

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2015

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.NO. 16781 OF 2007
(O.A.NO. 3169 of 2003)

S. Narayanan

.. Petitioner

Vs.

The Head Master
Government Higher Secondary School
Kodambakkam
Chennai - 600 024.

... 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.3169 of 2003 from the file of the Tamil Nadu Administrative Tribunal praying for a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the respondent in Mu. Mu. No.397/B/2003 dated 7.7.2003 and quash the same and direct the respondent to treat the leave from 12.08.2002 to 2.1.2003 as Unearned Leave on Medical Certificate and the leave from 6.1.2003 to 14.1.2003 and 3.6.2003 to 30.6.2003 as Earned Leave.

For Petitioner : Mr. B. Rajendran

For Respondent : Mr. N. Srinivasan,
Additional Government Pleader

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O R D E R

This Writ Petition has been filed by Mr. S. Narayanan, challenging the impugned order of recovery dated 07.07.2013 passed by the respondent in Mu. Mu. No.397/B/2003, treating the leave period from 12.08.2002 to 2.1.2003 as Unearned Leave on Medical Certificate and the leave from 6.1.2003 to 14.1.2003 and 3.6.2003

to 30.6.2003 as Earned Leave, on the ground that before passing the impugned order no notice was given to the petitioner.

2. Learned counsel appearing for the petitioner contended that the petitioner was not given any opportunity to show cause notice against the modification of the leave in the impugned order, which is in violation of principles of natural justice hence the same is liable to be dismissed. It is also his contention that when the petitioner was serving as an Upgraded Superintendent, Government Higher Secondary School, Kodambakkam in Chennai, he had applied for Unearned Leave on Medical Certificate from 12.08.2002 to 2.1.2003, Earned Leave from 6.1.2003 to 14.1.2003 and 3.6.2003 to 30.6.2003. As he was eligible for the said leave, entries were also made in the Attendance Register and the Service Register of the petitioner to that effect. Accepting his request, the petitioner was paid with the salary and other allowances for the said period. However, all of a sudden, the Headmaster of the Government Higher Secondary School, the respondent herein, has issued the impugned order, treating the said leave from 12.08.2002 to 02.01.2003 as leave on Half-Pay on Private Affair and the other leave from 06.01.2003 to 14.01.2003 and 03.06.2003 to 30.06.2003 (37 days) as leave on Loss of Pay on Medical Certificate. Further, in the impugned order the petitioner was directed to remit a sum of Rs. 20,1855.50 being the pay already paid to him for the said leave period. The said order is passed without notice and the same is liable to be interfered with.

3. A detailed counter affidavit has been filed. Further, Learned Additional Government Pleader appearing for the respondent contended that the claim made by the petitioner that he was eligible for Earned Leave for the period from 6.1.2003 to 14.1.2003 and 3.6.2003 to 30.6.2003, cannot be accepted. The reason is, when he was in-charge of the office, he has wrongly credited Earned Leave to his account and that apart, as per his own calculation the balance of Earned Leave on his credit was only 2 days as on 25.11.2002 (SR pg. No.35) and 2 days Medical Leave as on 29.11.2002 (SR pg. No.51). Therefore, when he has got a balance of only 2 days Earned Leave as per his own calculation, it became impossible to sanction 37 days Earned Leave from 06.01.2003 to 14.01.2003 and 03.06.2003 to 30.06.2003, as such when the Earned Leave has been sanctioned without looking into the records, after perusing the registers it has come to light that the petitioner had only 2 days Earned Leave to his balance. Therefore, it became impossible to sanction 37 days Earned Leave to the petitioner from 6.1.2003 to 14.1.2003 and 3.6.2003 to 30.6.2003. In view of that the impugned order was passed.

4. Nodoubt, the impugned order appears to have been passed without notice, however, the reason is perfectly in order. But the petitioner is not in service today. Therefore, even if the matter is remanded, with a direction to the respondent to give notice to the petitioner, no purpose would be served as it would be only an eye-wash. As per the counter affidavit filed, the respondent has not properly refuted by filing a rejoinder. Learned counsel for the petitioner also fairly stated that the petitioner is not in touch with him for quite long time.

5. In view of the above, this Court finding no merits in the petition, is not inclined to accept the prayer of the writ petitioner. Accordingly, the Writ Petition fails and the same is dismissed. No order as to costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

avr

To

The Head Master
Government Higher Secondary School
Kodambakkam
Chennai - 600 024.

1 cc to m/s.P. Rajendran, Advocate, Sr. 301

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