

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-01-2016

CORAM:

THE HON'BLE MR.JUSTICE SATISH K.AGNIHOTRI
AND
THE HON'BLE DR.JUSTICE P.DEVADASS

Writ Appeal No.1817 of 2015
and
M.P.No.1 of 2015

1. State Represented by
The Secretary to Government,
Finance Department,
Fort St. George,
Madras-9.
 2. The Deputy Secretary,
Finance Department,
Government of Tamil Nadu,
Madras-9.
 3. The Chief Internal Auditor and
Chief Auditor of Statutory Boards,
124, Thiagaraya Salai,
Madras-18.
- ... APPELLANTS

K.Pandi,
Deputy Director (Rtd.),
103, Peraiyur Salai,
Usilampatti,
Madurai District.

Vs.

सत्यमेव जयते

... RESPONDENT

Appeal filed under Clause 15 of Letters Patent against
the order dated 30.9.2009 made in W.P.No.39866 of 2006
(O.A.No.1599 of 1998) on the file of this Court.

W.P.No.39866 of 2006 : Petition filed under Article 226 of the
Constitution of India, praying for the issue of a Writ of

Certiorarified Mandamus to call for the records made in the impugned order dt.17.4.95 made in Lr.No.82102/L.F./94 passed by the 1st respondent communicated by the 3rd respondent by letter dated 18.12.97 to the applicant quash the same and to further direct the respondents to treat the period from 1.1.94 to 2.8.94 (214 days) as period in service of the applicant, pay necessary emoluments with all other monetary benefits as per the service rules.

For Appellants : Mrs.A.Srijayanthi,
Special Government Pleader

For Respondent : Ms.A.V.Bharathi

JUDGMENT

(JUDGMENT OF THE COURT WAS MADE BY DR.P.DEVADASS, J.)

This Writ Appeal arises out of the order of the Writ Court dated 30.9.2009 passed in W.P.No.39866 of 2006.

2. The respondent, namely, K.Pandi was working as Inspector in the Local Fund Audit Department. He was deputed as Assistant Stock Verification Officer to Madurai Corporation for a period of 3 years. The third appellant, namely, the Chief Internal Auditor passed orders repatriating him to his parent Department as he is a native of Madurai and consequently Commissioner, Madurai Corporation relieved him from his post.

3. The respondent challenged his repatriation in O.A.No.6576 of 1993 before the Tamil Nadu Administrative Tribunal, Chennai. On 9.12.1993, the Tribunal granted him interim relief and directed issuing him posting orders to join the Madurai Corporation. Subsequently, on 15.4.1994, the said O.A. itself was finally disposed of holding that he is entitled to serve the normal term of 3 years in Madurai Corporation.

4. However, only on 3.8.1994, he was given postings to join Madurai Corporation. Accordingly, he joined. He was not paid for the period from 1.1.1994 to 2.8.1994, namely, from the date of interim order passed by the Tribunal till the posting order was issued to him. He claimed wages for the said period.

5. On 17.4.1995, the second appellant/Finance Department passed orders adjusting the said period towards his earned leave, unearned leave on private affairs and leave on loss of pay. In the circumstances, he filed O.A. No.1599 of 1998 before the Tamil Nadu Administrative Tribunal, Chennai challenging the said orders contending that he is not responsible for his non-employment during the said period and the Department alone is responsible for the same, thus, the Department is bound to pay him salary for the said period. The Department opposed it.

6. Consequent upon the abolition of the State Administrative Tribunal, the said O.A. has been transferred to this Court. It was numbered as W.P.No.39866 of 2006.

7. After hearing both sides, on 30.9.2009, the Writ Court ordered as under:-

"19. In view of the settled legal positions, in cases where transfer orders are finally set aside by the Court, there will be no difficulty in ordering the official respondents to regularise the said period as spent on duty with wages. Since in those cases once the order of transfer is set aside, it is as if there is no order in the eye of law and consequently, the employee may stake his claim for wages. Therefore, W.P.No.39866 of 2006 (O.A.No.1599 of 1998) will stand allowed. The respondents are directed to pass appropriate orders on the claim made by the petitioner within a period of two months from the date of receipt of this order."

8. Challenging the said order, the Government has directed this Writ Appeal.

9. According to the learned Special Government Pleader, for the period from 1.1.1994 to 2.8.1994, the respondent had not at all worked. In the circumstances, on the principle of 'No Work No Pay', he is not entitled to salary for the said period, thus, the direction of the Writ Court is not in accordance with law.

10. On the other hand, the learned counsel appearing for the respondent contended that there was no refusal on the part of the respondent to work. Actually, there was no offer of job consequent upon the orders of the Tribunal when the respondent is ready to work, in such circumstances, the appellants are bound to pay him salary for his period of non-employment occasioned by the Department.

11. We have anxiously considered the rival submissions, perused the impugned order of the Writ Court and the materials on record.

12. When an order of transfer, repatriation order relieving a person from his job is set aside by the Court/Tribunal, it is the duty of the employer to provide him job, permit him to join duty. If it did not do so, it has to pay him salary for his non-employment. It is a case of non-implementation of Tribunal's orders. In such circumstances, the principle of 'No Work No Pay' will not arise.

13. In the instant case, the impugned order of the Government transferring the respondent from Madurai Corporation to Chennai was stayed by the Tribunal by way of an interim order on 9.12.1993 and a direction was also issued to post him in Madurai Corporation and finally on 15.4.1994, the O.A. itself was allowed in favour of the respondent and the order of his transfer from Madurai to Chennai has been set aside and the Government has been directed to allow him to complete his normal term of 3 years of deputation in Madurai Corporation.

14. Admittedly, he was given posting orders only on 3.8.1994. Admittedly, from 1.1.1994 till 2.8.1994, he was not given posting orders to join Madurai Corporation in spite of the interim order and final orders of the Tribunal. As per the Tribunal's orders, the Department is bound to give him posting to join Madurai Corporation. Thus, for his non-employment for the period from 1.1.1994 to 2.8.1994, the respondent cannot be blamed. He is ready to work, but he was not given work by the Department. So, for his non-employment during the said period, the Department alone is responsible. Hence, for the said period, as rightly held by the Writ Court, the respondent is entitled to stake claim for salary.

15. In view of the foregoing, this Writ Appeal fails and it is dismissed. Within two months from the date of receipt of a copy of this order, the appellants shall pass orders on his claim for salary made by the respondent. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Principal Secretary to Government,
Finance Department,
Fort St. George,
Secretariat,
Chennai-9.
2. The Deputy Secretary to Government,
Finance Department,
Fort St. George,
Secretariat,
Chennai-9.
3. The Chief Internal Auditor and
Chief Auditor of Statutory Boards,
124, Thiagaraya Salai,
Madras-18.

+1cc to Mr.A.V.Bharathi, Advocate, S.R.No.1174

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VD(CO)
CA(25/01/2016)

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