



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.10.2019
CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

W.P. (MD) No.13437 of 2011

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M.Anbunathan

: Petitioner

vs.

1. The Chief Engineer,
Agricultural Engineer Department,
Nandanam, Chennai -35.

2. The Executive Engineer,
Agricultural Engineering Department,
Kattukulam, Pudukottai -1.

: Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records made in A13846/2009, dated 31.10.2011 passed by the second respondent and quash the same and consequently, to direct the first respondent to treat the period from 15.07.2009 to 29.04.2010 as one of compulsory wait with consequential pay benefits.

For Petitioner : Mr.G.Venkataraman

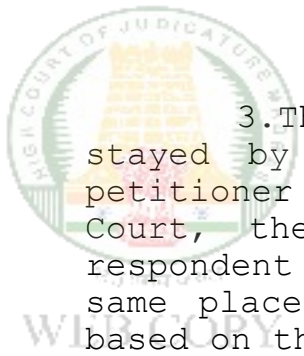
For Respondents : Mr.D.Muruganandam

Additional Government Pleader

ORDER

This Writ Petition is filed to quash the impugned order passed by the second respondent, dated 31.10.2011 and consequently, to direct the first respondent to treat the period from 15.07.2009 to 29.04.2010 as one of compulsory wait with consequential monetary benefits.

2.The petitioner was appointed as Assistant Soil Conservation Officer in the year 1985 and was promoted as Junior Engineer in the year 2007. While the petitioner was working as Junior Engineer, Aranthangi under the second respondent, the said post was surrendered by the second respondent to the first respondent by order, dated 13.07.2009. Thereafter, the first respondent passed an order, dated 14.07.2009, transferring the petitioner to the Office of Executive Engineer, Krishnagiri. Since the surrender of post was stated to be on account of poor performance of the petitioner, the petitioner challenged the same in a writ petition in W.P.(MD)No.7436 of 2009.



3.The order relieving the petitioner, dated 13.07.2009 was stayed by this Court in the said writ petition filed by the petitioner on 05.08.2009. After the interim order granted by this Court, the petitioner submitted a representation to the first respondent stating that the petitioner be permitted to work in the same place by passing appropriate order. The representation was based on the interim order granted by this Court.

4.Though the first respondent, by order, dated 14.07.2009, transferred the petitioner to the office of Executive Engineer, Krishnagiri, and directed him to report to the Executive Engineer, at Krishnagiri, the said order was cancelled, later by proceedings, dated 29.03.2010, citing the interim order granted by this Court in the writ petition filed by the petitioner. Subsequently, the writ petition filed by the petitioner was allowed by this Court on 26.02.2010 in W.P.(MD)No.7436 of 2009 and the relevant portion of the said order reads as follows:

"14.As stated supra, admittedly, in this case, there is no whisper in the transfer order that the transfer or is passed on the administrative grounds. The 4th respondent has also stated the reason for surrendering the petitioner to the first respondent, which was the reason for transferring the petitioner by the first respondent.

15.In this case, it is admitted by the 4th respondent that the petitioner was surrendered to the first respondent due to his unsatisfactory performance on various grounds and the authority, who transferred the petitioner, accepted the act of the 4th respondent in surrendering the petitioner are genuine or not and mechanically passed the order of transfer. Therefore, it cannot be stated that the transfer order was passed in public interest or exigencies of administration and as held supra, it is punitive in nature. Therefore, it is a clear case of punitive transfer and without giving opportunity to the petitioner to explain his stand, the transfer order cannot be justified and hence, the transfer order of the second respondent in surrendering the post to the first respondent and the subsequent order of the first respondent, dated 14.07.2009 transferring the petitioner to Krishnagiri are all quashed."

5.Despite this Court granted an interim order staying the operation of the impugned order, dated 13.07.2009 and the consequential order passed by the first respondent, dated 14.07.2009, the petitioner was not permitted to work in the place, where he was working prior to the order relieving and transferring the petitioner by the impugned orders. Despite several representations being given by the petitioner that he may be permitted to report duty as Junior Engineer, Agricultural



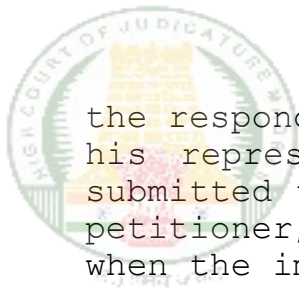
Engineering Department, Aranthangi, it is stated that the representations of the petitioner were not considered.

6.The second respondent after cancelling the order of transfer, directed the petitioner to join duty as Junior Engineer, in the office of the Assistant Engineer in Avudaiyarkoil South Vellaru River Bed Scheme Command Area Development Programme. Though the petitioner accepted the post with effect from 30.04.2010, filed a writ petition in W.P.(MD)No.4562 of 2010 challenging the order, dated 01.04.2010, whereby, the petitioner was posted as Assistant Engineer in Avudaiyarkoil South Vellaru River Bed Scheme Command Area Development Programme

7.The writ petition filed by the petitioner in W.P.(MD)No.4562 of 2010 was disposed of with the direction to the petitioner to submit a representation to the Chief Engineer, Agricultural Engineering Department, Guindy, Chennai and a further direction to the Chief Engineer to consider the said representation of the petitioner. Thereafter, the petitioner made a representation to the second respondent to regularise his service from 15.07.2009 to 29.04.2010, and to pay salary by treating the same as period of compulsory wait. However, the period from 15.07.2009 to 29.04.2010 was not regularised. The petitioner submitted a representation on 22.09.2011 to the effect that the period from 15.07.2009 to 29.04.2010 should be regularised by treating 182 days as unearned Leave with Medical Certificate and treating the remaining 107 days as Earned Leave. Thereafter, the second respondent has passed the impugned order. Aggrieved by the same, the above writ petition is filed.

8.The learned Counsel for the petitioner submitted that the impugned order is arbitrary, not only in violation of order of this Court, but, also in violation of principles of natural justice. It is stated that the writ petition filed by the petitioner challenging the relieving order and the consequential order of transfer, was allowed by this Court on 26.02.2010. It is submitted that the service of the petitioner ought to have regularised without affecting pay and service of the petitioner. Stating that the petitioner was always willing to report duty and it was the department, which did not allow him to join duty, the petitioner's Counsel submitted that the period, during which the writ petition was pending, cannot be treated as one of Earned Leave. It is pointed out by the learned Counsel for the petitioner that the petitioner did not voluntarily remain out of work and it was only on account of wilful omission and the attitude of respondents not allowing the petitioner to work, despite an order of stay granted, the petitioner could not join duty.

9.On the other hand, the learned Additional Government Pleader, on instructions, submitted that the impugned order was passed on 22.09.2011 in response to the request of the petitioner, dated 22.09.2011 and



the respondents, who have accepted the request of the petitioner in his representation, dated 22.09.2011, cannot be faulted. It is submitted that impugned order, therefore, cannot be assailed by the petitioner, who is estopped from challenging the same, particularly, when the impugned order was at the request of the petitioner.

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10.This Court considered the rival submissions and perused the materials available on record.

11.The learned Counsel for the petitioner refers to the interim order granted by this Court and the final order passed in the writ petition in W.P.(MD)No.7436 of 2009 quashing the impugned relieving order and transfer order, transferring the petitioner to work in the Office of Executive Engineer at Krishnagiri. However, the learned Counsel for the petitioner is unable to explain the purpose, for which, the petitioner gave a representation, dated 22.09.2011. By the impugned order, the second respondent has only accepted the representation of the petitioner. It is true that the petitioner succeeded in the writ petition in W.P.(MD)No.7436 of 2009. However, the petitioner's representation, dated 22.09.2011, is not explained in this writ petition.

12.This Court is unable accept the contentions of the petitioner that the respondents have ignored the direction of this Court in the earlier writ petition in W.P.(MD)No.7436 of 2009. It may be noted that the writ petition was disposed of on 26.02.2010. However, the petitioner has given representation, dated 22.09.2011, knowing fully well his right and entitlement. In the present writ petition, the petitioner has not even referred to the representation, dated 22.09.2011 given by him. The petitioner admits the letter. However, no explanation is offered as to the circumstance, under which the petitioner was forced to give such letter. In the said circumstances, this Court has no other option, but to accept the contention of the learned Additional Government Pleader as the petitioner is estopped from claiming something contrary to his own representation, dated 22.09.2011.

13.In view the peculiar facts and circumstances of the case, this Court is not inclined to entertain the Writ Petition. Accordingly, the writ petition is dismissed and the impugned order passed by the second respondent, dated 31.10.2011 is confirmed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)



To

1. The Chief Engineer,
Agricultural Engineer Department,
Nandanam, Chennai -35.
2. The Executive Engineer,
Agricultural Engineering Department,
Kattukulam, Pudukottai -1.

+1 CC to Mr.G.VENKATARAMAN, Advocate (SR-93460[F] dated
22/10/2019)

+1 CC to SPL GP (SR-93515[F] dated 22/10/2019)

W.P.(MD)No.13437 of 2011
21.10.2019

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