

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.07.2019

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.16377 of 2019

A.Shanmugam

... Petitioner

Vs.

1.The Additional Chief Secretary/  
Commissioner of Revenue Administration,  
Chepauk, Chennai - 5.

2.The District Collector,  
Dharmapuri.

3.The District Revenue Officer,  
Dharmapuri District.

4.The Revenue Divisional Officer,  
Harur, Dharmapuri District.

5.The Tahsildar, Taluk Office,  
Pappireddipatti Taluk,  
Dharmapuri District.

.... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the fourth respondent in his proceedings No.Roc.6647/2009/A1 dated 6.8.18 and to quash the same and set aside the proceedings of the fourth respondent vide proceedings No.Roc.6647/2012/A1 dated 29.9.2018 and regularise services of the petitioner for the period from 8.9.09 to 26.8.10.

For Petitioner : Mr.Vijayakumar S.

For Respondents : Mr.J.Pothiraj  
Special Government Pleader

ORDER

The petitioner was selected and appointed as Village Administrative Officer on 26.12.1987. He was granted Selection Grade in the same post in 1998. The post of Selection Grade

Village Administrative Officer was equivalent to the post of Junior Assistant and both the posts were feeder category for the next promotional post as Assistant. The petitioner submitted his representation on 02.11.2007 to the 4<sup>th</sup> respondent expressing his willingness to be promoted to the post of Assistant. Subsequently, by order dated 20.02.2009, the petitioner was transferred to Bosi Nayakena Halli Village and accordingly, he joined in the promotional post of Assistant.

2. In the meanwhile, the petitioner appears to have been diagnosed with serious ailment of cancer and in view of the ailment, the petitioner decided to withdraw his option to the promotion to the post of Assistant. Accordingly, he submitted a representation on 18.06.2009 to the 4<sup>th</sup> respondent withdrawing his willingness for promotion and sought permission to continue as Village Administrative Officer. However, the 4<sup>th</sup> respondent, without considering his representation, passed an order, in his proceedings dated 26.08.2009, promoting the petitioner with the post of Assistant. The petitioner was also directed to handover the charge as Village Administrative Officer, by proceedings dated 06.09.2009.

3. In the above circumstances, the petitioner has approached this Court and filed W.P.No.22661 of 2009 to quash the order of the 4<sup>th</sup> respondent dated 26.08.2009 and consequently, direct the respondents to permit the petitioner to continue him as Selection Grade VAO at Bosi Nayakena Halli Village, Pappyyreddypatti Taluk, Dharmapuri District with all consequential monetary and other service benefits. The petitioner also filed M.P.No.2 of 2009 in that said writ petition for stay of all further proceedings of the promotion and posting order of the petitioner. This Court, while consideration of the miscellaneous petition, has ordered status quo on 06.11.2009. The respondents did not choose to file counter affidavit in the writ proceedings. Therefore, the interim order of status quo was ultimately extended until further orders.

4. This Court eventually disposed of the writ petition on 13.07.2010 with a direction to pass orders within two weeks. However, the same was not complied with and therefore, the petitioner was constrained to file Contempt Petition No.1067 of 2010. When the contempt petition came up for hearing on 25.08.2010, the 1<sup>st</sup> respondent, by his proceedings dated 24.08.2010, complied with the original direction passed in the writ petition, by accepting the relinquishment of promotion by the petitioner as Assistant and permitted him to continue to

work as Selection Grade VAO. Therefore, the contempt petition came to be closed. Thereafter, the petitioner was granted Special Grade and one increment on account of completion of 20 years of service in the category of VAO.

5. After the relinquishment of his right for promotion to the post of Assistant and the acceptance of the same, the petitioner submitted representations to regularize the services of the petitioner for the period from 08.09.2009 to 26.08.2010 as Village Administrative Officer, the period when the petitioner was kept out of employment, despite the interim order of status quo granted by this Court. In the meanwhile, the petitioner on attaining the age of superannuation on 30.06.2018 stood retired from service. After the retirement of the petitioner, the 4<sup>th</sup> respondent passed order on 06.08.2018 holding that the period from 08.09.2009 to 26.08.2010 shall be treated as leave without pay and the said order passed by the 4<sup>th</sup> respondent is put to challenge in the present writ petition.

6. Mr. S. Vijayakumar, learned counsel for the petitioner would submit that the impugned order passed by the 4<sup>th</sup> respondent dated 06.08.2018 cannot be countenanced both in law and on facts for the simple reason that during the period in question, the petitioner had the benefit of interim order passed by this Court, which was unfortunately not implemented. In fact, on behalf of the respondents, no counter affidavit was filed in the writ proceedings pending before this Court when the petitioner has challenged his promotion to the post of Assistant. In the absence of counter affidavit, the initial status quo order was extended until further orders and the petitioner had the benefit of interim orders of this Court till the disposal of the same on 13.07.2010. Therefore, the petitioner was entitled to the period of his absence from 08.09.2009 to 26.08.2010 to be regularised as the period spent on duty and consequently further entitled to all benefits arising therefrom.

7. According to the learned counsel, once the interim order passed by this Court in favour of the petitioner, the petitioner was deemed to have continued in service during the period in question and in which event, he was entitled to salary and allowances for the said period.

8. After notice, Mr. J. Pothiraj, learned Special Government Pleader has entered appearance and on behalf of the respondents, a detailed counter affidavit has been filed.

9. The substance of the counter affidavit filed on behalf of the respondents is that the petitioner is not entitled for treatment of the period as spent on duty on the simple principle

of 'No Work No Pay'. In this case, the petitioner having not worked during the period from 08.09.2009 to 26.08.2010 was not entitled to pay and allowances. According to the counter affidavit, as per the Policy of the Government i.e. 'No work No pay', the period of absence has been treated as extraordinary leave without pay and allowances. This point of resistance was reiterated by the learned counsel appearing for the respondents viz., Mr.J.Pothiraj, Special Government Pleader. According to the learned Special Government Pleader, the petitioner having remained absent during the period cannot seek for treating the period as spent on duty. According to him, the petitioner was relieved from service before the status quo order was passed by this Court and hence, he remained absent unauthorisedly for which the respondents had passed orders treating the period as 'extraordinary leave without pay'. Therefore, he would submit that there is nothing wrong with the impugned orders passed by the 4<sup>th</sup> respondent.

10.This Court considered the rival submissions of the learned counsel on either side, perused the materials and the pleadings placed on record.

11.Undoubtedly, the petitioner has approached this Court earlier in W.P.No.22661 of 2009 challenging his promotion order dated 26.08.2009 and the consequential order dated 06.09.2009 and this Court, while entertaining the writ petition has granted interim order of status quo, which was continued till the disposal of the writ petition on 13.07.2010. Originally the status quo order was passed on 06.11.2009 and thereafter it was extended until further orders on 08.01.2010. When this Court has passed interim order of status quo which was continued till the disposal of the writ petition on 13.07.2010, the respondents ought to have implemented the order by reinstating the petitioner in service. Unfortunately, it appears that the respondents have not taken any action, in pursuance of the interim order of status quo granted by this Court.

12.The petitioner having secured interim orders of this Court cannot be allowed to suffer for the inaction on the part of the respondents for not implementing the interim orders passed by this Court. If only the petitioner had been allowed to join duty in the face of the interim orders of the status quo, the petitioner would have earned pay and allowances for the period in question. The violation on the part of the respondents in implementing the lawful orders of this Court cannot deprive the petitioner of his due pay and allowances for the period from 08.09.2009 to 26.08.2010. This is more so when the respondents themselves have agreed to the relinquishment option exercised by the petitioner and posted him as Village Administrative Officer and granted him Special Grade also. Once the competent authority

has accepted the relinquishment of the petitioner for promotion, the promotion which was granted in the interregnum for the subject period, which was the subject matter of challenge in the above writ petition, has to be ignored for all purposes and the respondents ought to have treated the petitioner one spent on duty. Otherwise, it will only result in punishing the petitioner for no fault of his, when the petitioner was alert in enforcing his right to relinquish his promotion and obtained interim orders from this Court.

13. Moreover, this Court is of the view that unless the person is kept out of employment on the ground of any disciplinary proceedings initiated against him like suspension, he cannot be denied due pay and allowances for the period when the petitioner was prevented from joining duty at the instance of the respondents. The Fundamental Rules do not authorize to treat the period as extraordinary leave without pay in a situation like this. On the other hand, the petitioner is entitled to have the period when he remained absent from 08.09.2009 to 26.08.2010 as spent on duty for the purpose of pay and allowances, in terms of the relevant provisions of the Fundamental Rules. If the period is not treated as spent on duty, the interim order granted by this Court would be rendered meaningless. Once the interim order passed by this Court was continued till the disposal of the writ petition, the interim order shall accrue to the benefit of the petitioner, but it would certainly not deprive the petitioner further entitlement to have the period regulated as spent on duty.

14. In the above circumstances, this Court is of the view that the petitioner has made out a case for grant of relief. Therefore, the Writ Petition is allowed and the impugned proceedings passed by the 4<sup>th</sup> respondent in Na.Ka.No.6647/2009/A1 dated 06.08.2018 and Na.Ka.No.6647/2012/A1 dated 29.09.2018 are hereby set aside and consequently, there shall be a direction to the respondents to regularize the period of absence by the petitioner from 08.09.2009 to 26.08.2010 as spent on duty for all purposes including pay and allowances. The 4<sup>th</sup> respondent or any other competent authority shall pass appropriate orders in this regard within period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Additional Chief Secretary/  
Commissioner of Revenue Administration,  
Chepauk, Chennai - 5.

2.The District Collector,  
Dharmapuri.

3.The District Revenue Officer,  
Dharmapuri District.

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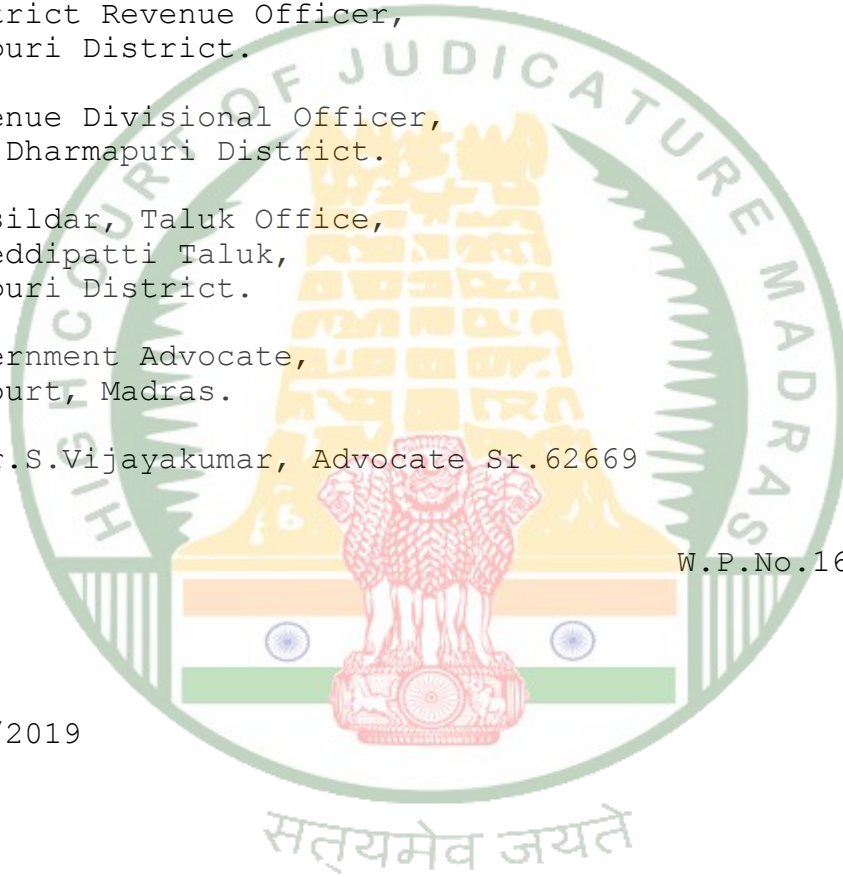
5.The Tahsildar, Taluk Office,  
Pappireddipatti Taluk,  
Dharmapuri District.

6.The Government Advocate,  
High Court, Madras.

+lcc to Mr.S.Vijayakumar, Advocate Sr.62669

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