



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2018

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THE HON'BLE Mr. JUSTICE R. SURESH KUMAR

W.P. (MD) No.8077 of 2013

and

M.P. (MD) .Nos.1 and 2 of 2013

A.Davidson Tharmaraj

... Petitioner

-vs-

1. The Chief Educational Officer,
Tirunelveli.

2. The Head Master,
Government Higher Secondary School,
Ayikudi,
Tirunelveli District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus, calling for the records relating to the impugned order bearing Na.Ka.No.1119/A5/2013 dated 29.04.2013 passed by the first respondent and quash the same and consequently direct the respondents and quash the same and consequently direct the respondents to pay the salary of the petitioner regularly from January 2013.

For Petitioner

: Mr.Gnanagurunathan

For R1 & R2

: Mr.D.Muruganantham

Additional Government Pleader

O R D E R

The prayer sought for in this Writ Petition is for a writ of Certiorarified Mandamus, to call for the records relating to the impugned order bearing Na.Ka.No.1119/A5/2013 dated 29.04.2013 passed by the first respondent and quash the same and consequently direct the respondents to pay the salary of the petitioner regularly from January 2013.

2.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.



3.The petitioner, while working at a school in Ayikudi, Tirunelveli District, has been transferred by an order dated 31.12.2012 to a school at Pavoorchathiram and the said order of transfer dated 31.12.2012 was under challenge and the same was stayed by this Court in W.P.(MD).No.1456 of 2013 dated 29.01.2013. Though the said transfer order was stayed, the petitioner was not given posting, where he was working i.e., Aiykudi. Therefore, it is seen that, subsequently, the petitioner filed a Contempt Petition before this Court in Cont.P.(MD).No.227 of 2013, for the wilful disobedience of the said order.

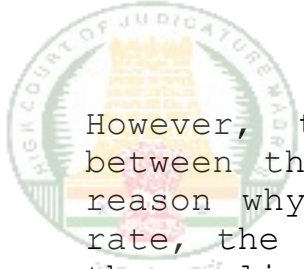
4.During the pendency of the contempt petition, on 04.10.2013, the petitioner was permitted to join at the school, from where he was transferred i.e., Ayikudi School by the proceedings of the Chief Educational Officer, Tirunelveli.

5.This aspect was also taken note of by this Court in the said Contempt Petition proceedings in Cont.P(MD).No.227 of 2013. When the Contempt petition was taken up for hearing on 04.10.2013, the learned Judge, by recording the compliance of the order of stay granted, was pleased to close the said Contempt Petition. Therefore, the fact remains that the stay was granted in January 2013, till 04.10.2013, the said stay order was not complied with. As a result, the petitioner was not permitted to join duty in the original place and only on 04.10.2013 such permission was granted by the Chief Educational Officer concerned. Pursuant to which, on 05.10.2013, the petitioner joined in the original place. Only in that circumstances, since the petitioner had not been working between 18.01.2013, the date on which he was not permitted to work in the original place, till 04.10.2013, the respondents did not pay salary to him. Therefore, seeking the said salary, when the petitioner approached the first respondent, the same was turned down by the first respondent in the impugned proceedings dated 29.04.2013. challenging the same, the present Writ Petition has been filed.

6.The learned Additional Government Pleader appearing for the respondents would submit that in fact, there was a serious allegation levelled against the petitioner stating that he allegedly misbehaved with the students and that is the reason why, immediate disciplinary action could not be taken against him, instead, he was transferred from that School.

7.The said submission made by the learned Additional Government Pleader was opposed by the learned counsel for the petitioner.

<https://hcservices.ecourts.gov.in/hcservices> 8.The learned counsel appearing for the petitioner states that this is a wrong statement made on the side of the respondents that the petitioner allegedly misbehaved with the students.



However, the fact remains that there was a misunderstanding between the petitioner and the school concerned and that is the reason why the petitioner was transferred. By this time, at any rate, the said order of transfer, which was the subject matter of the earlier round of litigation, was interfered by this Court and the stay was granted admittedly upto October 2013. However, the same was not complied with and as the petitioner was not permitted to join duty in the original place, only after, the petitioner filed Contempt Petition and the same was pending consideration before this Court, the Chief Educational Officer had come forward on 04.10.2013 permitting the petitioner to join in the school, pursuant to which, the petitioner joined in the original place. Therefore, it is clear that from 18.01.2013 till 04.10.2013, the petitioner was not functioning as a Teacher in the School, from where, he was transferred not because of his own voluntary action, but because of the inaction on the part of the respondents. Therefore, for the said inaction on the part of the respondents, the reason cannot be attributed on the side of the petitioner, instead only the respondents shall shoulder the responsibility or reason for non joining of duty at the original place by the petitioner. Therefore, in all fairness, the petitioner shall be paid the salary for the said period ie., from 18.01.2013 till 04.10.2013.

9. When the said salary was sought for by approaching the respondents, the same has been turned down by the impugned order dated 29.04.2013 stating that since the petitioner has not been working, during the said period, the salary cannot be granted. In view of the aforesaid discussion, this Court is of the view that the impugned order is not sustainable, as the respondents ought not to have rejected the request of seeking salary for the said period because the said absence, as stated above is not on the voluntary action on the part of the petitioner. Therefore, the impugned order is liable to be interfered with and therefore, the same is quashed.

10. In the result, the Writ Petition is allowed and the first respondent is directed to calculate the salary for the petitioner from the period 18.01.2013 to 04.10.2013 and disburse the same within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/



To

1. The Chief Educational Officer,
Tirunelveli.

2. The Head Master,
Government Higher Secondary School,
Aiyukudi,
Tirunelveli District.

+1cc to Mr.M.Gnanagurunathan, Advocate Sr.No.60931

+1cc to Spl.Government Pleader Sr.No.61037

TSG

VB/SB/KKR/SAR3/05.07.2018/4P/5C

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