



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.06.2019

CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

WEB COPY

W.P.No.624 of 2012

D.Ravindran

.. Petitioner

Vs.

- 1.The Managing Director,
Tamilnadu Water Supply and Drainage Board,
Head Office, Chennai - 600 005.
- 2.The Joint Chief Engineer(Gl.),
Tamilnadu Water Supply and Drainage Board,
Head Office, Chennai - 600 005.
- 3.The Secretary-cum-General Manager,
Tamilnadu Water Supply and Drainage Board,
Head Office, Chennai - 600 005.
- 4.The Chief Engineer,
Tamilnadu Water Supply and Drainage Board,
North Zone, Vellore.
- 5.The Project Chief Engineer,
Tamilnadu Water Supply and Drainage Board,
Hogenakkal W.S.&F.M.P.,
Dharmapuri.
- 6.The Executive Engineer,
Tamilnadu Water Supply and Drainage Board,
Maintenance Division,
Thiruvannamalai.
- 7.The Executive Engineer,
Tamilnadu Water Supply and Drainage Board,
Hogenakkal W.S. And FMP Unit-II,
4/422, Vadivel Gounder Street,
Dharmapuri - 1.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records pursuant to the impugned order of the 5th respondent in his proceedings in Nadavadikkai No.4123/NiU/2011/Thi.Tha.Po./dated 09.05.2011, and subsequent order passed by the 1st respondent in his proceedings in Lr.No.25744/ET4/2011 dated 11.07.2011 ordering loss of pay



for petitioner's absence period from 30.06.2005 to 11.05.2009 AN (totally 1412 days) and consequently direct the respondents herein to regularize the period of the petitioner's service from 04.06.2005 to 10.05.2009 as 'Duty' for all purpose of consequential benefits including monetary and continuity of service benefits.

For Petitioner : Mr.T.Sellapandian
for Mr.A.Ramalingam

For Respondents: Ms.S.Thamizharasi
Standing Counsel for TWAD Board

O R D E R

The present Writ Petition is filed for issuance of Writ of Certiorarified Mandamus calling for the records pursuant to the impugned order of the 5th respondent in his proceedings in Nadavadikkai No.4123/NiU/2011/Thi.Tha.Po./dated 09.05.2011, and subsequent order passed by the 1st respondent in his proceedings in Lr.No.25744/ET4/2011 dated 11.07.2011 ordering loss of pay for petitioner's absence period from 30.06.2005 to 11.05.2009 AN (totally 1412 days) and consequently direct the respondents herein to regularize the period of the petitioner's service from 04.06.2005 to 10.05.2009 as 'Duty' for all purpose of consequential benefits including monetary and continuity of service benefits.

2.The petitioner was appointed as Assistant Draughtsman in the service of the respondents. He was one of the State Level office bearer of "Labour Progressive Sanga Perravai" and made complaints on the corruption of officials. In view of the same, he was not given any work. He was transferred to Vellore Division. The petitioner gave a representation for regularization of his leave and granting leave salary. One Assistant in that section demanded Rs.3,000/- as illegal gratification. The petitioner gave complaint to the Regional Vigilance Officer, TWAD Board, Vellore on 01.12.2003. The Vigilance Officer conducted enquiry on 08.12.2003. In spite of petitioner's various representation, his grievances were not redressed. He submitted his resignation on 04.06.2005 to the Executive Engineer, TWAD Board, Vellore. He was permitted to work till 04.07.2005 and thereafter, he was orally instructed not to attend the office. His resignation was neither accepted nor rejected. Due to the family circumstances, the petitioner by the letter dated 09.10.2006 expressed his willingness to withdraw his resignation and expressed his willingness to rejoin duty. The sixth respondent directed the petitioner to give one more representation, as the representation dated 09.10.2006 was misplaced. The petitioner gave a representation dated 20.07.2007



to the sixth respondent, withdrawing his resignation and expressing his willingness to rejoin duty.

3.While so, the sixth respondent by his proceedings dated 07.08.2007 bearing Pro.na.2762/EA/F/Ravindran/07, accepted the resignation of the petitioner with retrospective effect from 04.06.2005. The petitioner filed an appeal dated 21.11.2007 before the first respondent requesting to cancel the order dated 07.08.2007 passed by the sixth respondent. No order was passed on the appeal filed by the first respondent. The petitioner filed W.P.No.30645 of 2008, challenging the order of the sixth respondent dated 07.08.2007. This Court, by the order dated 18.03.2009, directed the first respondent to consider the appeal filed by the petitioner and pass orders on merits and in accordance with law. As per the orders of this Court, the first respondent by the proceedings dated 05.05.2009 bearing Pro.No.4118/ETE/HQ, considered the case of the petitioner and issued posting order, directing the petitioner to join duty and to approach the fourth respondent for posting order. The fourth respondent permitted the petitioner to join as Assistant Draughtsman and petitioner joined duty on 11.05.2009. The petitioner gave representation dated 23.05.2010 to the first respondent to regularize the period of absence from 04.06.2005 to 10.05.2009 as duty period and to pay all the monetary benefits with continuity of service. No order was passed by the respondents on his representation. The petitioner filed W.P.No.4102 of 2011 and this Court by the order dated 23.02.2011, directed the first respondent to consider the petitioner's representation dated 23.05.2010 and pass orders on merits and in accordance with law.

4.While so, the fifth respondent without any authority, by the order dated 09.05.2011, informed the petitioner that his absence period from 30.06.2005 to 11.05.2009 will be treated as loss of pay. Subsequently, the first respondent by the impugned proceedings dated 11.07.2011, passed an order rejecting the petitioner's representation and treated the period of absence as leave on loss of pay. The petitioner has come out with the present Writ Petition, challenging the above two orders.

5.According to learned counsel appearing for the petitioner, the petitioner was orally asked not to attend office from 04.07.2005 and his resignation letter dated 04.06.2005 was accepted by the respondents on 07.08.2007, after the same was withdrawn by the petitioner on 09.10.2006. The acceptance of resignation letter given by the petitioner after two years, even after the withdrawal of resignation by the petitioner is invalid and illegal. By this illegal acceptance, the petitioner was prevented from attending office. It is not the fault of the petitioner that he could not attend the office from 04.07.2005 and prayed for allowing the Writ Petition.



6.The respondents filed counter affidavit and denied all the averments made therein. The learned counsel appearing for the respondents contended that the petitioner was unauthorizedly absented from 02.12.2002. The respondents called upon the petitioner to submit his explanation for his unauthorized absence. The petitioner submitted his reply dated 17.01.2003 that he forgot to send his leave letter. Even thereafter the petitioner remained absent till 21.05.2003. His unauthorized absence was regularized as leave without pay. The petitioner submitted his resignation on 04.06.2005 and the same was not in proper format as the petitioner has not given three months notice. As per Rule 41-A of the General Rules for the Tamil Nadu State and Subordinate Services, as substituted by G.O.Ms.No.144/P&AR/dated 17.06.1998, if the resignation of the employee was not accepted or rejected within three months, the same is deemed to have been accepted. After submitting his resignation, the petitioner did not attend the office and his resignation was accepted by the sixth respondent by the proceedings dated 07.08.2007. The petitioner gave a mercy petition to the first respondent to permit him to rejoin duty in view of his family circumstances and for the welfare of his two minor daughters. The first respondent took a lenient view and permitted the petitioner to rejoin duty. The petitioner has unauthorizedly absented himself after submitting his resignation and after acceptance of resignation, the petitioner is not entitled to attend the office. The period from 01.06.2005 to 29.06.2005 was regularized as eligible earned leave and from 30.06.2005 to 11.05.2009 (1412 days) has been regularized as leave on loss of pay by the proceedings dated 09.05.2011. The petitioner's request was considered by the first respondent and by the impugned proceedings the same was informed to the petitioner. The petitioner is not entitled to any monetary benefits for the said period. The respondents have given all increments to the petitioner. The petitioner is not entitled to relief sought for and prayed for dismissal of the Writ Petition.

7.Heard the learned counsel appearing for the petitioner as well the learned Standing Counsel appearing for the respondents and perused the entire materials on record.

8.It is the contention of the petitioner that due to the attitude of the respondents, he was depressed and submitted his resignation letter on 04.06.2005. The respondents permitted the petitioner to attend the office till 04.07.2005 and on the same day, he was orally informed not to attend the office. The petitioner has not written any letter permitting him to attend the office and that oral order asking him to attend the office before acceptance of his resignation is invalid. No document was produced by the petitioner to prove the contention that he was orally asked not to attend the office. Till 09.10.2006, the



8(a).The petitioner by the letter dated 09.10.2006, withdrew his resignation. The fifth respondent asked the petitioner to give a fresh letter withdrawing the resignation, as the earlier letter dated 09.10.2006 was misplaced. The petitioner gave another letter dated 20.07.2007. The withdrawal of resignation by letters dated 09.10.2006 and 20.07.2007 was not disputed by the respondents. After such withdrawal, the sixth respondent by the proceedings dated 07.08.2007, accepted the resignation of the petitioner with retrospective effect from 04.06.2005. The sixth respondent has not given any reason for accepting the letter of resignation of the petitioner belatedly after two years that too after he withdrew the letter of resignation and expressed his willingness to rejoin duty.

8(c).The petitioner has withdrawn his resignation by his letters dated 09.10.2006 and 20.07.2007. After such withdrawal, the sixth respondent has accepted the letter of resignation of the petitioner on 07.08.2007 with retrospective effect from 04.06.2005. The sixth respondent has not referred to any Regulation or Rule in the said order. In view of the same, the said acceptance is invalid. On such invalid acceptance, the petitioner was prevented from attending office till the first respondent ordered rejoining the petitioner in service who



rejoined duty on 11.05.2009. The order of acceptance of resignation is invalid. The first respondent considering the appeal filed by the petitioner, permitted the petitioner to re-join duty and petitioner attended duty on 11.05.2009. In view of the invalid acceptance of resignation, the petitioner was unable to attend work from 07.08.2007 till 11.05.2009. It is not the fault of the petitioner for not attending the office.

9. For the above reason, the order of regularizing the services of the petitioner from 07.08.2007 to the date of joining i.e., 11.05.2009 is set aside. The petitioner is entitled to monetary benefits from 07.08.2007 to 11.05.2009. The respondents are directed to pay all the monetary benefits to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

10. With the above direction, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk

To

1. The Managing Director,
Tamilnadu Water Supply and Drainage Board,
Head Office, Chennai - 600 005.
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Tamilnadu Water Supply and Drainage Board,
Head Office, Chennai - 600 005.
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Hogenakkal W.S. And FMP Unit-II,
4/422, Vadivel Gounder Street,
Dharmapuri - 1.

+1cc to Mr.S.Thamizharasi, Advocate, S.R.No.53652

+1cc to Mr.A.Ramalingam, Advocate, S.R.No.53588

W.P.No.624 of 2012

VSNI (CO)

RRS (06/08/2019)