

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.11.2019

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P. NO.3397 of 2015  
and M.P.No.2 of 2015

G. Dharmaraj

.. Petitioner

- Vs -

Joint Director (Personnel),  
School Education,  
Chennai - 600 006.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorari, calling for the records relating to the proceedings of the respondent passed in Mu.Mu.No.108468/C3/E3/08 dated 28.10.2014 quash the same in so far as the treatment of period from 14.04.2006 to 09.12.2009 as not in service period (DIES-NON).

For Petitioner : Mr. S.Doraisamy

For Respondent : Mr. K.Karthikeyan  
Government Advocate

ORDER

The writ petition has been filed for issuance of a Writ of Certiorari, calling for the records relating to the proceedings of the respondent passed in Mu.Mu.No.108468/C3/E3/08 dated 28.10.2014 and quash the same in so far as the treatment of period from 14.04.2006 to 09.12.2009 as not in service period (DIES-NON).

2. The writ petitioner was joined as Junior B.T.Assistant in Government Higher Secondary School, Siramelkudi, Thanjavur District as a English Teacher on the consolidated pay of Rs.4,000/- on 09.07.2004. While he was working as a Junior B.T.Assistant, a criminal case was lodged on 14.04.2006 in Crime No.91 of 2006 for the alleged offences under Sections 366(A) and 376 IPC. The petitioner was placed under suspension by the respondent Department. The subsistence allowance and the dearness allowance were not paid to the writ petitioner. Thereafter, a charge sheet was filed against the petitioner in S.C.No.169 of 2008 on the file of the Additional Sessions Court/FTC. The Additional Sessions Court, Thanjavur, has acquitted the petitioner by judgment dated 30.06.2008. The

petitioner has made a request to the Chief Educational Officer, Thanjavur, to revoke the order of suspension. Upon verification that no appeal has been filed against the judgment of acquittal, the respondent has revoked the suspension order of petitioner only on 06.03.2012 and posting order was issued on such date.

3. The writ petitioner has filed W.P.No.33056 of 2012 challenging the proceedings of the respondent passed in Mu.Mu.No.108468/C3/E3/08 dated 06.03.2012 and seeking to quash the same in so far as the treatment of period of suspension as dies-non and a direction to the respondent to regularize the services of the petitioner with effect from 01.06.2006 and to pay the arrears of subsistence allowance and dearness allowance and other benefits. By order dated 16.08.2013, this Court has passed order in W.P.No.33056 of 2012 and the relevant paragraph is as follows:

"5. In the light of the said acquittal order as well as Additional Public Prosecutor-cum-Government Pleader's opinion dated 10.12.2009, the respondent is not justified in rejecting the request of the petitioner seeking revocation of suspension at least from 10.12.2009. The petitioner has also not been paid the subsistence allowance payable from the date of suspension that was from 24.04.2006 till 10.12.2009. Hence, the impugned order is set aside, with a direction to the respondent to revoke the order of suspension of the petitioner with effect from 10.12.2009 for the purpose of continuous service and other benefits and the petitioner shall be paid subsistence allowance from 24.4.2006 upto 06.3.2012. The order to that effect is directed to be passed by the respondent, within a period of six weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed."

4. The respondent has not complied with the above said order. Hence, the petitioner has filed a contempt petition in Cont.P.No.2377 of 2014 before this Court. Thereafter, the respondent has complied with the order and the contempt petition was closed.

5. According to the writ petitioner, the respondent has passed the impugned order treating the writ petitioner's non-working period from 14.04.2006 to 09.12.2009 as dies-non in service period. The aforesaid order of the respondent is contrary to the order passed in W.P.No.33056 of 2012. The petitioner further states that he received subsistence allowance from the respondent from 14.04.2006 to 09.12.2009. Therefore, the writ petitioner is entitled for regularization

of service, for the aforesaid non-working period and also for other benefits. Therefore, the impugned order is liable to be quashed.

6. On the other hand, the learned Government Advocate appearing for the respondent has submitted that in the order passed by this Court dated 16.03.2012 in W.P.33056 of 2012, a specific direction was given to the respondent to revoke the order of suspension of the petitioner with effect from 10.12.2009 for the purpose of continuous service and the other benefits and the petitioner shall be paid subsistence allowance from 24.04.2006 upto 06.03.2012. In the aforesaid order, it was clearly stated that the petitioner is not entitled for any allowance for the non-working period from 14.04.2006 to 09.12.2009.

7. This Court has considered the rival submissions and peruse materials on record.

8. This Court has given a specific direction in W.P.No.33056 of 2012, dated 16.3.2012 cited supra, to revoke the suspension order with effect from 10.12.2009 for the purpose of continuous service and other benefits and further observed that the writ petitioner is not entitled for any allowance for non-working period. In view of the aforesaid order, this Court finds no error or illegality in the impugned order. Therefore, the writ petition is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No costs.Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

सत्यमेव जयते  
Sub Assistant Registrar

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To

Joint Director (Personnel),  
School Education, Chennai - 600 006.

+lcc to Mr.S.Doraisamy, Advocate, S.R.No.97326  
+lcc to the Government Pleader, S.R.No. 97574

W.P. No. 3397 of 2015  
and M.P.No.2 of 2015

VBA (CO)  
GN (26/02/2020)

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