

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2507 of 2018
and
CMP No.20334 of 2018

1. State of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
Secretariat, Chennai- 9.
2. Director of School Education,
Chennai - 6.
3. Joint Director of School Education (Secondary),
Chennai - 6. Appellants

Vs.

1. C.Vasu
2. Cantonment Executive Officer / Correspondent,
Cantonment Board High School,
Pallavaram, Chennai - 43. Respondents

[4th appellant has been transposed as 2nd respondent vide order of this Court [SMKJ & SPJ] dated 30.11.2018.

Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 20.10.2016 made in W.P.No.7800 of 2010.

Prayer in WP No.7800/2018 : Petition filed under Article 226 of Constitution of India it is humbly prayed that this Hon'ble Court may be pleased to issue a writ of mandamus, or any other appropriate Writ or Direction in the nature of Writ, directing the 1st Respondent to regularize the break period from 13-10-1983 to 7-8-1986 as per the judgment in WP No.18091 of 1996 dated 17-8-2000 and confer all the consequential benefits by considering the representation dated 20-03-2009 made by the petitioner and pass such further or other orders as may deem fit and thus render justice.

For Appellants : Mr.C.Munusamy
Special Govt. Pleader (Edu.)

For Respondents : Mr.P.Ganesan (for R1)

J U D G E M E N T

(Order of the Court was delivered by S.MANIKUMAR, J)

Writ Appeal is directed against the order dated 20.10.2016 made in W.P.No.7800 of 2016, by which the writ Court, directed the appellants to regularise the services of the first respondent from 13.10.1983 to 07.08.1986, with all service and attendant benefits, as per the relevant service rules, governing the service condition of the first respondent, within a period of twelve weeks from the date of receipt of a copy of the order.

2. Short facts leading to the filing of the writ appeal are as follows:

First respondent joined as a Peon and subsequently, re-designated as Office Assistant, in the erstwhile Aided Management of Madras Hindu Sevak Sangh Aided High School. He was relieved from service by the management and there was a battle between the Management of School and the first respondent, and ultimately he was reinstated in service on 08.08.1986. Thereafter, he was redeployed to the 4th appellant school on 10.10.1990 and he joined the said school on the same day. First respondent made a representation seeking for regularisation of his services from the date of issuance of Government Order in G.O.Ms.No.822, Education Department, dated 16.08.1991, which gave relaxation for those who were appointed, without resorting to employment exchange for appointment. First respondent also sought for, regularisation from the initial date of his appointment, i.e. 16.07.1979. Since there was no reply, first respondent filed W.P.No.18091 of 1996 for the abovesaid relief. The said writ petition was allowed with a positive direction. In compliance of the said order, Government have issued G.O.Ms.No.62 School Education Department, dated 18.06.2004, wherein the Government, after having considered the request of the first respondent for regularisation of service, though had agreed to regularise his service from 16.07.1979, refused to accept to regularise his services from the date i.e. 13.10.1983 to 07.08.1986, for the purpose of service benefits.

3. It is the grievance of the first respondent, that though he had obtained a favourable order in WP No.18091 of 1996 on 17.08.2000, the same was not complied with fully and partial relief alone was given to him. Therefore, first respondent sent several representations during 2007, 2008 as well as 2009. As

none of the representation evoked any response, the first respondent has filed W.P.No.7800 of 2010.

4. After hearing the learned counsel on either side and on perusal of the material on record, writ Court, vide order dated 20.10.2016, disposed of the writ petition and passed orders in favour of the first respondent. Aggrieved by the said order, instant writ appeal has been filed.

5. Heard the learned counsel for the parties and perused the materials available on record.

6. In G.O.Ms.No.822, Education (D2) Department dated 16.08.1991, Government have issued orders, ratifying the appointment of the First respondent and regularised his services with effect from 18.07.1979 to 13.10.1983 and again from 08.08.1986, as a special case, relaxing the rules relating to appointment through Employment Exchange and provisions relating to reservation of appointment. In the said Government Order, services of the first respondent have also been regularised from the date of issuance of the Government Order. However, without challenging the said Government Order i.e. G.O.Ms.No.822, Education (D2) Department dated 16.08.1991, first respondent has filed WP.No.18091 of 1996 stating that he was appointed as Office Assistant on 16.07.1979, and discharged from service on 13.10.1983. Subsequent to the orders passed in CMA No.183 of 1984 by the learned First Assistant Judge, City Civil Court, Madras, reinstatement was made on 18.08.1986. In the said writ petition, the first respondent has also referred to G.O.Ms.No.822, Education (D2) Department dated 16.08.1991, wherein Government have granted relaxation, with reference to the appointment, without resorting to Employment Exchange.

7. After hearing the learned counsel for the parties, writ Court, at paragraph No.7 of the order made in W.P.No.18091 of 1996 dated 17.08.2000 ordered as follows:

"Government referred to above, the order issued by the Government in G.O.Ms.No.822, Education Department dated 16.08.1991 regularizing the services of the petitioner with effect from the date of issue of said order cannot be sustained. Though the writ petitioner has prayed for issuance of writ of mandamus directing the respondents to regularized the service of the petitioner from the date of appointment i.e. 16.07.1979 without seeking on order to quash the said G.O.Ms.No.822, Education Department dated 16.08.1991 as stated above, in the light of the law laid down by the Division Bench as well as subsequently course educational order platter of the Government, in the

interest of justice this Court, is justified in molding the relief as claimed by the petitioner. Accordingly, in the light of the Division Bench Decision as well as the order of the Government in G.O.Ms.No.873 dated 13.11.1995, the second respondent is directed to regularize the service of the petitioner from the date of appointment i.e. 16.07.1979 and accord all consequential benefits eligible in accordance with law and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. The writ petition is allowed to the extent mentioned above. No costs. Consequently, W.M.P.25255 of 1996 is closed."

8. Perusal of the above order made in W.P.No.18091 of 1996 dated 17.08.2000 would show that writ Court was conscious of the fact that, challenge was not made to G.O.Ms.No.822, Education Department dated 16.08.1991, still, in the light of the law laid down by the Hon'ble Division Bench, in State of Tamil Nadu represented by its Commissioner and Secretary to Government, Education Department, to Chennai Vs. Tamil Nadu Recognised Private Schools Managers' Association, represented by its Joint Secretary Pulavar R.Palanisamy & Others, reported in 1995 WLR 499, and also taking note of G.O.Ms.No.873 Education, Science & Technology (D2) Department dated 13.11.1995, held that the first respondent was entitled to be regularized, from the date of initial appointment, i.e. 16.07.1979, with all consequential benefits, eligible in accordance with law.

9. Government in G.O.Ms.No.873 Education, Science & Technology (D2) Department dated 13.11.1995, have taken a decision, to regularise all the appointments made up to 17.02.1995 i.e., without consulting employment exchange.

10. At this juncture, it would be useful to extract paragraph No.3(iv) of the said G.O.Ms.No.873 Education, Science & Technology (D2) Department dated 13.11.1995, relevant and considered by the writ Court, in W.P.No.18091 of 1996.

"The appointments made upto 17.02.1995 i.e. the date of the judgment in the writ appeal in the private aided Educational Institutions without consulting the Employment Exchange shall be regularized, if the appointments are found to be otherwise regular and in accordance with the rules."

11. In the case on hand, according to the first respondent, he was appointed on 16.07.1979 and discharged by the Management on 13.10.1983, for the reason that the department did not approve his appointment. Now that, when the Government in G.O.Ms.No.873 Education, Science & Technology (D2) Department

dated 13.11.1995, have taken a decision to regularize all the appointments, the break in service between 13.10.1983 and 07.08.1986, cannot be taken, as a reason, for not granting salary for the period. Order in W.P.No.18091 of 1996, takes care of the break in service period also. As no appeal has been filed against the order made in W.P.No.18091 of 1996 dated 17.08.2000, it has attained finality.

12. Stand of the appellants is that during the period between 13.10.1983 and 07.08.1986, the first respondent did not work and thereafter, on the principle of 'No Work No Pay', the period cannot be regularised. There is no hard and fast rule for applying the principle of 'no work no pay'. In this context it is useful to refer the followings decisions of the Hon'ble Supreme Court and this Court.

(i) The Hon'ble Supreme Court in Union of India v. K.V.Janakiraman, reported in 1991 SC 2010, in Paragraph 7 of the judgment, held as follows:

"The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R.17(1) will also be inapplicable to such cases."

At this juncture, it is relevant to extract Section 17(1) of the Fundamental Rules.

"Subjects to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence."

(ii) In Burn Standard Co. Ltd., and another v. Tarun Kumar Chakraborty and others reported in 2003 SCC (L & S) 1015, the first respondent therein was kept out of service and not permitted to work. The appellants contended that due to pendency of a case filed by the association, they bona fide believed that they could not permit him to join duty. The Hon'ble Supreme Court accepting the contention of the respondent therein, employer, held that if there was no impediment in law in permitting the employee in joining the duty, then there is no

justification in denying the salary to him. Accordingly, the Court, directed the appellant to pay the salary and other emoluments for the period not covered by the litigation and interim orders.

(iii) In Srikantha S.M. v. Bharath Earth Movers Ltd., reported in 2005 (8) SCC 314, an employee submitted his resignation to relieve him from duties as per the Rules. The employer-company accepted his resignation on the same day and directed him to be relieved with "immediate effect". However, on the same day, the Company granted him Casual Leave from 05.01.1993 to 13.01.1993 and 14.01.1993 being a holiday, informed him that he would be relieved by the close of working day, i.e., on 15.01.1993. In the evening of that day, the company relieved him. However, before that day, the employee sent a letter to the Company, withdrawing his resignation. The Hon'ble Supreme Court, in such circumstances, held that the employee remained in service upto the postulated day and the company was bound to give effect to the withdrawal of resignation.

(iii)(a) In the above reported judgment, the employee was not allowed to work after the postulated day and therefore, he filed a Writ Petition, challenging the action of the employer, relieving him from service. The employee contended that the resignation had already been withdrawn and therefore, he should be permitted to continue in service. The Writ Petition was dismissed, on appeal, the Hon'ble Division Bench also concurred with the view of the learned Single Judge. On further appeal, the Supreme Court reversed the decision of the High Court and held that the employee had withdrawn his resignation before it was given effect to by the Employer and therefore, granted the relief prayed for, by the employee. As regards backwages, the Company contended that since the employee did not work for the later period, he would not be entitled to salary on the principle of "No work No pay". Rejecting the submission made on behalf of the Company, the Hon'ble Supreme Court at Paragraph 29 of the judgment held as follows:

"We must frankly admit that we are unable to uphold the contention of the respondent company. A similar situation had arisen in J.N.Srivastava and a similar argument was advanced by the employer. The Court, however, negatived the argument observing that when the workman was willing to work but the employer did not allow him to work, it would not be open to the employer to deny monetary benefits to the workman who was not permitted to discharge his duties. Accordingly, the benefit were granted to him. In Shambhu Murari Sinha II also, this Court held that since the relationship of employer and the employee continued till the employee

attained the age of superannuation he would be entitled to "full salary and allowances" of the entire period he was kept out of service. In Balram Gupta inspite of specific provision precluding the government servant from withdrawing notice of retirement this Court granted all consequential benefits to him. The appellant is, therefore, entitled to salary and other benefits."

(iv) In Punjab SEB v. Kuldeep Singh reported in 2005 (13) SCC 362, the Hon'ble Supreme Court considered the case of Junior Engineer, who was not promoted to the post of Assistant Engineer (AE) by the State Electricity Board, as he had not taken the departmental examination. Subsequently, he passed the examination. One S was appointed as Assistant Engineer and his appointment was made subject to the rights of a candidate who may be appointed in regular course. When the said Junior Engineer (respondent therein) acquired qualifications after passing the departmental examination, neither S was reverted nor the respondent was promoted as Assistant Engineer. However, S preferred a suit, in which, interim injunction was granted restraining the State Electricity Board from reverting him to the post of Junior Assistant. Ultimately the suit came to be dismissed. On the Writ Petition filed by the respondent, the High Court directed the Electricity Board to decide the dispute on merits. Thereafter, the respondent was promoted to the post of Assistant Engineer with effect from 14.12.2001, instead of 20.03.1990, being the date, he had passed the departmental examination. A second Writ Petition was filed by the respondent, claiming notional promotion with effect from 20.03.1990 with all backwages and consequential benefits with interest at the rate of 18% until the payment was made. Before the High Court, the State Electricity Board contended that the respondent was not entitled to notional promotion or backwages for any period prior to 2001, as the number of posts had been reduced by way of amendment to the Rules. The second Writ Petition was also allowed and the High Court directed the Electricity Board to create a supernumerary post and pay all arrears of salary together with interest at the rate of 9% within two months from the date of passing of the order. On appeal, the Supreme court declined to accept the contention of the State Electricity Board and allowed the appeal only to the extent of rate of interest.

(v) In State of Kerala v. E.K.Bhaskaran Pillai reported in 2007(6) SCC 524, the Hon'ble Supreme Court, while deciding the correctness of the judgment of the Kerala High Court, directed that the respondent therein would be entitled to higher pay on account of retrospective promotion. At Paragraph 4 of the judgment, the Hon'ble Supreme Court held as follows:

"So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facts which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full backwages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in the criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes, in the matter when the person is superseded and he has challenged the same before Court or Tribunal and he succeeds in that and direction is given for reconsideration of his case the Court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also."

(v) (a) In the above reported case, persons junior to the respondent therein were promoted to the higher post, whereas, he was wrongly denied promotion. Thereafter, he was promoted with retrospective effect, without pay on the basis of "No work no pay". Learned Single Judge refused to grant him monetary benefits in the promotional post with retrospective effect. In the Review application, benefit was given from the date, when he filed the Original Application in the High court, i.e., 15.06.1992.

(vi) A Hon'ble Division Bench of this Court in *Munivenkatappa v. State Bank of India*, reported in 2007 (2) CTC 135, considered a case where the request of the appellant therein for voluntary retirement was unilaterally treated as resignation and by applying the principle of "No work No pay", the employer refused to give him the monetary benefits. A Hon'ble Division Bench of this Court at Paragraph 12, held as follows:

"Once it is found that the decision of the respondents is illegal, it has to be held that the respondents have illegally prevented the petitioner from discharging his duties from 01.10.1999 and if the respondent's illegally

prevented the petitioner from attending to the duties, respondents are bound to pay salary for the period for which the petitioner was not allowed to perform his duties."

(vii) In *V. Mani v. The Secretary to Government* reported in 2008 (2) CLT 241, this Court, after following the above decisions, at Paragraph 13, held that,

"13. The legal principles which emerge from the decisions cited supra are that the normal rule of "No work, No pay" is not applicable to cases where the employee although was willing to work, is kept away from work by the authorities for no fault of him. The principle of "No Work No Pay" cannot be accepted as a Rule of Thumb, in a case where the administration has wrongly denied his due, the Government servant/employee should be given the benefits, as per the Fundamental Rules, including monetary benefits, subject there being any change in law or some supervening factors. As held by the Division Bench in *Munivenkatappa's case*, once it is found that the decision of the respondent is illegal, it has to hold that the respondents have illegally prevented the employee from discharging his duty and consequently he is entitled to the emoluments for the period for which he was not allowed to perform his duties. In all these decisions, the Apex Court as well as this Hon'ble Court have held that if the government servant or employee is denied of a benefit or deprived of his legitimate right due to the fault of the department/employer, then the government servant/employee should not be made to suffer, but for specific circumstances, such as change in law or some supervening circumstances."

13. In the case on hand, the first respondent was relieved by the school and later on reinstated. It is not the case of the appellants that he was not willing to work during the period in dispute. In W.P.No.18091 of 1996 dated 17.08.2000, this Court directed regularisation from the date of initial appointment with all consequential benefits. In the said order the first respondent / writ petitioner therein has narrated as to how he was relieved from the school. He has averred the details of the appeal filed by the management before the Tribunal and the order passed. Therefore, it is not open to the appellants, to deny regularisation for the interregnum period.

14. In the light of the above discussion and decisions, instant Writ Appeal is dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
School Education Department,
Secretariat, Chennai- 9.
2. The Director of School Education, Chennai - 6.
3. The Joint Director of School Education (Secondary),
Chennai - 6.

+1cc to M/s.C.S. Associates, Advocate SR.No.83058

+1cc to Government Pleader, High Court, Madras SR.No.83625

W.A.No.2507 of 2018
and
CMP No.20334 of 2018

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