

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.8997 of 2017

M.Ramesh

... Petitioner

vs.

1. The District Adi-Dravidar Welfare Officer,
O/o. The District Adi-Dravidar Welfare Officer,
Cuddalore District,
Cuddalore.
2. The Special Tahsildar,
(For Adi-Dravidar and Scheduled Tribe),
Virudhachalam,
Cuddalore District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified mandamus, to call for the entire records connected with the proceedings of the 1st Respondent in Na.Ka.W10/26080/2015, dated 02.03.2017 and quash the same, consequently direct the 1st Respondent to regularize the period of suspension of the Petitioner from 29.04.2005 till the date of reinstatement into service as duty period for all purposes with all consequential service within a time frame.

For Petitioner : Mr.T.Elumalai

For Respondents : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

O R D E R

Petitioner has come up with this Writ Petition challenging the proceedings of the 1st Respondent in Na.Ka.W10/26080/2015, dated 02.03.2017 and for a consequential direction to the 1st Respondent to regularize the period of his suspension from 29.04.2005 till the date of reinstatement into service, as duty period for all purposes, with all consequential service.

2. According to the Petitioner, in the year 2005, while he was working as a Cook in Adi-Dravidar Welfare Hostel,

Dharmanallur, on the allegation of kidnapping his own brother, police officials of Srimushnam Police Station registered an F.I.R. against him in Crime No.111 of 2005, dated 29.04.2005 under Section 363 I.P.C., mechanically. Based on the same, the Petitioner was arrested and remanded into judicial custody on 29.04.2005 and subsequently, he was released on 02.05.2005.

3. The grievance of the Petitioner is that since he was detained in prison for more than 48 hours, on instructions from the 2nd Respondent/Special Tahsildar, Adi-Dravidar and Scheduled Tribe, Virudhachalam, Cuddalore District, the Hostel Warden did not permit him to attend the job. Therefore, the Petitioner approached the 2nd Respondent, explained his case and requested him to reinstate him into service. The 2nd Respondent informed the Petitioner that he could be reinstated into service only after acquittal from the said criminal case.

4. In the meantime, the Sub-Inspector of Police, Srimushnam Police Station, vide communication dated 17.07.2005, informed the 1st Respondent that the Petitioner has been exonerated from the Charge Sheet, since there was no allegation against him. In such circumstances, the petitioner made a representation dated 28.12.2005 to the 1st Respondent and sought for reinstatement into service. However, the said representation has not been considered.

5. To the contrary, the 1st Respondent issued a Charge Memo to the Petitioner vide proceedings in Na.Ka.W10/26080/05, dated 16.07.2006 asking the Petitioner to submit an explanation within 15 days. While so, the 1st Respondent vide proceedings in Na.Ka.W10/26080/06, dated 15.07.2006 appointed the Petitioner as Cook in the Boys Hostel (Technical Training), Cuddalore pending the disciplinary proceedings issued against him. Pursuant thereto, the Petitioner joined into service as Cook and had also made a written explanation to the 1st Respondent, denying all the allegations levelled against him.

6. Further, based on the exoneration report of the Police officials, Judicial Magistrate No.II, Virudhachalam, by an order dated 13.06.2014 closed the said F.I.R. in Crime No.111/2005 as 'further proceedings are given up'. Subsequent to the said order, the 1st Respondent, vide proceedings in W10/26080/2006, dated 06.02.2015 discharged the Petitioner without any punishment except warning him severely.

7. Since the period of his suspension was not regularized by the Respondents, the Petitioner made a representation dated 12.05.2015 to the 1st Respondent through the 2nd Respondent seeking regularization of his service with all service and monetary benefits. Since there was no response from the

Respondents, the Petitioner was constrained to file a Writ Petition in W.P.No.1206 of 2017 seeking a direction to the 1st Respondent to regularize the period of his suspension and this Court directed the 1st Respondent to act on the 2nd Respondent's communication dated 02.06.2015 in Na.Ka.Aa.No.416/2015 and pass orders on merits and in accordance with law within a period of four weeks.

8. In view of the said order of this Court, the 1st Respondent, by his proceedings in Na.Ka.W10/26080/2015, dated 02.03.2017 regularized the Petitioner's period of suspension from 29.04.2005 till 10.09.2006 (totally 500 days) as leave by stating that without obtaining leave or consent, the Petitioner absented from duty. Since his request for regularization of his suspension period as duty period for all purposes with all consequential service and monetary benefits, has not been considered, the Petitioner is before this Court by way of the present Writ Petition.

9. In paragraph 8 of the counter affidavit filed by the Respondents, it is stated that in obedience to the order dated 18.01.2017 passed by this Court, the 1st Respondent vide proceedings in C.No.W10/26080/2015, dated 02.03.2017, specifically indicated that since the Petitioner had absented from duty without any leave or permission on his own accord, the period of his absence from 29.04.2005 to 10.09.2006 (500 days) is to be treated as eligible leave. Subsequently, the 1st Respondent issued proceedings vide W10/26080/2005, dated 16.04.2019 with regard to settlement of his period of absence, as tabulated below:

29.04.2005 to 02.05.2005	04 days	Without Medical Certificate and without pay
01.05.2005 to 09.06.2005	38 days	Earned Leave
10.06.2005 to 10.09.2006	458 days	Leave without M.C. and without pay

10. Heard the learned counsel for the parties and gone through the material documents available on record.

11. It is not in dispute that the Petitioner was in judicial custody for 48 hours in a criminal case. However, based on the Exoneration Report of the Police Officials, the F.I.R. against the Petitioner was closed by Judicial Magistrate No.II, Vridhachalam, by an order dated 13.06.2014, as further proceedings against him were given up.

12. It is the contention of the learned Special Government Pleader appearing for the Respondents that the Petitioner was

not placed under suspension at any time in connection with the criminal case and hence, he is not eligible for settlement of wages during the period of absence of duty for all purposes, as per Fundamental Rules.

13. The proceedings of the 1st Respondent dated 02.03.2017 is clear to the effect that the Petitioner has voluntarily stopped from attending work without taking permission from his higher authorities or without making any application for leave, and that the Petitioner's absence of 500 days has to be treated as eligible leave at his credit. Further, the proceedings dated 16.03.2006 of the 2nd Respondent is very clear that the Petitioner is deemed to have attended work, once he has been taken out of judicial custody after 48 hours and that the petitioner has not been allowed to discharge his work. A cursory reading of the 2nd Respondent's proceedings dated 16.03.2006 and the 1st Respondent's proceedings dated 02.03.2017 run counter to each other and there is no question of the Petitioner refusing to join the work.

14. Further, it is clearly stated by the Respondents in their counter that the Petitioner has not been placed under suspension on account of the criminal case that was initiated against him and they have agreed to regularize the period of the Petitioner's absence from service in the manner mentioned in the Tabular column (extracted supra). Also, the F.I.R. in Crime No.111/2005 against the Petitioner was closed. Hence, this Court is of the view that the Petitioner's service need to be regularized and certainly, he should not be put to prejudice for no fault of his, after coming out of judicial custody and requested him for discharging his work.

15. Accordingly, the impugned order dated 02.03.2017 passed by the 1st Respondent in Na.Ka.W10/26080/2015 is set aside and the Petitioner's absence from service, i.e. from 29.04.2005 till the date of joining into service shall be treated as duty period, as per the tabular column extracted supra. It is made clear that the Petitioner will be entitled to all the monetary benefits, which he is otherwise eligible.

The Writ Petition is allowed with the above direction and observation. No costs.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

To:

1. The District Adi-Dravidar Welfare Officer,
O/o. The District Adi-Dravidar Welfare Officer,
Cuddalore District,
Cuddalore.
2. The Special Tahsildar,
(For Adi-Dravidar and Scheduled Tribe),
Virudhachalam,
Cuddalore District.

+1cc to Mr.T.Elumalai, Advocate sr.59898

+1cc to Government Pleader sr.60781

W.P.No.8997 of 2017

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