

In the High Court of Judicature at Madras

Dated: 24.07.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.A.No.972 of 2015 and
M.P.No.1 of 2015

The Secretary to Government,
Education Department, Chennai

Appellant/Respondent

Vs.

Sivagnana Sambandam
(Retired Selection Grade Teacher)
K.K.Nagar Panchayat Union Middle School,
Manikandam Panchayat Union,
Trichy District

Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent Appeal to set aside the order dated 28.04.2014 made in W.P.No.6959 of 2006 (OA.No.1860 of 2004). Writ Petition having been Transferred from the file of the Tamilnadu Administrative Tribunal in O.A.1860/04 is filed to call for the records pertaining to the order of the Respondent in GO-(1-D) No.14 Education (G) Department, dated 29/03/2004 and to set aside the same and to direct the Respondent to treat the waiting period as compulsory wait (i.e) 06/04/1988 to 18/04/1993 and give all consequential benefits.

For Appellant : Mr.K.Karthikeyan
Government Advocate

JUDGMENT

[Judgment of the Court was Delivered By M.VENUGOPAL, J.]

The Appellant / Respondent has preferred the instant Writ Appeal as against the Order dated 28.04.2014 in W.P.No.6959 of 2006 (OA.No.1860 of 2004) passed by the Learned Single Judge.

2. While allowing the Writ Petition on 28.04.2014, the Learned Single Judge had quashed the Impugned Order by issuing a direction to the Appellant/Respondent to treat the Compulsory Wait Period of the Respondent/Petitioner between 06.04.1988 to 16.04.1993 as duty period with all consequential and monetary benefits. Further, the Learned Single Judge had passed an Order to the effect that the Respondent/Petitioner shall be sanctioned and disbursed the amount due in question within 12 weeks from the date of receipt of copy of the Order.

3.The Learned Government Advocate for the Appellant urges before this Court that the Learned Single Judge had failed to consider the fact that the Authorities concerned only after examining the issue whether there was an absolute necessity to

treat the period in question as compulsory wait as per Fundamental Rules based on the available records had passed order regulating the said period as Extraordinary Leave Without Allowance and without Medical Certificate.

4.The Learned Government Advocate for the Appellant contends that the Respondent/Petitioner, after he was on 'Unearned Leave on Private Affairs and Extraordinary Leave without Allowance from 08.02.1986' had applied for permission to join duty on 06.04.1988. Further, the Medical Officer, Dr.V.Gopalan, Civil Assistant Surgeon, Tanjavur, who issued Certificate dated 09.04.1988 had certified that the Respondent/Petitioner was under treatment for 'Abdominal Tuberculosis and Ulcerative Colitis' from 05.02.1986 to 09.04.1988 and that he was improved and physically fit to join duty from 10.04.1988. Added further, the Respondent/Petitioner had applied for permission to join duty on 06.04.1988 itself, ie., three days prior to the date on which he was certified by the Doctor to be fit to join duty. Presumably, in view of this, the Respondent/Petitioner was referred to the Medical Board for verification. However, these facts were not considered by the Learned Single Judge at the time of passing the Order in the Writ Petition.

5.The Learned Government Advocate for the Appellant forcefully submits that when the Respondent/Petitioner was instructed to appear before the Medical Board, Tanjavur on 06.04.1988 and when he had not received the call letter from the Medical Board and if he had the inclination to work he should have approached the District Elementary Educational Officer, Tanjavur (Competent Authority) and informed him of the position. Furthermore, he ought to have sought the permission of the District Elementary Educational Officer to allow him to join duty, instead, he waited till 15.03.1993 viz., for 5 years without taking any sincere efforts to approach the competent authority for joining duty.

6.That apart, it is represented on behalf of the Appellant that the Learned Single Judge should have considered that the District Elementary Educational Officer, Tanjavur in his proceedings dated 16.04.1993 accepted the Application of the Respondent/Petitioner dated 15.03.1993 requesting permission to join duty. His explanation that he was not able to appear before the Medical Board since he had not received any call letter from the Medical Board and perusing all the Medical Certificates produced by him had directed him to join immediately for producing the fitness certificate from the Medical Officer, concerned.

7.The Learned Government Advocate for the Appellant strenuously contends that the Learned Single Judge had failed to take into account as per ruling (3) of Fundamental Rules, 9(6)(b) when a Government Servant is compulsorily wait for Orders of Posting, such period of waiting shall be treated as duty and during such period he shall be eligible to draw the pay plus special pay, which would have been drawn had he continued in the post he held immediately before the period of compulsory wait. However, in the instant case, the Respondent was not made to wait compulsorily from 06.04.1988 to 16.04.1993 for Orders of Postings and he was only

directed to appear before the Medical Board for certification of his health condition on 06.04.1988.

8. According to the Learned Government Advocate for the Appellant, the Learned Single Judge should have considered that in terms of the Orders issued in G.O.(Ms).No.1046, Personnel and Administrative Reforms Department dated 13.11.1987, no Government Servant, (permanent and approved professional) who had completed five years of service shall be granted leave on any kind for a continuous period exceeding one year and if he does not resume duty after availing leave, he may be removed from service. But, in the present case, the Respondent/Petitioner had accepted in his representation dated 01.11.2001 that in view of the afore said Government Order dated 13.11.1987, he was called for duty and he being aware of the fact that if he fail to join duty, he shall be removed from service as per orders issued in the said Government Order and indeed, he had applied to join duty on 06.04.1988. As such, it is evident that the Respondent/Petitioner was fully aware of the consequences if he does not join duty, based on the Orders of the afore said Government Order.

9. The main grievance of the Appellant is that the Respondent/Petitioner had kept quiet for nearly five years without taking any effort to join duty, which points that he was absent from duty unauthorisedly for five years. As such, he cannot claim the said period as compulsory wait when factually he was not made to wait compulsorily for the orders of postings.

10. The Learned Government Advocate for the Appellant brings it to the notice of this Court that his Leave Period was regulated as 'Leave on Loss of Pay' with Medical Certificate and pay fixation was made notionally and also the monetary benefits were granted to the Respondent. Later, only during audit inspection, the regulation of the said period of five years and ten days as Extraordinary Leave Without Allowance with 'Medical Certificate' was objected by the 'Internal Audit' and the said period was regulated as Extraordinary Leave without Allowances without Medical Certificate by the Appellant in G.O.(ID) No.74, School Education Department dated 29.03.2004.

11. The Learned Government Advocate for the Appellant submits that the Learned Single Judge had failed to take into account that consequent on the Regulation of the Period as 'Extraordinary Leave' without Allowance without Medical Certificate, the authority concerned was instructed to deduct said excess amount paid to the Respondent/Petitioner and the said factual position was informed to the Respondent/Petitioner. Apart from that, the Respondent/Petitioner consented to deduct the said amount from his gratuity and accordingly the said amount was recovered. Therefore, the Respondent/Petitioner cannot now claim that the period in question has to be treated as "Compulsory Wait" and the same is only an after thought.

12. At the outset, it is to be pointed out that it is the plea of the Respondent/Petitioner that on 05.02.1986, he applied for

medical leave on loss of pay and the same was extended time to time, viz., up to 28.03.1988 and thereafter on 28.03.1988, he had applied for posting and the same was given by the Appellant on 16.04.1993. In this regard, it is the categorical stand of the Respondent that in terms of F.R.9(6) Ruling(3) "if posting was given belatedly due to administrative reasons, then, that period must be treated as duty period".

13. In the instant case, the Medical Board was not constituted nor the Respondent was directed to appear before the Medical Board for the purpose of examination. As a matter of fact, he waited for longer duration only when he approached the District Educational Officer, again, the said Officer accepted his extension and issued posting orders. Further, he joined duty on the same day.

14. Suffice it for this Court to unerringly point out that the Respondent/Petitioner's case comes within the ambit of ruling (3) of FR 9(6). If that be the case, the compulsory wait period of the Respondent shall be treated as on duty with consequential monetary benefits to be paid by him.

15. As such, the Impugned Order dated 29.03.2004 in G.O.(1D) No.74 School Education (G-1) Department, Chennai -9 passed by the Secretary to Government is not legally tenable in the considered opinion of this Court. Therefore, on going through the Order dated 28.04.2014 passed by the Learned Single Judge in W.P.No.6959 of 2006 (filed by the Respondent/Petitioner), this Court is of the considered opinion that the same does not require any interference in the hands of this Court because of the reason that the said Order is a flawless one. Consequently the Writ Appeal fails.

In fine, the Writ Appeal is dismissed leaving the parties to bear their own costs and the connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

ssd

To

Sivagnana Sambandam

(Retired Selection Grade Teacher)

K.K.Nagar Panchayat Union Middle School,

Manikandam Panchayat Union,

Trichy District

+1 cc to Government Pleader, sr.38030.

W.A.No.972 of 2015 and
M.P.No.1 of 2015

vsn(co), kra(11/08)