

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2017

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.2369 of 2012

R.Kothandaraman

..Petitioner

Vs.

1. State of Tamil Nadu
rep. by its Secretary,
School Education Department,
Chennai.
 2. The Director,
Non Formal and Adult Education,
College Road, Chennai - 6.
 3. The Joint Director of School
Education, College Road,
Chennai - 6.
- ..Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the issue of the order in Proceedings bearing Na.Ka.No.1894/A1/2006 dated 19.10.2011 by the Director, Non-formal Adult Education, College Road, Chennai - 6, the second respondent herein and quash the same and direct the respondents to expedite the payment of back wages pertaining to the period between 30.11.1998 and 07.01.2001 inclusive of other benefits payable to the petitioner on part with the other employees relating to his then services as a Film Operator, Selection Grade at the office of the Director of Non-formal and Adult Education Department.

For Petitioner .. Mr.D.Ashok Kumar

For Respondents.. Mr.T.M.Pappiah,
Spl. Govt. Pleader

ORDER

The petitioner has approached this Court seeking the following relief:

"to issue a writ of certiorarified mandamus to call for the records pertaining to the issue of the order in Proceedings bearing Na.Ka.No.1894/A1/2006 dated 19.10.2011 by the Director, Non-formal Adult Education, College Road, Chennai - 6, the second respondent herein and quash the same and direct the respondents to expedite the payment of back wages pertaining to the period between 30.11.1998 and 07.01.2001 inclusive of other benefits payable to the petitioner on par with the other employees relating to his then services as a Film Operator, Selection Grade at the office of the Director of Non-formal and Adult Education Department."

2.The case of the petitioner is that he was appointed as Film Operator on 14.04.1988 in the office of the Director of Non-formal Adult Education Department and his services came to be regularised on 16.10.1990 in the post of Film Operator. After completion of ten years of service, the petitioner had been granted selection grade on 24.07.1998. While working as Film Operator, the Department had taken a decision to abolish certain posts including the post of Film Operator. However, the persons who have worked in the posts which came to be abolished were immediately accommodated and absorbed in the alternative service under the Government whereas the petitioner alone had been left out. In the above circumstances, the petitioner had given number of representations, which were not considered for considerable length of time. The petitioner has not been formally relieved from the post of Film Operator and he has also not been paid wages for years together. The petitioner has also not been offered any alternative employment as given to other similarly placed persons, on abolition of the posts in which they were working.

3.In the above circumstances, the petitioner was constrained to approach the Tamil Nadu Administrative Tribunal in O.A.No.1234 of 1999 and the Tribunal, vide order dated 18.02.1999 directed the second respondent herein to consider the representation of the petitioner dated 05.02.1999 for the alternative employment. Thereafter, finally, an order was issued (G.O.Ms.No.282 Information and Tourism Department) dated 20.12.2000 appointing the petitioner as Cinema Operator at the office of Information and Public Relation Office, Nagapattinam Collectorate, Nagapattinam. Thereafter, the petitioner was relieved by the District Non-formal and Adult Education Department, Kancheepuram at the instance of the second respondent. After being relieved, the petitioner joined the Nagapattinam Collectorate as Cinema Operator on 08.01.2001 and he has been continuing in the same post as on date.

4.The issue before this Court is that the petitioner had not been paid wages for the period from 30.11.1998 till 07.01.2001. In this regard, the petitioner had submitted a representation but the same was not considered and therefore, he was once again constrained to approach this Court in W.P.No.21226 of 2006 and this Court has passed an order directing the authority to pass orders on his representation. In pursuance of the direction, proceedings dated 19.10.2011 was passed by the second respondent rejecting the claim of the petitioner on the ground that for the period in question, the petitioner was not entitled to wages on the ground of "No work No pay". The said proceedings is put to challenge before this Court.

5.Mr.D.Ashok Kumar, learned counsel appearing for the petitioner would submit that similarly placed persons who had faced abolition of posts in which they were working had been accommodated immediately in the alternative service and some of them have also been paid salaries between the two spells of appointment. Only the petitioner alone has been singled out for a discriminatory treatment. On one hand, the petitioner was denied immediate alternative employment and on the other, he was denied salary for the period even though he was not formally relieved from his earlier post of Film Operator.

6.Upon notice, Mr.T.M.Pappiah, learned Special Government Pleader entered appearance on behalf of the respondents and filed counter affidavit. He would submit that the rejection order by the second respondent is valid for the reason that the petitioner having not worked for the period cannot seek for payment for the period since the principle of "No Work No Pay" will apply.

7.At this, learned counsel appearing for the petitioner would submit that the Government has passed G.O.(1D) No.310 School Education (C1) Department dated 08.09.2008 in and by which the similarly placed persons who did not work for certain period had been extended the benefit of backwages and inspite of the same, the benefits of the said Government Order had not been extended to the petitioner alone. The grant of benefits in the said Government Order has not been disputed by the learned Special Government Pleader appearing for the respondents.

8.This Court has given its anxious consideration to the rival submissions of the learned counsels and also perused the pleadings and the materials placed on record. Firstly, it has to be seen that it was not the fault of the petitioner that no work was extracted from him for the period in question. Secondly, the other similarly placed employees who have rendered surplus, on abolition of the posts, had been accommodated promptly in the alternative service under the respondents and the petitioner alone was left out from being considered. It was only after the

petitioner moved the Administrative Tribunal and obtained orders, the Government had acted and granted him the alternative employment. Thirdly, as per the abovesaid G.O.(1D) No.310 School Education (C1) Department dated 08.09.2008, some of the similarly placed persons have been granted arrears of salary for the period when they were not in employment. Such being the case, the petitioner's claim cannot be viewed differently and the same treatment cannot be denied to him.

9.In view of the above narrative, this Court has no hesitation in allowing the writ petition. The writ petition is therefore allowed by setting aside the order of the second respondent dated 19.10.2011. The respondents are directed to make payment to the petitioner as admissible to him for the period between 30.11.1998 and 07.01.2001 with all other attendant benefits within a period of three months from the date of receipt of a copy of this order. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary to Government,
School Education Department,
Chennai.
2. The Director,
Non Formal and Adult Education,
College Road, Chennai - 6.
3. The Joint Director of School
Education, College Road,
Chennai - 6.

+1 CC to The Government Pleader sr 60208.
+1 CC to Mr.D. Ashok Kumar , Advocate sr 60438.

W.P.No.2369 of 2012

RJ(CO)
sp(30/08/2017)