

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.8085 of 2016

N.Velayutham

... Petitioner

-vs-

1.The District Collector,
Vellore District, Vellore.

2.The Personal Assistant to District Collector,
(Development),
Vellore District, Vellore.

3.The Block Development Officer,
(Village Panchayat),
Arcot Panchayat Union,
Arcot, Vellore District.

... Respondents

Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records passed by the second respondent in Na.Ka.PC1/8120/2012 dated 23.06.2015 in so far it directs the non-employment period as loss of pay and quash the same and further direct the respondents to treat the period from 12.02.2013 to 29.11.2015 as compulsory wait and regularise the same with all monetary and other attendant benefits.

For Petitioner::Mr.S.Kamadevan

For Respondents::Mrs.P.Rajalakshmi,
Additional Government Pleader
for R1 and R2
Mr.P.Chinnadurai for R3

ORDER

The petitioner has come up with this writ petition challenging the impugned proceedings dated 23.06.2015 passed by the Personal Assistant to District Collector (Development), Vellore District, Vellore, the second respondent herein in Na.Ka.PC1/8120/2012 and seeking a direction to the respondents to treat the period from 12.02.2013 to 29.11.2015 as compulsory

wait and regularise the same with all monetary and other attendant benefits.

2.Learned counsel appearing for the petitioner submitted that the petitioner was appointed as a Panchayat Assistant in Veppur Village Panchayat on 01.08.2011 and subsequently his services were regularised. While so, by proceedings dated 22.11.2012, the District Collector, Vellore District, Vellore, the first respondent herein had passed an order transferring the petitioner from Veppur Village Panchayat to Nandhiyalam Village Panchayat on administrative grounds. According to the learned counsel for the petitioner, the order of transfer was not given effect to since the President of Nandhiyalam Village Panchayat, who has opposed the transfer, not relieved his Panchayat Secretary and as a result of which, the petitioner was not relieved immediately and continued to work and relieved from the post only on 11.02.2013. Thereafter, the petitioner made repeated representations dated 12.04.2013, 05.08.2013, 27.02.2014 and 28.05.2015 to the third respondent to pass necessary orders. In view of the repeated representations, the third respondent made recommendation dated 02.06.2015 to the first respondent requesting to pass orders and to post the petitioner in the Mangadu Village Panchayat in a vacancy caused due to the death of one Kannan. Accepting the proposal forwarded by the third respondent, the second respondent passed orders on 23.06.2015 transferring the petitioner to the Mangadu Village Panchayat. While passing the above said order, the second respondent held that the period of non employment from 12.02.2013 will be treated as loss of pay, applying the principle of "No work No pay".

Learned counsel appearing for the petitioner would further submit that when the petitioner went to join in the transferred place, the President refused to accept the petitioner as his Secretary of Mangadu Village Panchayat and therefore, he could not join in the said post. However, the petitioner made several representations to the respondents to look into the issue and pass necessary order of postings immediately. Taking note of the representation and the proposals forwarded by the third respondent, the second respondent passed another order dated 08.07.2015 cancelling the earlier transfer order and transferred the petitioner to Uppuppetai Village Panchayat. On the objections made by the President, he could not join in the above said post. Thereafter, despite repeated representations, no posting orders were issued and the impugned proceeding dated 23.06.2015 was passed by the second respondent denying the salary, applying the rule of no work no pay. Hence, the petitioner is before this Court.

According to the learned counsel for the petitioner, since the petitioner was not allowed to join in the above said places, the impugned order passed by the second respondent declaring the period of non employment from 12.02.2013 to 29.11.2015 as loss of pay applying the principle of no work no pay is liable to be set aside.

3.Reiterating the averments made in the counter affidavit, learned Additional Government Pleader appearing for respondents 1 and 2 would submit that it is true that that the petitioner was transferred from Veppur Village Panchayat to Nandhiyalam Village Panchayat by the District Collector, Vellore District, Vellore vide proceedings dated 22.11.2012, but the said order of transfer was not given effect to since the President of the Nandhiyalam Village Panchayat, who was the Executive authority of the Nandhiyalam Panchayat had opposed the said transfer and not allowed the petitioner to join in the said post. Thereafter, the first respondent vide his memo dated 08.03.2013 has issued a show cause notice to the above said President, Nandhiyalam Village Panchayat for not allowing the petitioner to join duty in the said Village Panchayat and necessary action has been initiated by the first respondent under Section 205(11) of Tamil Nadu Panchayat Act 1994. Subsequently, Village Panchayat Council Meeting has been scheduled on 14.10.2015. In view of interim stay granted by this Court in W.P. No.37077 of 2015 dated 20.11.2015, the said meeting has been cancelled and the petitioner has been re-posted in the Vanakkampadi Village Panchayat. While passing the impugned orders, the second respondent declared that the period of non employment of the petitioner from 12.02.2013 will be treated as loss of pay because his salary has been met out from the Village Panchayat account and as per the existing orders, salary arrears shall not be met out from another Village Panchayat.

4.Heard both sides.

5.This Court is unable to find any merit or justification on the stand taken by the respondents. Admittedly, when the District Collector, the first respondent herein has passed a transfer order dated 22.11.2012 transferring the petitioner from Veppur Village Panchayat to Nandhiyalam Village Panchayat on administrative grounds, it is the obligation and duty cast upon the respondents to enforce the said order even if there is any violation on the part of the President of the Nandhiyalam Village. However, the said President, in an effort to retain his Panchayat Secretary, flatly refused to accept the transfer order of the petitioner and the second respondent has passed the above said impugned proceedings declaring that the period of non employment from 12.02.2013 will be treated as a loss of pay applying the principles of no work no pay. When the petitioner

was relieved from the post on 11.02.2013, he was unable to join the transferred place. Hence, without any posting order, he was compelled to wait from 12.02.2013, as the President of Nandhiyalam Village refused to accept the petitioner's transfer. For no fault on the petitioner, the second respondent cannot declare the period of non employment from 12.02.2013 as a loss of pay, wrongly applying the principles of no work no pay.

6.As the petitioner was forced to put in the compulsory wait though no fault on his part, this Court is of the view that the impugned proceedings passed by the second respondent is liable to be quashed and the same is quashed. Accordingly, the writ petition stands allowed. The second respondent is directed to pay the costs of Rs.15,000/- to the petitioner within a period of two weeks from the date of receipt of a copy of this order.

Vga

04.01.2019

Being Mentioned

The matter having been listed on 01/02/2019 for being mentioned in pursuance of Order dated 04/01/2019, and made herein and in the presence of Mr.S.Kamadeven, Advocate for the Petitioner, and of Mrs.P.Rajalakshmi, Additional Government Pleader, appearing for the respondent Nos 1 & 2 and of Mr.P.Chinnadurai, Advocate appearing for the 3rd respondent the Court made the following order;

This matter is listed today under the caption 'for being mentioned' at the instance of the learned counsel for the petitioner.

2.Learned counsel for the petitioner submitted that this Court while allowing the above writ petition, has imposed costs of Rs.15,000/- payable by the second respondent to the petitioner for not allowing the petitioner to work from the date of transfer. Now the learned counsel for the petitioner prays for a direction to pay the salary from the date of transfer till the date of re-joining in the post, namely, from 12.02.2013 to 29.11.2015.

3.Mrs.P.Rajalakshmi, learned Additional Government Pleader appearing for respondents 1 and 2 agreed that the payment of salary be clarified.

4.Finding no serious objection from the learned Additional Government Pleader appearing for respondents 1 and 2 and considering the submission made by the learned counsel for the petitioner, para 6 of the order dated 04.01.2019 shall be read as follows:

"6.As the petitioner was forced to put in the compulsory wait though no fault on his part, this Court is of the view that the impugned proceedings passed by the second respondent is liable to be quashed and the same is quashed. Accordingly, the writ petition stands allowed. As the petitioner was refused while joining the transferred post, the second respondent is directed to pay the salary for the period of non employment namely from 12.02.2013 to 29.11.2015. The second respondent is further directed to pay the costs of Rs.15,000/- to the petitioner within a period of two weeks from the date of receipt of a copy of this order."

vga

01/02/2019

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The District Collector,
Vellore District, Vellore.

2.The Personal Assistant to District Collector,
(Development), Vellore District, Vellore.

3.The Block Development Officer,
(Village Panchayat),
Arcot Panchayat Union,
Arcot, Vellore District.

+1cc to Mr.P.Chinnadurai, Advocate Sr.851
+1cc to Mr.S.Kamadevan, Advocate Sr.869
+1cc to the Government Pleader sr.1902

W.P.No.8085 of 2016

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srg 01/02/2019