

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.15026 of 2011

R.Shanmugasundaram

.. Petitioner

Vs

The District Elementary Educational Officer,
Raja Street,
Coimbatore - 1.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records relating to the order of the respondent dated 08.02.2011 in Na.Ka.No.7485/A1/2010 and the order of the respondent dated 12.04.2011 in Moo.Mu.No.1103/A1/2011 and quash the same and consequently direct the respondent to treat the period of suspension of the petitioner as earned leave.

For Petitioner : Mr.K.Selvaraj

For Respondent : Mrs.M.E.Raniselvam
Addl. Government Pleader

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of certiorarified mandamus to call for the records relating to the order of the respondent dated 08.02.2011 in Na.Ka.No.7485/A1/2010 and the order of the respondent dated 12.04.2011 in Moo.Mu.No.1103/A1/2011 and quash the same and to consequently direct the respondent to treat the period of suspension of the petitioner as earned leave.

2. The facts in a nutshell are as under: The petitioner was appointed as Junior Assistant in the Higher Secondary School, Samigoundanpapalayam, Palladam, in the year 1990. Thereafter, he was transferred to the office of the Assistant Educational Officer, Avinashi in the year 1991.

3. It is averred that since the handwriting of the petitioner was good, his colleague, i.e., Suresh, requested the petitioner to help him in writing cheques and the petitioner, accordingly, wrote about 50 cheques, which were disbursed to the beneficiaries by the section concerned.

4. It is alleged that there were irregularities in the disbursement of the benefits to eligible persons and, therefore, the petitioner was placed under suspension by order dated 24.03.1995. The Disciplinary Authority, after conducting enquiry, imposed punishment of stoppage of increment for a period of one year with cumulative effect by order dated 29.06.2000.

5. Calling in question the above said order dated 29.06.2000, the petitioner filed W.P.No.11855 of 2006 and seeking regularization of the services of the petitioner for the period between 23.03.1995 and 06.11.1995 by treating the said period as period spent on duty, the petitioner filed W.P.No.8602 of 2006.

6. This Court, by order dated 18.11.2010, dismissed W.P.No.11855 of 2006, by confirming the punishment imposed by the respondent. However, W.P.No.8602 of 2006 was disposed of by directing the respondent to take necessary proceedings in accordance with Rule 54-B(5) of the Fundamental Rules to quantify the pay and allowances to which the petitioner would be entitled to for the period of suspension, after giving opportunity to the petitioner as to the quantification made.

7. It is stated that the respondent did not quantify pay and allowance payable to the petitioner as per Rule 54-B(5) of the Fundamental Rules and did not give opportunity to the petitioner as to the quantification made. The respondent, by order dated 08.02.2011, stated that the total period of suspension is 229 days, out of which 90 days was treated as unearned leave on private affairs and 139 days was treated as leave on loss of pay. It is the case of the petitioner that the respondent, before passing the said order, did not give opportunity to the petitioner to put forth his case as per Rule 54-B(5) of the Fundamental Rules and as per the order dated 18.11.2010 passed by this Court.

8. It is further stated that the petitioner made a representation on 04.03.2011 to the respondent requesting him to treat the entire period of suspension as period spent on duty with pay and allowances for the said period.

The respondent, by order dated 12.04.2011 (signed on 06.05.2011), reiterated the earlier order dated 08.02.2011 and gave reasons for passing the earlier order dated 08.02.2011. It is the specific case of the petitioner that before passing the two impugned order, no notice was issued to the petitioner.

9. In this backdrop, the present writ petition is filed for the relief stated supra.

10. The learned counsel appearing on behalf of the petitioner contended that impugned orders passed by the respondent run counter to Rule 54-B(5) of the Fundamental Rules and the direction of this Court dated 18.11.2010 passed in W.P.No.8602 of 2006, more particularly in gross violation of the principles of natural justice.

11. He further contended that in respect of similarly placed person, i.e., Suresh, by order dated 10.11.2010, the respondent had treated the entire period of suspension as earned leave, whereas the petitioner is arbitrarily discriminated.

12. Per contra, the learned Additional Government Pleader appearing on behalf of the respondent contended that since 90 days was treated as unearned leave on private affairs, the petitioner is entitled to draw pay and allowance for that period and since there was no other kind of leave in his leave account, he had been sanctioned Extra Ordinary Leave for 139 days without pay and allowances and, therefore, there is no infirmity in the orders passed by the respondent.

13. He further contended that the said Suresh, drawing reference to whom the petitioner claims discrimination, had earned leave in his account unlike the petitioner, who had no leave, and, therefore, there is no discrimination as alleged by the petitioner.

14. I heard Mr.K.Selvaraj, learned counsel for the petitioner and Mrs.M.E.Raniselvam, learned Additional Government Pleader for the respondent and perused the documents available on record.

15. At the outset, it is apposite to refer to the direction issued by this Court on 18.11.2010, while disposing of W.P.No.8602 of 2006, which reads thus:

"9. the competent authority herein viz., the third respondent herein is directed to take necessary proceedings in accordance with

said Fundamental Rule to quantify the pay and allowances to which the petitioner would be entitled to for the period of suspension, after giving opportunity to the petitioner as to the quantification made. Thereupon, the respondents shall dispose of the representation of the petitioner within a period of sixty days from the date of such quantification."

16. Before advertng to the merits of the matter, it is apposite to refer to Rule 54-B(1)(5) of the Fundamental Rules, which reads thus:

"Rule 54-B(1)(5). In cases other than those falling under sub-rules (2) and (3) the Government servant shall subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the full pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period which, in no case shall exceed sixty days from the date on which the notice has been served as may be specified in the notice."

17. A reading of the above provision makes it amply clear that the competent authority shall determine, after giving notice to the government servant of the quantum proposed and after considering the representation. In the case on hand, even while passing the order dated 08.02.2011, the respondent indicated that out of 229 days, 90 days is treated as unearned leave on private affairs and 139 days is treated as leave on loss of pay. It is beyond any cavil that before passing such order, the respondent had not given an opportunity to the petitioner in the form of notice. Therefore, the said order dated 8.2.2011 passed by the respondent is not in consonance with Rule 54-B(1)(5) of the Fundamental Rules and the order of this Court dated 18.11.2010 passed in W.P.No.8602 of 2006.

18. It is also not in dispute that pursuant to the passing of the above said order dated 08.02.2011, the petitioner made a representation to the respondent on 04.03.2011 and the respondent by order dated 12.04.2011, which is 06.05.2011, reiterated the reasons stated in the

order dated 08.02.2011. The said act of the respondent would in no way qualify the stipulations mandated in Rule 54-B(1)(5) of the Fundamental Rules and the order of this Court dated 18.11.2010 passed in W.P.No.8602 of 2006. Therefore, on the sole ground of violation of principles of natural justice, the impugned orders are liable to be set aside.

19. For the foregoing reasons, this writ petition is allowed and the orders passed by the respondent in Na.Ka.No.7485/A1/2010 dated 08.02.2011 and in Moo.Mu.No.1103/A1/2011 dated 12.04.2011 are set aside and the matter is remanded to the respondent to pass fresh orders in tune with Rule 54-B(1)(5) of the Fundamental Rules and the order of this Court dated 18.11.2010 passed in W.P.No.8602 of 2006. No costs.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

vs

To

The District Elementary Educational Officer,
Raja Street,
Coimbatore - 1.

+1cc to Government Pleader SR.No.67782

W.P.No.15026 of 2011

GMV (11/01/2019)

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