

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2015

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.NO. 11788 OF 2007 (T)
(O.A.NO.5724 of 2002)

C. Ramasundaram

.. Petitioner

Vs.

The Revenue Divisional Officer
Dharmapuri
Dharmapuri District.

... Respondent

PRAYER: This Writ petition came to be numbered under Article 226 of the Constitution of India by way of transfer of O.A.No. 5724 of 2002 from the file of the Tamil Nadu Administrative Tribunal praying for issuance of a Writ of Mandamus, to direct the respondent to treat the transfer period from 13.09.2001 to 07.03.2002 as Compulsory Wait and confer all the consequential benefits to the applicant and pass further orders.

For Petitioner : Mr. P. Ganesan

For Respondent : Mr. R. Govindasamy, AGP

O R D E R

Mr. C. Ramasundaram, a Village Administrative Officer, filed O.A. No.5724 of 2002 before learned Tamil Nadu Administrative Tribunal seeking for a direction to the respondent, to treat the transfer period from 13.09.2001 to 07.03.2002 as Compulsory Wait and confer all the consequential benefits to him, since the said period has been treated as loss of pay. Later, the matter came on transfer to this Court, re-numbered as W.P. No.11788/2007.

2. Learned counsel appearing for the petitioner would submit that the petitioner was appointed by Tamil Nadu Public Service Commission as a Village Administrative Officer on 14.01.1988 and got his posting at Vellaigoundanpalayam. After 10 years he was transferred to Virupatchipuram Village on 01.06.1998. After three years he was once again transferred to Puzhuthikarai Village on 11.09.2001. The said transfer took place in the middle of the academic year. Since he was having a physically handicapped daughter

with 75% disability and the petitioner being her father used to carry her to the school and bring her back to the house every day, challenged the transfer order by filing O.A. No.5945/2001 before the learned Tamil Nadu Administrative Tribunal, on the ground that the transfer order passed during the middle of the academic year had caused great prejudice to his physically handicapped daughter, who is suffering from 75% disability and as a result she may not be able to attend her X Standard Public examination. Learned Tribunal accepting the case of the petitioner, granted an order of stay on 13.09.2001, with a specific direction that the petitioner should join in the transferred place on 01.06.2002. However, against the said order, the respondent filed a Writ Petition before this Court in W.P. No. 23559/2001 and this Court granted an order of stay initially on 30.11.2001 and subsequently the same was vacated on 21.01.2002 by dismissing the Writ Petition, based on the photographs of his daughter produced by the petitioner, showing that she is physically handicapped and is incapable of walking on her own and thereby she needs the assistance of her father to take her to School during the Public Examination during March - April 2002. Thereafter, the petitioner was allowed to join duty on 08.03.2002 in the old place. As the said period was not regularised, he made a representation on 03.04.2002 to the respondent, to treat the period from 13.09.2001 to 07.03.2002 as compulsory wait. But the respondent had not passed any order. As the said period was treated as leave on loss of pay, he has sought for a direction to regularise the period as compulsory wait, when he was enjoying the benefit of the orders granted by both, the learned Tamil Nadu Administrative Tribunal in O.A. No. 5945 /2001 and by this Court in W.P. No.23559/ 2001.

3. Concluding his argument, learned counsel would submit that since the respondent transferred the petitioner during the middle of the academic year, that too when his physically handicapped daughter R. Kayalvizhi was unable to go to school to attend the classes and write the X Standard Public examination, the case of the petitioner was accepted by learned Tribunal and subsequently being challenged by the respondent, this Court also accepted the case of the petitioner. Finally, he joined duty on 08.03.2002. Therefore, as the petitioner was enjoying the benefit of stay of the order passed by both the Forums during such period, the period from 13.09.2001 to 07.03.2002 has to be regularised as duty period.

4. A detailed counter affidavit has been filed. Learned Additional Government Pleader appearing for the respondents repeating the reasons given in the reply affidavit submitted that the Government's basic policy is no work no pay and the same is applicable to the present case also. The break period of service from 13.09.2001 to 07.03.2002 cannot be treated as a duty period since the petitioner had not worked in any village during the said period. Therefore, he is not entitled to press the prayer. Adding further he stated that the petitioner was provided with a posting

order to work in a 'B' group Village on 11.09.2001, when he was transferred to a particular place, but citing his inconvenience he has approached the Court. As a result, there was delay on the part of the petitioner to join duty and the delay is not on the part of the Government. When he was not ready to work in 'B' village, he has no right at all to claim the break of service period, as duty. Compulsory Wait could be given only to those cases where the delay or wait was due to administrative reasons. If this period is ordered to be treated as duty, it will lead to heavy monetary loss to the Government.

5. But the case of the petitioner is different from the one contended by learned Additional Government Pleader. When the petitioner was serving as a Village Administrative Officer in Virupatchipuram Village, an order was passed transferring him to Puzhuthikarai Village on 11.09.2001, during the middle of the academic year. His physically handicapped daughter, who suffers from 75% physical disability, was studying X Standard. The petitioner as a father, used to take her physically to the school every day in the morning and used to bring her back home, as his daughter is incapable of moving on her own, therefore, the petitioner approached the learned Tamil Nadu Administrative Tribunal by filing O.A. No. 5945/2001, citing the reasons that the transfer order has been passed in the middle of the academic year and without his assistance, his physically handicapped daughter, who suffers 75% disability would not be in a position to attend the X Standard Public Examination. He also filed relevant photographs showing the physical disability of his daughter. Accepting the case of the petitioner, learned Tamil Nadu Administrative Tribunal passed its final order on 13.09.2001 granting stay of the transfer order, with a specific direction to the petitioner to join duty in the transferred place on 01.06.2002. As against the order of learned Tribunal, the respondent filed W.P. No. 23559/2001. Although initially stay was granted on 30.11.2001, subsequently on 21.01.2002, this Court passed the following order:

"We vacate the interim order after having seen the photograph of the daughter of the petitioner which shows her to be physically handicapped and is incapable of movement of her own and who needs assistance and who is to take a public examination during March-April 2002. The interim order of stay granted on 30.11.2001 is vacated."

Thereafter, the Revenue Divisional Officer, Dharmapuri, the respondent herein, in his proceedings Roc. No. 9363/2001/A3 dated 05.03.2002, re-posted the petitioner as Village Administrative Officer at Virupatchipuram Village, with a direction to join duty forthwith. Immediately the petitioner also joined duty. Therefore, the petitioner was enjoying the order of stay from the Tribunal in O.A. No.5945/2001 granted on 13.09.2001 and the same was also

confirmed by this Court in W.P. No. 23559/2001 on 21.01.2002 and only thereafter the posting order was passed on 05.03.2002. Immediately thereafter, the petitioner joined duty on 08.03.2002. Hence, the period commencing from 13.09.2001 to 07.03.2002 needs to be treated as Compulsory Wait.

6. Accordingly, the Writ Petition is allowed. It is needless to mention that the petitioner is entitled to all the consequential benefits thereof. The respondent is directed to pass orders within a period of six weeks from the date of receipt of a copy of this order. No order as to costs.

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-s/d-

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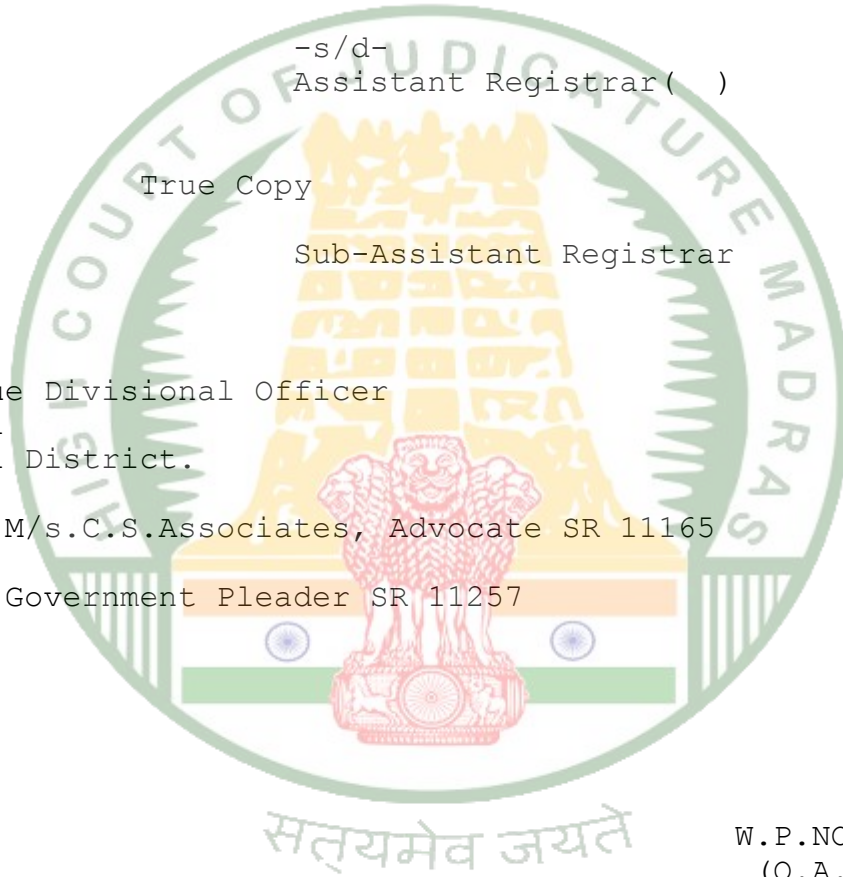
To

The Revenue Divisional Officer
Dharmapuri
Dharmapuri District.

+ 1 cc to M/s.C.S.Associates, Advocate SR 11165

+ 1 cc to Government Pleader SR 11257

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