitted by the Village Administrative Officer are all concocted for the purpose of passing order impugned. The respondents have violated the procedure and the action of the first respondent passing order impugned is violation of the Article 311 of the



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Constitution of India. To strengthen his contention, he has relied upon the judgment of the Division Bench of this Court in W.A.(MD)No.605 of 2022 dated 22.07.2022 in a case of The District Collector, Sivagangai, Sivagangai District & Anr. Vs. K.R.Kanimozhi to show that the authorities have not conducted any enquiry before issuing order of termination except issuing some show cause notice and therefore, the principles of natural justice are clearly violated.

8.It is seen from the counter filed by the second respondent that the petitioner was not holding a civil post and hence, the protection under Article 311 of the Constitution of India is not available to her and in fact, Anganwadi Workers are only part-time employees employed under a scheme and that they were not brought into regular employment by the Government so far and that no rules were framed relating to pursuing of departmental action or the application of Tamil Nadu Civil Services (Discipline and Appeal) Rules and that being a part time employee. Further, it is also stated that as per G.O.(Ms)No.4 dated 05.01.1995 and reiterated in Govt.Letter No.152 dated 11.08.2003, on issuing notice and on receiving explanation, the authority can pass orders on the basis of the explanation within a period of 21 days.



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9.It is seen from the order impugned that the order of termination has been passed based on the Rule 18 of the Tamil Nadu State Employees (Discipline and Appeal) Rules. However, in the counter, it has been stated that the petitioner is not come under the purview of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. It is not the case of the respondents that initial show cause notice was issued to the petitioner calling for explanation for her unauthorized absence. It is also not the case of the respondents that enquiry officer was appointed to conduct enquiry after furnishing of charge and charges were also served to the petitioner or tried to serve same, thereafter, enquiry was conducted in ex-parte. The respondents have not filed any documents relating to the charges levelled as against the petitioner and the enquiry proceedings conducted. It is not the case of the respondents that the petitioner was frequently availed leave or unauthorized absent from service.

10.Considering the above facts and circumstances, the respondents have not provided reasonable opportunity to the petitioner to defend her case. It is stated in the counter affidavit that a report has been received from the Village Administrative Officer stating that the petitioner was not residing in the address for more than 7 months. The respondents have not place any acceptable documents with regard to the



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alleged misconduct committed by the petitioner. It is not in dispute that the petitioner had put in service of 35 years and hence, the order of termination from service is shockingly disproportionate to the delinquency committed by the petitioner. The procedures contemplated under service Rules was also not followed by the first respondent.

11.In the light of the above discussions, there is merit in this writ petition, which warrant to interfere with the order impugned. Accordingly, the order impugned dated 23.05.2016 is hereby quashed and this writ petition is allowed on the following terms:-

i) the petitioner is permitted to retire on superannuation and the respondents are directed to disburse all retirement benefits, which are eligible to the petitioner.

ii) the period of absence shall be treated as “No Work No Pay”.

iii) there shall be no order as to costs. Consequently connected miscellaneous petition is closed.

NCC : Yes / No

Index : Yes / No

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