



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2019

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THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P (MD) No. 4111 of 2015

and

M.P (MD) No. 1 of 2015

M. Rajan

... Petitioner

Vs

1. The Director (Crafts Men Training)
Department of Employment & Training
Chennai-600 002.

2. The Joint Director (Crafts Men Training)
Department of Employment and Training
Guindy,
Chennai-600 002.

3. The Principal,
Government Industrial Training Institute,
Konam, Nagercoil,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 1st respondent in Se.Mu.Order No.Tho.Nu.Pa.5/41975/2012 dated 06.06.2013 quash the same and consequently direct the respondent herein to pay the salary and pensionary benefits treating the leave period from 14.10.2011 to 20.09.2012 as spent on duty on account of civil commotion and qualifying service, within a reasonable period as may be fixed by this Court.

For Petitioner : Mr.A.Rajkumar Sen

For Respondents : Mr.K.Mu.Muthu,
Additional Government Pleader

ORDER

The order impugned passed by the first respondent in proceeding dated 06.06.2013 is sought to be quashed in the present writ petition.

2. The order impugned is regularisation of the period of absence by the writ petitioner from performing his duties and responsibilities. The writ petitioner admittedly had not joined in the post in which he was transferred and not performing the duties and responsibilities. Thus, this Court is of the considered opinion

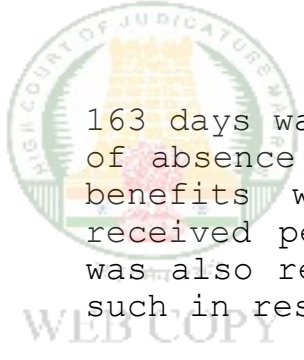


that the principles of 'No work no pay' will be applicable to the petitioner and the Government servant who had not worked in the particular post in respect of the fact that he was transferred to the post, thereafter he cannot claim salary for the period in which he was not worked. In respect of the present writ petition on hand, the writ petitioner was working as Hostel Superintendent/Physical Training Officer and initially on his own request he was transferred to Tiruchenthur in proceeding dated 12.09.2011. The person, who was working at Nagercoil, one Mr.Welsing challenged the order of transfer filed a writ petition in W.P.(MD)No.10787 of 2011 before this Court and this Court dismissed the writ petition by order dated 21.09.2011. The said Welsing preferred a Writ Appeal in W.A.(MD) No.985 of 2011 and the Division Bench of this Court on 31.01.2012 dismissed the said writ appeal for non-prosecution. Thus, no relief was granted to Mr.Welsing. However, during the interregnum period, when the case was pending, the writ petitioner was directed to join in his original place at Tiruchenthur as Hostel Superintendent/Physical Education Officer. The writ petitioner instead of joining in his original place at Thiruchenthur, had remained absent. The very conduct of the writ petitioner in not joining the duty and performing the official duties are to be deprecated.

3.The Government servant on transfer during the pendency of the writ petition has to join either in the transferred place or in his original place. If at all any interim order is granted against the Government servant, he must join on his original place and perform his duties and responsibilities. Contrarily, a Government servant cannot remain absent without joining either in the original place or in the transferred place. In such an event, the writ petitioner cannot claim salary for the entire period for which he was not worked. The Hon'ble Supreme Court of India in such circumstances held that the principles of 'no work no pay' will be applicable to the Government servant, who had not performed duties and responsibilities cannot claim salary for the period, in which he remained absent.

4.In the present case on hand, initially the transfer order was issued transferring the writ petitioner from Tiruchenthur to Nagercoil at his own request. The person, who was working at Nagercoil filed a writ petition challenging the order of transfer. Immediately, the Department directed the writ petitioner to join in his original place. Instead of joining, the writ petitioner was waiting for the final orders in the writ petition and only after the order passed in the writ appeal, he joined and thereafter, the writ petitioner was allowed to retire from service.

5.This being the factum of the case, the competent authority had undergone the principles to regulate the period of absent, infact the said period of absence was treated as leave applicable to the writ petitioner and accordingly regulated. 180 days was treated as Earned Leave from the credit of the writ petitioner and balance



163 days was treated as leave on loss of pay. Therefore, the period of absence was already regulated and accordingly, pension and other benefits were also settled. The writ petitioner had already received pensionary and terminal benefits and now, monthly pension was also received. This being the factum, there is no infirmity as such in respect of the impugned order passed.

6. Considering the facts and circumstances of the case, this Court is of the considered opinion that the writ petitioner was at fault in not joining in his original place at Tiruchenthur. Other person, who was working at Nagercoil challenged the request transfer order. This being the factum, the writ petitioner has not established any acceptable grounds for the purpose of considering the relief as such sought for in the present writ petition.

7. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

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Chennai-600 002.
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