

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2019

PRONOUNCED ON :19.03.2019

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL

And

THE HON'BLE Mr. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.2730 of 2016

and

W.M.P.No.2282 of 2016

K.Balasubramaniam

... Petitioner

V.

1.Union of India,

Department of Posts Rep.

By the Senior Superintendent RMS,

Airmail Sorting Division,

Meenambakkam, Chennai - 27.

2.The Chief Post Master General,

Tamil Nadu Circle,

Anna Road, Chennai - 2.

3.The Central Administrative Tribunal,

Chennai Bench,

Chennai - 104 Rep.

By the Registrar.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records on the file of the 3rd Respondent in connection with the order passed by him in O.A.No.969/2013, dated 14.12.2015 and quash the same to the extent of denial of salary even for the period of stay from 18.7.2013 to 14.12.2015 granted by the learned Tribunal in O.A.No.969/13, dated 18.7.2013.

For Petitioner

: Mr.R.Singaravelan

Senior Counsel

For M/s.M.Srividhya

For Respondents 1 & 2 : Mr.K.Raju, CGSC

O R D E R

M.VENUGOPAL, J.

Heard both sides.

2.The Petitioner joined service on 18.09.1996 as Sorting Assistant. Later, he was deputed to Speed Post Concentration Centre (SPCC) from 01.09.2002 and from the date of the said deputation till date (filing of the present Writ Petition), he is serving in the said post without any blemish. He was served with the order of Suspension suspending him from service with effect from 09.04.2009 and the said Suspension was periodically reviewed by the Review Committee. Through an order dated 11.06.2013 the order of Suspension was revoked and by an order dated 14.06.2013 he was transferred from Chennai to Jolarpettai. The arrears of pay on revocation of Suspension were not paid and hence, he made a representation dated 30.07.2013 to the Senior Superintendent, RMS, Airmail Sorting Division, Meenambakkam, Chennai -27. Thereafter, the Suspension Revocation Order and the Transfer Order were served on him, through letter dated 12.07.2013, on 17.07.2013

3.A Charge Memo dated 26.08.2009 was issued to the Petitioner and he filed O.A.No.278 of 2010 assailing the said Charge Memo on numerous grounds and the said Original Application in O.A.No.278/2010 was allowed on 18.05.2011 quashing the same. The Department filed W.P.No.16058 of 2011 and an interim stay of the order of the Tribunal was granted on 06.07.2011. In the meanwhile, the order of Suspension was revoked by the Department on 11.06.2013 and after Revocation of Suspension, by an order dated 14.06.2013, as already stated, he was transferred from Chennai to Jolarpettai. Against the order of Transfer, he had filed an Application before the Tribunal in O.A.No.969 of 2013 based on the following grounds:

"(a) The order of Transfer is not only arbitrary and illegal but lacks bona fide.

(b) After quashing of Charge Memo by the learned Central Administrative Tribunal the department filed a Writ Petition and then chosen to revoke the order of suspension. On revocation of suspension I should have been retained in the same place and post and instead of doing so, the department vindictively has questioned the order of Transfer dated 14.06.2013 to victimize me for the filing an application challenging the charge memo.

(c) The order of transfer was passed in the middle of the Academic year without even taking note of my family circumstances that my sons were pursuing the school studies and even now my 2nd son is undergoing the +2 Course.

(d) The order of Transfer is violation of the Fundamental Right guaranteed to me under Arts.14, 16 and 21 of the Constitution of India."

4.The aforesaid Original Application was admitted and an interim order was granted on 18.07.2013. In fact, the said interim order against the order of 'Transfer' was in force till 14.12.2015, the date of dismissal of the Original Application filed by the Petitioner questioning the order of 'Transfer'. Because of the fact that an order of interim stay was in force from 18.07.2013 till 14.12.2015, the Petitioner is entitled to receive the salary for the said period based on the Judgment of the Hon'ble Supreme Court and this Court.

5.The grievance of the Petitioner is that the Tribunal, while dismissing the O.A.No.969 of 2013, was pleased to make an observation in its order that he is not entitled to salary for the period from 18.07.2013 to 14.12.2015 in spite of the interim order of the stay in his favour. Such an order passed by the Tribunal in O.A.No.969 of 2013 is assailed by the Petitioner in the present Writ Petition.

6.The Learned Senior Counsel for the Petitioner contends that in view of the Interim Stay Order of Transfer passed by the 3rd Respondent/Tribunal, the Respondents should have allowed the Petitioner to continue in service with all benefits and failure to do so would amount to abuse of process of Law and contempt on the part of the Respondents.

7.The Learned Senior Counsel for the Petitioner submits that inasmuch as the interim order was not vacated till 14.12.2015 the Petitioner must be deemed to be in service and therefore, he is entitled to the salary for the period of interim order atleast. Apart from that, the observation of the Tribunal in O.A.No.969 of 2013 that the Petitioner is not entitled to salary even for the period of 'Transfer' is beyond the scope of Original Application and the claim made by him is liable to be set aside, in the interest of Justice.

8.The Learned Counsel for the Petitioner proceeds to point out that failure to pay salary for the period from 18.07.2013 to 14.12.2015 is tainted with mala fide motives and illegalities.

9. The Learned Senior Counsel for the Petitioner cites the decision of the Hon'ble Supreme Court in Electronics Corporation of India Limited and others V. Sateesh S. Rao Sonawalkar, (2004) 11 Supreme Court Cases 550, wherein at paragraph 6 to 9, it is observed and held as follows:

"6. Learned counsel for the appellants submits that the respondent had been relieved by passing the order dated 17-7-1995 and thereafter he remained absent. Under the rules, whatever period is admissible as earned leave that having been made available to the respondent, rest of the period is to be treated as the period on extraordinary leave but it has to be without pay, including the period during which the respondent had gone abroad on sanctioned extraordinary leave without pay. It is further submitted that any concession made by the counsel or if no objection is made by the counsel to a situation which may run contrary to the rules would not be binding. It is further submitted that a whole reading of the order passed by the High Court would show that the period of absence though not authorised, yet it is to be treated as on sanctioned extraordinary leave. This is how the period was to be regularised. It is further submitted that the direction for payment of salary would only mean payment of salary for the period as admissible under the rules pertaining to the extraordinary leave or any other kind of leave. It is further submitted that considering the rule position, the appellants have regularised the whole period of absence treating the same as period covered by earned leave as well as extraordinary leave but no payment of salary is liable to be made except for the period of earned leave.

7. The respondent-in-person tried to make a submission that the order of his transfer was mala fide. However, we find no relevance in that aspect of the matter since it became final with the

dismissal of his appeal against the matter pertaining to his transfer. The matter was not taken up any further by the respondent. The next contention which has been raised by the respondent-in-person is that the rules relating to extraordinary leave, as provided in the ECIL Service Rules, are applicable only to ECIL but not to its officers, namely, the General Managers of different departments who have been impleaded as the respondents in this appeal. The argument is fallacious on the face of it and such a plea cannot be entertained that he may be allowed extraordinary leave with salary and the officers may be directed to make the payment of the same.

8. We have, however, considered the whole matter including the order passed by the High Court. The High Court thought in the best interest of both the parties, namely, the organisation as well as the respondent to pass the impugned order. The direction was to regularise the period of absence even though it was without sanction of leave, by treating the period spent on extraordinary leave as per the relevant rules. As indicated by the learned counsel for the appellants, extraordinary leave for a period of three months at one stretch can be granted by the management without pay and for period beyond that, it may be granted by the higher authorities. It is further submitted that the period with effect from 17-7-1995 to 8-11-1995 can be adjusted against earned leave on full salary. Thereafter, the respondent was granted three months' extraordinary leave without pay w.e.f. 9-11-1995 to 7-2-1996 during which period he went abroad, namely, USA. The rest of the period may be allowed to be treated as the period on extraordinary leave without pay. We, however, find that the respondent had on 19-7-1995 obtained the stay order of his transfer. The

respondent reported on duty with that order on the next day. The appellants sat tight over the matter for a period of five months, without bringing to the notice of the Court that the respondent stood relieved on 17-7-1995 and moved for vacation of the stay order only on 19-12-1995 and the stay order was vacated only on 8-4-1996, that is to say, the stay order remained operative w.e.f. 19-7-1995 till the date of its vacation i.e. on 8-4-1996. The respondent had made himself available and had reported on duty on 20-7-1995. This kind of relieving order, if passed on 17-7-1995, should have been brought to the notice of the Court at the earliest, rather than to allow it to continue for such a long time even though appearance on behalf of the appellants was put in before the Court much earlier. In the circumstances, the case of relieving of the respondent in the manner as indicated by the appellants is not liable to be accepted.

9. Therefore, we provide that the period from 17-7-1995 to 8-4-1996 shall be treated as the period spent on duty and the appellants shall pay full salary for the said period, excluding the period of three months w.e.f. 9-11-1995 to 7-2-1996 for which extraordinary leave was granted to the respondent to visit USA. The period after 8-4-1996 shall be adjusted against earned leave or any other such leave which according to the appellants have been made admissible to the respondent for the period from 17-7-1995 to 8-11-1995. The rest of the period has only to be regularised as against extraordinary leave without pay. In this manner the continuity of service of the respondent is also maintained and all the period of service would also stand regularised in the spirit of the order passed by the High Court. The arrears of salary to be calculated in the manner indicated above shall be worked out and paid within six

weeks from today."

10. The Learned Senior Counsel for the Petitioner relies on the decision of this Court in T. Titus V. State of Tamil Nadu represented by the Secretary to Government, P & AR Department, Secretariat, Chennai and others, (2007) 6 MLJ 550, wherein at paragraphs 6, 10, 13 and 20, it is observed as follows:

"6. The learned counsel for the petitioner argued that the transfer order dated 9.3.1994 having been stayed in O.A.No.1416 of 1994 on 13.3.1994 and the stay was vacated only on 6.5.1994. Petitioner also filed R.A.No.67 of 1994 and the Tribunal passed order on 4.10.1994 and posting order was given only on 25.8.1995 and therefore the petitioner cannot be termed as unauthorisedly absented as the petitioner was willing to work and only due to want of posting order at Nagercoil, he was prevented from attending his duties and the entire period shall be treated as compulsory wait and as such the charge framed against the petitioner for unauthorised absence for more than one year is baseless. According to the learned counsel, the second charge framed is also unsustainable in view of the fact that as a Government servant, the petitioner is entitled to seek the legal remedy available to the Government servants, which the petitioner exercised, for which no charge could be framed. The learned counsel further argued that the petitioner was victimised, harassed and was compelled to file successive applications before the Tribunal to get justice.

10. Admittedly the petitioner challenged the order of transfer dated 9.3.1994 before the Tribunal in O.A.No.1416 of 1994 and the Tribunal granted interim stay of the Transfer order on 13.3.1994. However, petitioner was not given posting at Nagercoil. O.A.No.1416 of 1994 was disposed of on 6.5.1994 and the interim stay was

vacated. Petitioner filed R.A.NO.67 of 1994 and the Tribunal on 4.10.1994 passed the following order:

"O R D E R In O.A.No.1416/94, dated 6.5.1994, we have held as below:-

"If as stated, the applicant has been working in the station from 15.9.93, normally he would not be liable to transfer. But, if he had entered on leave for an extended period, the transfer would inevitable, because the post cannot be vacant, awaiting return of the person leave. It is seen that he had been working in Kanyakumari District from 1983, except for a period between 22.8.91 and 16.12.1992 at Kodaikanal. Therefore, he should not have been retransferred to Kanyakumari District. The orders regarding posting of spouses in or near the same station is subject to the orders regarding tenure in a station."

The Review Application states that posts are now available in Kanyakumari District and that he may be considered. This is not a matter for review of our orders. However, the applicant having been retransferred to Kanyakumari District, even though he had worked for 8 years earlier in the District, he could be allowed to work for a further period, if vacancies are available. He should represent to the departmental authorities for consideration."

13. The question of unauthorised absence will come only when no proceeding was initiated against the transfer order and no leave application was submitted. Here in this case, as per the above referred legal proceedings it is established that the petitioner challenged the order of transfer passed against him and he was awaiting posting order after obtaining stay of the transfer order and also after the review order, which ultimately was given on 25.8.1995. As

rightly contended by the learned counsel for the petitioners as per F.R.9(6)(3), the said period shall be treated as compulsory wait period. Hence I am of the view that the charge of unauthorised absence of petitioner from 20.12.1993 to 19.12.1994 is not made out warranting to treat the petitioner as deserted in terms of G.O.Ms.No.1046 P&AR Department dated 13.11.1987.

20. Since I have found that the charges levelled against the petitioner are not maintainable, the writ petitions challenging the charge memo dated 20.1.1995 are to be allowed. The contention that petitioner need not be given salary during the period of stay cannot be accepted in view of the judgment of the Supreme Court reported in (2004) 11 SCC 550 (Electronics Corporation of India Ltd v. Sateesh S. Rao Sonawalkar). The Supreme Court upheld the course adopted by the High Court in the said case to evolve the possible solution in the matter....."

11.The Learned Senior Counsel for the Petitioner brings it to the notice of this Court the decision in D.Kasthuribai V. The District Backward Class and Minority Welfare Officer reported in CDJ 2008 MHC 2575 wherein at paragraphs 4, 6, 15, 19 to 22, it is observed and held as follows:

"4. Earlier, Appellant filed W.P.No.11628/2006 seeking for a direction to consider the representation of the Appellant dated 06.12.2001 and 11.12.2001. By its order dated 05.02.2007, Court has directed the respondent to consider the representation of the Appellant and pass orders.

6.Aggrieved by the order, petitioner has filed W.P.MD.No.3737/2007 to quash the impugned Order dated 09.03.2007. Observing that the interim order of the Tribunal merged with the final order and that Tribunal has given

the Seal of approval to the transfer order by stating that the order is not vitiated by any illegality or impropriety, the learned Single Judge dismissed the Writ Petition. The learned Single Judge took the view that the decision reported in 2004(11) SCC 550 - Electronics Corporation of India ltd. vs. Sateesh S.Rao Sonawalkar, may not be applicable to the case of the Appellant.

15. Transfer order is subject to judicial review within the permissible parameters. The contention of the Appellant that she was ready to join duty on 15.12.1999 but she was not given posting in Thoothukudi is supported by filing the contempt petition C.A.No.15/2000. In our view, the contention of the respondent that the Appellant was unauthorisedly absent from 23.11.1999 to 23.11.2001 is unacceptable.

19. Following the above decision, in W.P.MD.No.4092/2004, Justice Jyothimani has taken the view that where the employee was willing to do work and the employer has not provided employment, the principle of 'no work, no pay' will not apply. In 2007(6) MLJ 550 [cited supra], Justice Paul Vasanthakumar has held that as the petitioner had not absented from duty, he could not be treated as unauthorised absentee and that the petitioner is to be given salary during the period of stay.

20. In our considered view, the decision of the Supreme Court in 2005(8) SCC 314 and 2004(11) SCC 550 is applicable to the facts of the present case. we are unable to uphold the contention of the respondent that the Appellant was an unauthorised absentee from 23.11.1999 to 23.11.2001. For the foregoing reasons, the appeal deserves to be allowed.

21. The only point that remains to be considered is, as to how the period has to be treated and whether Appellant

is entitled to salary for the entire period. The Appellant herself applied for Unearned Medical Leave from 23.11.1999 to 15.12.1999 in two spells. Therefore, we are of the view that leave from 23.11.1999 to 15.12.1999 has to be as Unearned Leave on Medical Certificate. From 16.12.1999 to 23.11.2001 as the Appellant was willing to work, she shall be entitled to full salary.

22. The order in W.P.No.3737.2007 is set aside and this appeal is allowed. It is ordered that the period from 23.11.1999 to 15.12.1999 shall be treated as Unearned Leave on Medical Certificate and she shall be entitled to salary as permissible under Rules. From 16.12.1999 to 23.11.2001 the Appellant shall be entitled to full salary as permissible under the Rules."

12. The Learned Senior Counsel for the Petitioner points out that the 3rd Respondent/Tribunal in O.A.No.969 of 2013 filed by the Petitioner on 18.07.2013 had passed the following order:

"The operation and execution of the impugned order No.B1/TFR/R-37/2013 dated 14.06.2013 dated at Chennai 600 027 the 14.06.2013 issued by the respondent is stayed till 01.08.2013."

Issue notice to the Respondent returnable by 01.08.2013"

and ultimately the O.A., M.A., and C.A. came to be dismissed on 14.12.2015.

13. Per contra, it is the submission of the Learned Counsel for the Respondents that the Petitioner was recruited as Sorting Assistant on regular basis with effect from 08.07.1985 and that he was deputed to Speed Post Concentration Centre (SPCC), Chennai - 600 016 from 01.09.2002.

14. It is represented on behalf of the Respondents that the Manager, Speed Post Concentration Centre, in his communication dated 08.04.2009, had reported that as per the investigation carried out in his office, it was found that the cash collected at the Multi Purpose Counter Machine at the counter by the Petitioner was not credited by him on several dates to the tune of Rs.16,70,362/- and since the Government Money was not deposited, the Petitioner was

placed under Suspension with effect from 09.04.2009 and that the Charge Sheet under Rule 14 of CCS (CCA) Rules, 1965 was issued to him on 26.08.2009.

15.The Learned Counsel for the Respondents points out that based on the Investigation Report and material evidence, it was found that there was a prima facie case against the Petitioner. Therefore, a Charge Memo was issued to the Petitioner. In the said Charge Memo, the charges framed against the Petitioner, the documents by which and witness by whom the articles of charges were proposed to be sustained were clearly mentioned in the Charge Memo and that he was suspended on 09.04.2009 and the Suspension was reviewed by the Review Committee periodically and extended till 11.06.2013.

16.The Learned Counsel for the Respondents brings it to the notice of this Court that the Petitioner filed O.A.No.278 of 2010 before the Tribunal against the Charge Memo issued under Rule 14 of the CCS (CCA) Rules, 1965 and that the Petitioner prayed for an interim stay and the Central Administrative Tribunal, Madras on 18.05.2011 had quashed the Charge Memo dated 26.08.2009 and issued a consequential direction to the Respondents therein to reinstate the Petitioner into service with all attendant benefits, which exercise shall be completed within two weeks from the date of receipt of copy of this order.

17.Further, it is projected on the side of the Respondents that as against the order of Tribunal in O.A.No.278 of 2010 dated 18.05.2011, W.P.No.16058 of 2011 was filed by the Department before this Court and an interim stay was obtained and a Miscellaneous Petition was filed in M.P.No.1 of 2011 to stay all further proceedings in O.A.No.278 of 2010 and this Court had granted an interim order of stay and subsequently, a final order was passed in W.P.No.16058 of 2011 whereby and whereunder the order of the Tribunal was quashed and that the same was set aside.

18.The Learned Counsel for the Respondents submits that the Suspension of the Petitioner was revoked and that the Petitioner was transferred to SRO, RMS 'M' Division, Jolarpettai as per Rule 37 by the Competent Authority. But the Petitioner had not joined in the place of posting and he filed O.A.No.969 of 2013 before the 3rd Respondent/Tribunal against the Department and ultimately the Tribunal dismissed O.A.No.969 of 2013, M.A. and C.A. as they were devoid of merits. Furthermore, the Tribunal had ordered that in regard to the payment of salary from the date of Revocation of Suspension, admittedly that the Petitioner had not reported

duty and therefore, he is not entitled to claim any salary commencing from the date of Revocation and resultantly, interim order dated 18.07.2013 stood vacated. Moreover, the Petitioner assumed the charge at SRO, RMS 'M' Division, Jolarpettai only on 07.01.2016. Aggrieved against the order of 3rd Respondent/Tribunal in O.A.No.969 of 2013 dated 14.12.2015, the Petitioner has filed the present Writ Petition.

19.The Learned Counsel for the Respondents submits that the Petitioner was under Suspension since 2009 and he had received 50% of Subsistence Allowance from the date of his Suspension and since the period of continuation of Suspension expired on 31.07.2013 and the Department decided to revoke the Suspension after taking into account of all the circumstances. However, because of the said Order in O.A.No.278 of 2010 to discontinue the Disciplinary Proceedings and since there were chances to hamper the Documents, Records and Registers and to intimidate the witnesses, if the Petitioner was posted in Parent Division, he was transferred and posted outside the Parent Division i.e. RMS 'M' Division, Chennai - 600 008 and it is not contrary to the Rules.

20.The Learned Counsel for the Respondents projects an argument that if the Petitioner credited the money collected across the Multipurpose Counter into the Government Accounts and discharged his duties as a Government Servant correctly and he would not have been suspended by the Department and further transferred to SRO, Jolarpettai after Revocation of Suspension and in short, it is the version of the Respondents that the Petitioner is personally responsible for his Suspension and Transfer in the interest of service, blaming the Department for his transfer without taking note of his family circumstances is an irrelevant one.

21.The Learned Counsel for the Respondents draws the attention of this Court that the order of interim stay was in force from 18.07.2013 till 14.12.2015 and even though the interim order was granted to the Petitioner in O.A.No.969 of 2013, no order was issued as regards as the interim stay till 14.12.2015. Added further, since the Petitioner had not reported for duty, he was not entitled to claim any salary commencing from the date of Revocation of Suspension as per order of the 3rd Respondent/Tribunal dated 14.12.2015 and as such, he is disentitled to claim salary for the period from 18.07.2013 to 14.12.2015.

22.The Learned Counsel for the Respondents cites the decision of the Hon'ble Supreme Court in Union of India

V. .Jankiraman reported in (1991) 4 SCC 109 at special page 121 wherein at paragraph 25, it is observed as under:

"25.We are not much impressed by the contentions advanced on behalf of the authorities. 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."

23.The Learned Counsel for the Respondents relies on the decision in Abani Kumar Das V. State of Assam and others, 2003 (3) Gauhati LR 648 wherein at paragraph 3, it is observed as follows:

"The petitioner was a subject teacher in Hindi and was working in Dispur Government Higher Secondary School. On 4.7.1998 the petitioner was transferred from Dispur Government Higher Secondary School to Tezpur Govt. Girls' Higher Secondary School. Aggrieved by the order of transfer, the petitioner filed a writ petition and the learned Single Judge of this Court has granted stay of the transfer order on 22.7.1998. Thereafter the matter was taken up and the writ petition was dismissed on 31.3.1999. It is the case of petitioner that in spite of the stay order of his transfer granted by this Court, the authority has not permitted him to join the service at Dispur although he was relieved and joined his service at Tezpur. The petitioner has made this claim on the basis of the stay order granted by the court whereby his transfer from Dispur to Tezpur was stayed. The learned Single Judge was of the view that the petitioner has not brought to the notice of the court that he has already joined at Tezpur and thus he is not entitled to any benefit under the stay order granted by the court and as he has not worked in the post he is not entitled to salary.

The learned counsel for the State-respondent could not bring to out notice that any application has been moved for vacating the stay granted by the court, nor the stay order was got vacated, bringing to the notice of the Court that the petitioner appellant herein was not entitled to have a stay in view of the fact that he has already joined at Tezpur. The net result of stay order granted by the court is hat the transfer of the petitioner has been stayed. By virtue of the stay of the transfer order, the petitioner is entitled to join his duties at Dispur, which has been denied to the petitioner, and thus it cannot be said that the petitioner would not be entitled to salary for the period he has not worked as a teacher at Dispur because of the fact that he has not worked as a teacher at in Dispur Government Higher Secondary School. The principle of 'no wok no pay' shall be made applicable only when the employee is not willing to work and has not worked. The principle has no application where the employer refused to give work and consequent thereof refused to pay the salary."

24. In the present case, the Petitioner was appointed on Ad hoc basis as Sorting Assistant in Ms. Airmail Sorting Division as per Memo No. B12/A/85 dated 09.07.1985 with effect from 08.07.1985 in the pay scale of Rs.260-8-300-EB-8-340-10-360-12-420-EB-12-480. The said appointment was purely temporary and Ad hoc one. In fact, the Circle Level Investigation Report of Director of Postal Services (MB)/2nd Respondent in the case of Non-Credit/Short Credit of Cash collected at Speed Post Booking Counter at Speed Post Concentration Centre, St. Thomas Mount, Chennai - 600 016 (the period of fraud from 14.11.2007 to 08.03.2009) speaks of the Petitioner viz., K. Balasubramaniam, the then SA, SPCC, Chennai - 600 016. Also that, a police case was registered against the Petitioner in TBOP SA with Central Crime Branch, Chennai sub Urban Police on 17.09.2009 vide FIR No.109/2009 in respect of case registered under Sections 409, 477A of the Indian Penal Code.

25. The Investigation Report of the 2nd Respondent/Chief Postmaster General, Tamil Nadu Circle, Chennai dated

21.12.2009 mentions that the Petitioner was issued charge sheet under Rule 14 of CCS (CCA) 1965 through Memo No.F/KB/2009 dated 26.08.2009 of SSRM, AM Sorting Division, Chennai. In the said Report, it was stated that the properties of main offender should be identified and intimated to Revenue Authorities to stop their alienation and may be taken under PAD Act 1850. Further, the Report adds that the entire fraud is due to manipulation of postage realised in counter operations and have no claims are to be raised/settled in the instant case and the Manager, SPCC, St. Thomas Mount is instructed to take immediate action on all the pending aspects. On 09.04.2009, the Senior Superintendent, RMS, Airmail Sorting Division & Automatic Mail Processing Centre, Chennai - 600 027 had placed the Petitioner under suspension with immediate effect.

26.Indeed, the total amount of loss to the Department was Rs.16,70,362/-. Since it was not possible to proceed with Departmental Proceedings pending final orders in W.P.No.16058 of 2011, according to the Respondents 1 and 2, the Petitioner's Suspension was revoked as per Memo dated 11.06.2013 and he was transferred from 'Airmail Sorting Division' to 'RMS 'M' Division', in accordance with Rule 37 of Postal Manual Volume IV in public interest, vide Circle Office Memo No.STA/29/R-37/MM dated 12.06.2013. Based on this, a Posting Order of the Writ Petitioner was issued by the Superintendent, RMS 'M' Division through Memo dated 12.06.2013 in and by which the Petitioner was posted as Sorting Assistant at SRO, Jolarpettai RMS and a Relieving Order was issued as per SSRM, Airmail Sorting Division Memo dated 14.06.2013.

27.It transpires that the Order of Revocation was addressed to the Petitioner on the same day on 11.06.2013 and that the Petitioner was intimated by the Manager, Speed Post through letter dated 25.06.2013 whereby he was directed to attend the office for receipt of the Transfer and Posting Orders and this letter was received by him on 25.06.2013. Being dissatisfied with the same, the Petitioner has filed the present O.A.No.969 of 2013.

28.The Learned Counsel for the Respondents brings it to the notice of this Court that the Suspension Order of the Petitioner was revoked through Memo dated 11.06.2013 and the same was sent to the Petitioner's residential address and Rule 37 of the Postal Manual Volume IV enjoins that 'all Officials of the Department are liable to be transferred to any part of India' and since the Petitioner belongs to the cadre of Sorting Assistant and in accordance with the aforesaid Rulings, he was transferred to RMS 'M' Division in

the public interest. As a matter of fact, the Posting Orders were forwarded to the Manager, Speed Post Concentration Centre (SPCC), Chennai -16 where the official lastly served and HRO, Chennai Airmail Sorting Division, Chennai - 27 who is DDO to the Official for delivering the same to the Petitioner. Hence, the Manager, SPCC issued notice to the Petitioner through Registered Post dated 25.06.2013 to collect his transfer orders from the office of the Manager SPCC and a notice was delivered to him on 01.07.2013. Although it was informed by the Manager, SPCC, Chennai - 600 016 to receive the transfer and posting orders, he had not attended SPCC for receiving the orders. However, he had attended HRO, Chennai Airmail Sorting Division, Chennai - 600 027 to receive his Subsistence Allowance on 04.07.2013. Since the suspension of the Petitioner was revoked from 11.06.2013, his Subsistence Allowance was drawn up to 10.06.2013 and the same was served on him by the Cashier and further directed the Petitioner to meet the HRO for further information.

29.The Learned Counsel for the Respondents contends that the HRO had further reported that the Petitioner had refused to meet the HRO and informed that he would collect his order copies from the Manager, SPCC, Chennai - 600 016, when he attended HRO for receipt of his Subsistence Allowance, for June 2013. But the Petitioner never visited the Manager, SPCC, Chennai - 600 016 and that he deliberately avoided to receive the transfer and posting orders and also the revocation orders so as to create an evidence to state that the revocation orders was not delivered in time.

30.The Learned Counsel for the Respondents submits that the 'Order of Revocation of Suspension' was already sent to the Petitioner's residential address on 11.06.2013 itself and the intimation regarding the receipt of Transfer Order was delivered to him on 01.07.2013 itself. As such, it is represented on behalf of the Respondents 1 and 2, the contra plea taken on behalf of the Petitioner that the orders of Revocation of Suspension and Transfer were served along with a letter dated 12.07.2013 and 16.07.2013 is an incorrect one.

31.The Learned Counsel for the Respondents contends that with reference to the notice issued by the Manager, SPCC, Chennai - 600 016, the Petitioner was to attend his office of last working viz., SPCC, Chennai - 600 016 and to receive the transfer and posting orders. But, he had refused to receive the notice although he was informed by the HRO at the time of receipt of Subsistence Allowance on 04.07.2013.

Besides this, a copy of Revocation of Suspension Order along with a copy of the Transfer Order were sent through one T.Vivekanandan, IP, APSO in person on 04.07.2013 itself to the Petitioner's address along with the Delivery Postman of Old Pallavaram S.O. Sri.R.Ashok Kumar, but the Applicant refused to accept the orders by hand and this was witnessed by R.Ashok Kumar, Delivery Postman of Old Pallavaram S.O. In fact, when the IP, APSO had required the Writ Petitioner to assign reason for refusing the letters in writing, the Petitioner had stated that he would collect letters through post only and not through by hand and the Delivery Postman of Old Pallavaram R.Ashok Kumar in his statement on 04.07.2013 had stated that the Petitioner had refused to receive the orders to state that the orders were not delivered to him in time. Therefore, the plea of the Petitioner that orders were served only after 16.07.2013 is not a tenable one.

32.The Learned Counsel for the Respondents contends that as per Para 6.13.3 of Vigilance Manual Volume I, if investigation is likely to take more time, it should be considered whether it is still necessary, taking the circumstances of the case into account, to keep the Government Servant under suspension or whether the suspension order could be revoked, and if so, whether the Government Servant could be permitted to resume duty on the same post or transferred to another post or office.

33.The Learned Counsel for the Respondents contends that the Petitioner was transferred and posted purely on administrative grounds and that the Petitioner had not made any representation to the Competent or Appellate Authority regarding his posting and transfer to Jolarpettai RMS under RMS 'M' Division and further that, he had not availed proper channel for redressal of his grievances.

34.The Learned Counsel for the Respondents projects a plea that 'Transfer' is an incidence of service and the Petitioner had not singled out any violation of Statutory Rules or averred 'Mala fides' against the Respondents and as such, the Petitioner is not entitled to any relief in the Writ Petition.

35.It is to be pointed out that as regards the normal Rule, 'No Work, No Pay', no absolute proposition of Law in this behalf can be laid down. To put it succinctly, 'No Work, No Pay' cannot be accepted as a 'Rule of Thumb'.

36.At this stage, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in

R.R.Bhanot V. Union of India and others, AIR 1994 Supreme Court 1111 at special page 1113 & 1114, wherein at paragraphs 8 to 10, it is observed as follows:

"8. Counter-affidavit has been filed on behalf of the State of Punjab and the Chief Engineer, PWD (B & R Branch) Punjab, Patiala. In para 9 of the counter-affidavit the stand taken by the State of Punjab is as under:

"That in reply to this Para, it is submitted that the petitioner was allocated to the State of Himachal Pradesh, w.e.f. November 1, 1966. He was retired by the Himachal Pradesh Government, vide order dated March 20, 1969, w.e.f. May 14, 1968, when the Hon'ble High Court at Shimla, vide order dated September 29, 1969 set aside the above order on the ground that Union of India, vide their letter dated May 19, 1969 had allocated him to Punjab State, he should have come to Punjab. As admitted by the petitioner in para 7 of the petition, he did not join in the Punjab State. The Government of Punjab, therefore, had nothing to do with his pension case which was returned."

9. We are of the view that the stand taken by the Punjab Government is wholly unjustified. As stated above the order dated March 20, 1969 prematurely retiring the appellant from service was quashed by the Himachal Bench of the Delhi High Court by its judgment dated September 29, 1969. As a consequence the appellant continued in service till December 31, 1970 when he attained the age of superannuation. It is not disputed that the appellant was finally allocated to the State of Punjab with effect from November 1, 1966. The net result would be that the appellant shall be deemed to be continuously serving the State of Punjab with effect from November 1, 1966. He had joined service in the erstwhile State of Punjab on September 30, 1937. On March 20, 1969 when he was prematurely retired by the State of Himachal he had already served

the Government for about 32 years. He was undoubtedly entitled to the grant of pension and other postretiral benefits. Simply because the appellant failed to submit joining report to the State of Punjab after the judgment of the Himachal Bench of Delhi High Court, he could not be denied his right to pension and other benefits to which he was entitled on his attaining superannuation. It was for the State of Himachal Pradesh to have reinstated the appellant in service after the High Court judgment and thereafter relieved him to join the State of Punjab. In any case the appellant, having been finally allocated to the State of Punjab, it is the State of Punjab which has to give pension and other retiral benefits to the appellant.

10. We, therefore, order and direct as under:

(2) Since the appellant did not join service with the State of Punjab from October 1, 1969 to December 31, 1970, he shall not be entitled to any salary for the said period. The State of Punjab shall treat the said period to be leave of the kind due to the appellant. The appellant shall be deemed to have been retired from service on December 31, 1970 when he attained the age of superannuation."

37. Before the 3rd Respondent/Tribunal, the Writ Petitioner filed M.A.No.185 of 2015 in O.A.No.969 of 2013 to implead the proposed Respondent viz., Chief Postmaster General, T.N. Circle, Anna Road, Chennai as party Respondent. Further, the Petitioner filed M.A.No.186 of 2015 in O.A.No.969 of 2013 to amend the prayer in the Original Application. The said Miscellaneous Applications were ordered by the 3rd Respondent/Tribunal on 22.06.2015.

38. In the Original Application No.969 of 2013 filed by the Petitioner on the file of the 3rd Respondent/Tribunal, the 2nd Respondent was not arrayed as one of the Respondents. When the O.A.No.969 of 2013 was posted on 18.07.2013 before the 3rd Respondent/Tribunal, the Tribunal

stayed the operation and execution of the impugned order No.B1/TFR/R-37/2013 dated 14.06.2013 till 01.08.2013. Only on 22.06.2015, M.A.Nos.185/2015 and 186/2015 filed by the Petitioner to implead the Chief Postmaster General, T.N. Circle, Anna Road, Chennai as party Respondent and to amend the prayer sought for, were allowed by the Tribunal. In short, the 2nd Respondent/Chief Postmaster General, Tamil Nadu Circle, Chennai - 600 002 was later impleaded as 2nd Respondent in the said Original Application.

39.The Petitioner assailed the consequential order of the 1st Respondent dated 14.06.2013. Later the prayer in O.A.No.969 of 2013 was amended and the Petitioner/Applicant questioned the proceedings issued by the 2nd Respondent dated 12.06.2013. In fact, the Petitioner, for reasons best known to him, had not taken possible steps, by filing appropriate Miscellaneous Application, as the case may be.

40.In the present case, although the Petitioner comes out with a plea that he did not receive the revocation of suspension order dated 11.06.2013 and the transfer order dated 12.06.2013 till 17.07.2013, in reality, the Revocation of Suspension Order dated 11.06.2013 was sent to his residential address on 11.06.2013 itself and intimation regarding the receipt of transfer orders was delivered to him on 01.07.2013. In fact, when through T.Vivekanandan, IP, APSO a copy of revocation of Suspension Order along with copy of a transfer order were sent in person on 04.07.2013 itself to the Petitioner's residence and when the said person went to the Petitioner's residence to deliver the order of revocation of suspension and transfer in person at 14 hours along with the Delivery Postman of Old Pallavaram S.O., R.Ashok Kumar, the Petitioner refused to accept the orders through hand from the said T.Vivekanandan, which was witnessed by R.Ashok Kumar, Delivery Postman of Old Pallavaram S.O. When the said Vivekanandan asked the Petitioner to assign the reason for refusing the letters in writing, the Petitioner had reportedly informed that he would collect letters through post only and not by hand. As such, the plea taken on behalf of the Petitioner that orders were served only after 16.07.2013 is not acceded to by this Court.

41.At the risk of repetition, this Court points out that the Transfer Order to and in favour of the Petitioner was issued through Memo dated 14.06.2013.

42.In the instant case, the Petitioner had not reported for duty at the transferred place viz. SRO, RMS 'M' Division, Jolarpettai and further, not turned out any work.

Only after the dismissal of the O.A.No.969 of 2013 by the 3rd Respondent/Tribunal on 14.12.2015, he joined at the transferred place. Moreover, in the case on hand, the Employer had not refused to assign work and resultantly, refused to pay the salary. Per contra, it is only the Petitioner, who had not joined at the transferred place viz. SRO, RMS 'M' Division, Jolarpettai and reported for duty. All the more, the Petitioner had not moved his little finger to vary or modify the said order obtained by him on 18.07.2013 in O.A.No.969 of 2013 (especially after impleading the 2nd Respondent by filing Miscellaneous Application). In short, when the Petitioner had not joined in the transferred place and not reported for duty, then, as a logical corollary, this Court comes to an inescapable conclusion that he is not entitled to stake a claim for his salary for the period beginning from the date of Revocation of Suspension i.e. 11.06.2013. Viewed in that perspective, the Writ Petition fails.

43. In fine, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS iii)

//True Copy//

Sub Assistant Registrar

Sgl
To

1. The Senior Superintendent RMS,
Department of Posts,
Airmail Sorting Division,
Meenambakkam, Chennai - 27.
2. The Chief Post Master General,
Tamil Nadu Circle,
Anna Road, Chennai - 2.
3. The Registrar,
The Central Administrative Tribunal,
Chennai Bench, Chennai - 104.

+1cc to M/s.M.Srividhya , Advocate SR.No. 26355
+1cc to Mr.K.Raju , Advocate SR.No. 25533

W.P.No.2730 of 2016

VSN II (CO)
A.SK(23/04/2019)