

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.35648 of 2004

K.Ayyasamy

... Petitioner

Vs.

1. The Government of Tamilnadu
Rep. by Secretary to Government,
Education Department,
Fort.St.George,
Chennai - 600 009.
2. The Director of School Education,
Chennai - 600 006.
3. The Chief Educational Officer,
Namakkal.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling upon the production of the records relating to the proceedings dated 30.07.2004 made in Na.Ka.No/064160/C1/C4/2004 passed by the 1st respondent herein and quash the same and direct him to implement the order dated 11.07.2001 made in O.A.No.2880 of 2000 passed by the Tamilnadu Administrative Tribunal, Chennai.

For Petitioner : Mr.D.R.Arunkumar
For Respondents : Mrs.K.Bhuvaneswari
Government Advocate

O R D E R

The petitioner has filed this writ petition challenging the order dated 30.07.2004 made in Na.Ka.No.064160/C1-C4/2004 and for further direction to implement the order dated 11.07.2001 made in O.A.No.2880 of 2000 passed by the Tamil Nadu Administrative Tribunal, Chennai.

2. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents.

3. The petitioner entered into service in the education department as BT Assistant on 01.07.1967 and was promoted as Head Master on 28.11.1994. He retired from service with effect from 31.05.2002. While he was working as Head Master at Valasiramani Government High School in Trichy District, he was transferred to Koothur High School at Perambalur District vide proceedings dated 13.06.1997. Against the said transfer order, the petitioner filed O.A.No.5383 of 1997 before the Tamil Nadu Administrative Tribunal. The Tribunal vide order dated 17.10.1997 set aside the transfer order.

4. Against the order of the Tribunal dated 17.10.1997, the second respondent filed writ petition in W.P.No.3776 of 1998 before this Court and this Court vide order dated 23.03.1998, dismissed the writ petition. Thereafter, the second respondent vide proceedings dated 07.03.2000 rejected the claim of the petitioner to treat the period from 16.07.1997 to 31.03.1998 as duty period. Challenging the proceedings of the second respondent dated 07.03.2000, the petitioner filed O.A.No.2880 of 2000 before the Tribunal and the Tribunal vide order dated 11.07.2001 has held as follows:

"4. The point for consideration is whether the prayer of the applicant can be complied with or not, now it is submitted by the learned counsel for the applicant that the applicant has retired from service with effect from June 2001. It is also admitted that all the terminal benefits including encashment of earned leave to his credit have been disbursed to him. The Director also so far has not passed any order as to how the leave has to be adjusted. Now the applicant has retired and in view of the fact that the order of transfer was set aside, the period of absence, during the said period shall be treated as leave to his credit. The order of transfer was set aside. This was confirmed by the Highcourt. If the applicant is not eligible for any leave the period can be treated as leave on loss of pay. On any account no recovery shall be made on account of the absence of the above said period. With the above directions the application is ordered accordingly."

5. Thereafter, the petitioner made representation seeking to implement the order passed by the Tribunal in O.A.No.2880 of 2000 dated 11.07.2001. However, the second respondent passed the impugned order dated 30.07.2004, stating that since the District Educational Officer, Namakkal, has already issued proceedings dated 26.04.2001, treating the period of absence as eligible leave (excluding the unearned leave on medical certificate), the necessity to implement the order passed in O.A.No.2880 of 2000 does not arise and it further stated that since there is no provision in the Fundamental Rules to treat the period of absence during the transfer period as duty period, his period of absence was treated as eligible leave (excluding the unearned leave on medical certificate). Hence, the above period cannot be treated as unearned leave on medical certificate as requested by the petitioner.

6. I do not find any error in the impugned order dated 30.07.2004 passed by the second respondent. Accordingly, the writ petition is dismissed. No Costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

1. The Secretary to Government,
Government of Tamilnadu
Education Department, Fort.St.George,
Chennai - 600 009.
 2. The Director of School Education,
Chennai - 600 006.
 3. The Chief Educational Officer,
Namakkal.
- +1cc to the Government Pleader, Sr. 62881
+1cc to Mr.D.R.Arunkumar, Advocate Sr. 62279

W.P.No.35648 of 2004

AR(V)
VR(18/09/2017)