

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 12.06.2019

CORAM:

THE HONOURABLE **MR. JUSTICE S.M.SUBRAMANIAM**

WEB COPY

W.P.(MD)No.13921 of 2014**and****M.P.(MD).No.1 of 2014**

G.Rajan

... Petitioner

Vs.

The Superintendent
Central Prison,
Palayamkottai.

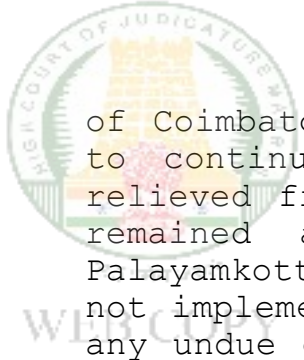
... Respondent

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in connection with the impugned order passed by him in Ref.No.426/P1/2013 dated 05.06.2014 and quash the same and further direct the respondent to treat the period from 29.04.2013 to 09.10.2013 as duty for all purposes and grant him all consequential service and monetary benefits.

For Petitioner
For Respondent: Mr.T.Ayngaraprabhu
: Mr.K.Mu.muthu
Additional Government Pleader**ORDER**

The order dated 05.06.2014 rejecting the claim of the writ petitioner to regulate the period of absence from 29.04.2013 to 09.10.2013 as duty period with salary, is under challenge in the present writ petition.

2.The lis on hand is a classic case where the writ petitioner made an attempt to abuse the judicial process to gain service benefits. The petitioner was appointed as Grade-II Warder in the Prison Department and subsequently, promoted as Grade-I Warder on 29.08.2012. The initial appointment of the writ petitioner was 23.03.1998. The petitioner was issued with an order of administrative transfer in proceeding, dated 06.04.2013, wherein the writ petitioner was transferred from Palayamkottai Central Prison to Coimbatore. The writ petitioner filed W.P.(MD).Nos.5841 and 5842 of 2013 and the High Court granted an interim order of stay of the transfer order immediately. The respondent Prison Department filed a writ petition and counter statement. However, vacate stay petition was not taken up for hearing. During the interregnum period, the writ petitioner had not joined in the transferred place



of Coimbatore. The respondent also not allowed the writ petitioner to continue at Palayamkottai in view of the fact that he was relieved from the post at Palayamkottai. Thus, the writ petitioner remained absent. The writ petitioner had neither joined at Palayamkottai nor at Coimbatore. In fact, if the interim stay was not implemented, proper actions are to be initiated without causing any undue delay. In the present case on hand, the Department filed vacate stay petition as well as counter, however, the case was not listed. During the period, the writ petitioner ought to have joined in the transferred place at Coimbatore without prejudice to his contention raised in the writ petition, which was pending during the relevant point of time.

3. Contrarily, the writ petitioner behaved unbecoming of a Government Servant and not attended the duty for about six months and therefore, he filed a Writ Appeal against the final order passed in the writ petition, which was also dismissed. Under these circumstances, the writ petitioner submitted a representation to the competent authority to regulate the period of absence as duty period for all purpose with salary. The respondent regulated the leave period as per the rules and rejected the claim of the writ petitioner to regularize the period of absence as duty. They have treated the absent period as "no work no pay" and accordingly, it was regulated as loss of pay without medical certificate.

4. Such order resulting in loss of pay without medical certificate itself is a concession granted to the writ petitioner. In fact, the writ petitioner was hail and healthy during the period in which the writ petition was pending before the High Court. As a dutiful public servant the writ petitioner ought to have joined in the transferred place at Coimbatore without prejudice to his contention in the writ petition. If at all there is a delay in listing the writ petition, the public servant must join the duty in the transferred place and serve in the interest of public administration and only after the disposal of the case, the writ petitioner can take a decision regarding his joining at Palayamkottai or otherwise.

5. In the present case on hand, the writ petition filed by the writ petitioner was dismissed and the writ appeal was also dismissed. This being the factum of the case, absent period was considered as a loss of pay without medical certificate and that itself is a concession granted by the respondent.

6. Under these circumstances, this Court is not inclined to grant further concession by regulating the period of absence as duty period with salary. The period of absence was on account of the reluctance of the writ petitioner in joining in the transferred post and place at Coimbatore. Such conduct of the public servant is to be deprecated. The writ petitioner was working in the responsible post of Grade-I Warder in the Prison Department and his service are very much needed for the Prison Department. Such being the importance of



the post, remaining absent for such an unspecified period can never be encouraged by the Court. Even in hard circumstances, a public servant is bound to serve in the interest of public for running the public administration efficiently. If such delay or absent for six months without any reason then the public administration will undoubtedly suffer. In these circumstances, the absence of the writ petitioner is certainly serious and unnecessary. The writ petitioner ought to have joined in the transferred place and served in the interest of administration. Having remained absent, now the petitioner cannot say that the period of absence to be treated as duty period with full salary. The order passed by the respondent regulating the period of absence as loss of pay without medical certificate is undoubtedly a concession and accordingly, the relief as such sought for in the present writ petition deserve no further consideration.

7. In view of the above, this writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar (CS-)

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To
The Superintendent
Central Prison,
Palayamkottai.

+1 CC to M/s.SPL GP (SR-68499[F] dated 13/06/2019)

W.P. (MD) No.13921 of 2014
12.06.2019

ES/02.07.2019/3P/3C