

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH  
and  
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.A.No.1308 of 2016  
and  
CMP.No.17012 of 2016

- 1.The Principal Commissioner and  
Commissioner of Survey and Settlement,  
Chepauk, Chennai.
  - 2.The Additional Director,  
Department of Survey and Land Records,  
Chepauk,  
Chennai.
  - 3.The Settlement Officer,  
Office of Commissioner of Survey and Settlement,  
Chepauk,  
Chennai.
  - 4.The Personal Assistant to the Director  
of Survey and Settlement  
Office of the Commissioner of Survey  
and Settlement, Chepauk,  
Chennai.
- ... Appellants
- vs.
- S.Sivalingam ... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent  
against the order dated 22.04.2016 passed by a learned Single  
Judge of this Court in W.P.No.17635 of 2015.

WP.No.17635 of 2015:Writ Petition filed under Article 226 of the  
Constitution of India praying to issue a Writ of Certiorarified  
Mandamus to call for the records relating to the proceedings of  
1st respondent in Na. Ka. No. A1/2892015 dt 27.2.2015 and to  
quash the same and consequently to direct the respondents to  
treat the period of service from 23.2.2013 to 17.6.2014 as duty  
period with all consequential and other attendant benefits  
awarding of selection grade in the post of Junior Assistant on  
completion of ten years of service and arrears of salary as well

as revision of pensionary benefits with arrears within a stipulated time frame.

For Appellants : Mr.P.S.Sivashanmuga Sundaram, SGP  
For Respondent : Mr.G.Sankaran

#### JUDGMENT

(Order of the Court was made by HULUVADI G. RAMESH,J.)

Heard Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader appearing for the appellants/respondents and Mr.G.Sankaran, learned counsel for the respondent/writ petitioner.

2.In the present appeal, the appellants have challenged the order passed a learned Single Judge in WP.No.17635 of 2015 dated 22.04.2016, whereby and whereunder, the appellants were directed to treat the period between 23.02.2013 to 17.06.2014 as on duty and pay the retirement benefits due to the respondent within a period of eight weeks.

3.The facts necessary for the disposal of this appeal, may be summarised, as below:

The respondent herein was initially appointed as a night watchman on a contract basis. Thereafter, he was appointed on regular basis by order dated 23.03.1993. Subsequently, he was given promotion to the post of Record Clerk and thereafter, to the post of Junior Assistant in the Settlement Wing. While so, he was transferred from Settlement Wing to Survey Wing, by order dated 04.01.2013. Challenging the said transfer order, he filed a writ petition in W.P.No.708 of 2013, which, by order dated 04.02.2014, was allowed by setting aside the transfer of the petitioner, holding that it was passed contrary to the Rules and that, enforcing such transfer will effect the service conditions of the respondent. Following the said order, the respondent was reverted back to the Settlement Wing, by order dated 16.06.2014. He joined the duty on 17.06.2014. Thereafter, by order dated 27.02.2015, it was informed to the respondent that he was sanctioned unearned leave with medical certificate from 07.01.2013 to 22.02.2013. It was further informed that as he has not attended the duty from 23.02.2013 to 17.06.2014 and he has not applied for any leave, such period of absence was ordered as stayed away from duty without any pay and allowances. Questioning the legality and correctness of the same, the respondent herein filed W.P.No.17635 of 2015, which was allowed by the order impugned herein. Aggrieved by the order passed in the said writ petition, the present Writ Appeal came to be filed by the appellants-State.

4.The learned Special Government Pleader appearing for the appellants would contend that the learned Single Judge erred in passing the impugned order, ignoring the principle of 'no work no pay'. According to him, the respondent cannot be allowed to avail the benefits for the period in question, during which, he has not discharged his duties, in the light of the principle of 'no work no pay'.

5.Per contra, the learned counsel for the respondent would contend that the normal rule of 'no work no pay' is not applicable to the facts of the present case, since the respondent was kept away from work based on the illegal transfer order passed by the appellants. He would further contend that when the respondent is armed with the order of this Court, he is entitled to all the benefits for the disputed period.

6.We have carefully considered the rival submissions of the learned counsel for the parties and perused the record.

7.It is not in dispute that the order of transferring the respondent from Settlement Wing to Survey Wing, was set aside by the order passed in WP.No.708 of 2013, which has attained finality. Pursuant to the same, the respondent was reverted back to Settlement Wing and he joined the duty and ultimately, he retired from service on attaining the age of superannuation.

8.Now, the issue that arises for consideration herein is, as to whether the respondent is entitled to monetary and service benefits for the disputed period i.e., from 23.02.2013 to 17.06.2014?

9.As noted earlier, it is the specific case of the appellants that as the respondent has stayed away from work, he is not entitled to get any benefits during the period in question, on the principle of 'no work no pay', whereas, the same is seriously opposed by the respondent stating that he was kept away from discharging his duties by the appellants for no fault on his part and the order passed by the court in WP.No.708 of 2013 has attained finality and hence, he is entitled to get all the benefits for the disputed period.

10.On a perusal of the order impugned herein, we find that the learned Single Judge has set aside the order dated 27.02.2015, in view of the facts that the order passed in WP.No.708 of 2013 has become final and the respondent has attained the age of superannuation. Consequently, the learned Single Judge has directed the appellants herein to treat the disputed period as on duty and compute the same and pay the retirement benefits due to the respondent within a time frame.

11.We are of the opinion that since the respondent has not discharged his duties during the disputed period, such period can be treated as absence from duty and he is not entitled to any monetary benefits, applying the principle of 'no work no pay'. However, having regard to the fact that the order passed in W.P.No.708 of 2013, setting aside the transfer of the respondent, has attained finality, the disputed period i.e., from 23.02.2013 to 17.06.2014 shall be taken into account only for the purpose of pensionary benefits.

12.Accordingly, the order of the learned Single Judge is clarified and this Writ Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal Commissioner and  
Commissioner of Survey and Settlement,  
Chepauk, Chennai.
- 2.The Additional Director,  
Department of Survey and Land Records,  
Chepauk,  
Chennai.
- 3.The Settlement Officer,  
Office of Commissioner of Survey and Settlement,  
Chepauk,  
Chennai.
- 4.The Personal Assistant to the Director  
of Survey and Settlement  
Office of the Commissioner of Survey  
and Settlement, Chepauk,  
Chennai.

+1 cc to M/s.G.Sankaran Advocate sr 72919  
+1 cc to Govt Pleader sr 72852

W.A.No.1308 of 2016

gmr (co)  
aa06/12/2017