

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.09.2019
Pronounced on : 19.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.9783 of 2010

R.Padmanaban

.. Petitioner

Vs.

1. The Director,
Adi Dravidar Welfare Department,
Chepauk, Chennai 600 005.

2. The District Adi Dravidar Welfare Officer,
Adi Dravidar Welfare Department,
Kancheepuram District,
Kancheepuram.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings of the 2nd respondent in Rc.no.106338/98 J4 dated 28.01.2010 and quash the same as illegal and direct the respondents to treat the period of 15 months and 28 days from 01.01.1989 to 29.04.1990 as the period spent on duty on compulsory wait and to pay the petitioner the monetary benefits and pay the arrears.

For Petitioner : M/s.A.Arulmozhi

For Respondents : Ms.K.Bhuvaneswari, A.G.P

O R D E R

This instant writ petition is for a Certiorarified Mandamus, calling for the records pertaining to the proceedings of the 2nd respondent in Rc.no.106338/98 J4 dated 28.01.2010 and quash the same as illegal and direct the respondents to treat the period of 15 months and 28 days from 01.01.1989 to 29.04.1990 as the period spent on duty on compulsory wait and to pay the petitioner the monetary benefits and pay the arrears.

2. The facts as taken in the writ petition are:-

a) The petitioner was joined as a Secondary Grade Teacher

in the Adi Dravidar Welfare Department School in 1964. He was reverted due to want of vacancy and posted as Secondary Grade in the same school. The petitioner was filed O.A.748 of 1989 before the Tamil Nadu Administrative Tribunal challenging the reversion. The Tribunal disposed of the O.A. by holding that since the petitioner was holding the post of Head Master for a long period of time, i.e., 26 years, the respondents are directed to consider for posting him as a Head Master for a smaller school. Consequent to this, the petitioner was reinstated as a Head Master, Adi Dravidar Welfare School, Uthiramerur, vide proceedings dated 19.04.1990.

3. At this juncture, it is pertinent to mention that the petitioner did not report for duty for the period of 15 months and 28 days, between 01.02.1989 to 31.03.1989. The petitioner states after he become fit, he tried to join duty but he was not permitted to join the duty from 31.03.1989 to 24.02.1980 and that actual leave was only between 01.02.1989 to 31.03.1989. On joining back on 19.04.1990, the petitioner gave a representation to treat the period between 01.02.1989 to 31.03.1989 as on duty. Since no action was taken, the petitioner moved the Tamil Nadu Administrative Tribunal by filing O.A.5864 of 1992 with the prayer to direct the respondents to settle the benefits with all arrears by treating the period from 01.01.1989 to 29.04.1990 as compulsory wait. The Tribunal directed the respondents to consider the representation of the petitioner.

4. In the meantime, the petitioner reached the age of superannuation on 31.05.1994. Since no orders have been passed even after his retirement, the petitioner once again moved the Tribunal by filing O.A.No.2446 of 1997. The said petition transferred to this Court in WP.No.27635 of 2005. It is stated that this Court by an order dated 28.02.2006, once again directed the respondents to consider the petitioner's detailed representation.

5. The petitioner moved this Court for the 3rd time by filing WP.No.26812 of 2008 and this Court by an order dated 12.11.2008, disposed of the writ petition directing the first respondent to consider the representation of the petitioner and directed the petitioner to furnish a copy of the representation dated 22.03.2006 to the first respondent along with a copy of this order within a period of one week from the date of receipt of copy of this order. The petitioner states that since the orders of this Court were violated with impunity, the petitioner issued a contempt notice and then filed a Contempt Petition. This Court had issued notice on the Contempt Petition. The respondents passed the impugned order rejecting the claim of the petitioner. It is this order which is challenged in the instant writ petition.

6. The petitioner states that he was on leave only from 01.01.1989 to 31.03.1989 and that he was not allowed to join duty from 31.03.1989 till 29.04.1990. He states that the records have been manipulated as "Medical leave applied, to be regularised pay not claimed". He would state that, since the petitioner was not allowed to join duty, it meant the petitioner was kept on compulsory wait and therefore the petitioner is entitled to the pay and allowance as per F.R.No.5(B) (3), which reads as under:-

"When a Government Servant has compulsorily to wait for orders of posting, such period of waiting shall be treated as duty. During such period he shall be eligible to draw the pay plus special pay which he would have drawn had he continued in the post he held immediately before the period of compulsorily wait or the pay plus special pay which he will draw on taking charge of the new post, which ever is less."

7. The respondents have filed a counter. In the counter, the respondents have categorically denied all the statements made by the petitioner. The respondents state that the leave claimed by the petitioner was not authorized and it could not have been granted for a continuous period exceeding one year. The respondents relied on F.R.15(a), F.R.18(2), F.R.67 and F.R.108. All the four Rules are reproduced here under:-

"F.R.18(2): Except on medical certificate or study leave under rule 84, no Government Servant (permanent or approved probationer) who has completed five years of service, shall be granted leave of any kind for a continuous period exceeding one year at any time.

F.R.67: Leave cannot be claimed as of right. When exigencies of the public service so require, discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it.

F.R.108: A Government servant who does not join his post within his joining time is entitled to no pay or leave salary after the end of the joining time. Willful absence from duty after the expiry of joining time may be treated as misbehaviors for the purpose of Rule 15

F.R.15.(a) Government may transfer a Government servant from one post to another provided that, except-

(1) on account of inefficiency or misbehavior; or
(2) on his written request a Government servant shall not be transferred substantively to or appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien or would hold a lien had his lien not been suspended under Rule 14.

(b) Nothing contained in clause (a) of this rule or in clause (13) of Rule 9 shall operate to prevent the re-transfer of a Government servant to the post on which he would hold a lien, had it not been suspended in accordance with the provisions of clause (a) of Rule 14.

The respondents states that the period of leave cannot be regularized.

8. Heard the learned counsel for the parties.

9. The petitioner has produced the Service Register. A perusal of the Service Register would show that from February 1989 to April 1990, it records "applied for medical leave to be regularized pay not claimed". The petitioner states that these entries are fabricated and the petitioner was not allowed to join duty after March 1989 till April 1990, when he was posted as the Head Master in another school. There is nothing to substantiate the contention that the petitioner was not allowed to join duty. The petitioner is not an illiterate, helpless person. The record shows that he has been repeatedly approaching Courts. In such a case, it cannot be believed that the petitioner had not been allowed to join duty and he kept quiet. The fact that the petitioner has not protested that he has not been permitted to join duty by writing any letter indicates that the petitioner did not want to join duty at a lower post. The petitioner has not filed any medical certificate to show what ailment he was suffering from. In this circumstances, this Court is not persuaded to accept the contention of the petitioner that he was actually kept on compulsorily wait and that therefore he is entitled to the benefit of F.R.5(B)(3).

10. In view of the above, the writ petition is dismissed. No Costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pkn.

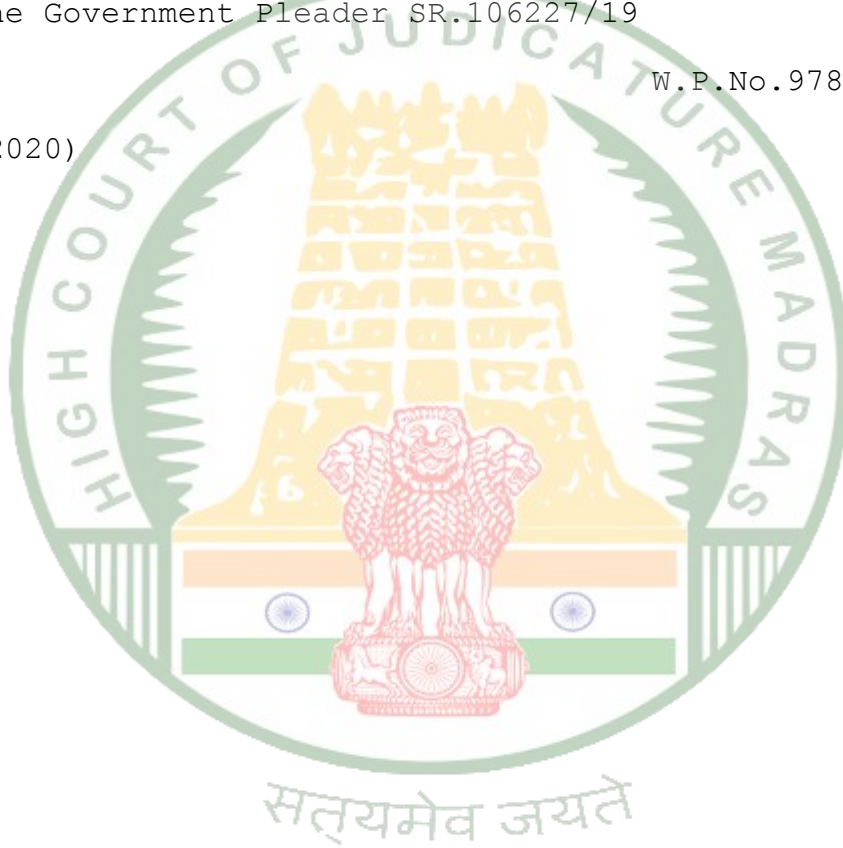
To

- 1.The Director,
Adi Dravidar Welfare Department,
Chepauk, Chennai 600 005.
- 2.The District Adi Dravidar Welfare Officer,
Adi Dravidar Welfare Department,
Kancheepuram District,
Kancheepuram.

+lcc to Mr.A.Arulmozhi, Advocate SR.106679/19
+lcc to the Government Pleader SR.106227/19

W.P.No.9783 of 2010

NR(CO)
CB(27/01/2020)



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