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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) No.685 of 2019

and C.M.P. (MD) No.6036 of 2019

- 1.The Principal Secretary to the Government,
Youth Welfare and Sports Development Department (YW),
Secretariat, Fort St. George,
Chennai - 9.
- 2.The Deputy Director General of NCC,
NCC Directorate, Fort. St. George,
Chennai - 9.
- 3.The Group Commander,
NCC Group Head Quarters,
No.86/1, P.T. Rajan Road,
Madurai.
- 4.The Commanding Officer,
3 (TN) Naval Unit NCC, Lions Town,
Thoothukudi. ... Appellants/Respondents

-vs-

M.Ravindran Mariappan ... Respondent/Petitioner

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 31.01.2019, made in W.P.(MD) No.25010 of 2018, on the file of this Court.

Prayer in WP(MD). 25010 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 2nd Respondent to treat 557 days as loss of pay and regularize the same and directed to pay salary and allowance for the period of 424 days vide the Representations dated



12.09.2018, 28.09.2018, 01.10.2018 and Letter No.3958/YW1/2018, dated 08.10.2018 sent by the 1st Respondent to the 2nd Respondent.

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For Appellant

: Mr.S.Angappan
Government Advocate

For Respondent

: Mr.C.Mayilvahana Rajendran

J U D G M E N T

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

This Writ Appeal has been filed by the Government, challenging the order passed by the learned Single Bench in W.P.(MD) No.25010 of 2018, filed by the respondent herein.

2.The Writ Petition was filed to direct the appellant to treat 557 days as loss of pay and regularize the same and to pay salary and allowance for the period of 424 days by considering the representation.

3.The Writ Court issued a positive direction to pay salary and other allowances for the period in question. The direction issued by the Writ Court traverse beyond the relief sought for by the Writ Petitioner. At best we can pass orders directing the appellants to take note of the representations of the respondent for regularizing the period of absence. It is for the authorities to take note of the relevant Rules, number of leave available to the credit of the respondent and then pass orders. Therefore, we are of the view that positive direction ought not to have been issued.

4.The learned counsel appearing for the respondent/writ petitioner submitted that in the memorandum of grounds of Writ Appeals it is admitted that as per Rule 17(e)(4) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules the period of dismissal i.e., from 27.02.2015 to 21.01.2016 may be treated as deemed suspension and he may be paid the subsistence allowance for the above period as per the provisions of F.R.53 and not full pay and allowances as claimed by the respondent. Further, with regard to regularization of period of deemed suspension, if the respondent desires to treat the period of 'absence from duty' as 'leave' of any kind due and admissible to him as per the proviso under F.R. 54(5), then the said period shall be treated as eligible leave if EL/UEL on Private Affairs is available to his credit and if no EL/UEL on Private Affairs is available to his credit, it shall be treated as Extra Ordinary Leave without pay and allowances without Medical Certificate and he may be paid the leave salary only for the



eligible period as per the proviso to F.R. 54(5).

5.In the light of the above, we are inclined to interfere in the order passed in the Writ Petition. Accordingly, the Writ Appeal is allowed and the order passed by the Writ Court in W.P.(MD) No.25010 of 2018 dated 31.01.2019 is set aside and there will be a direction to the appellants to take note of the respondent's representations and regularize the period of absence by passing a speaking order within a period of two weeks from the date of receipt of a copy of this order. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

sj

To

1.The Principal Secretary to the Government,
Youth Welfare and Sports Development Department (YW),
Secretariat, Fort St. George,
Chennai - 9.

2.The Deputy Director General of NCC,
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NCC Group Head Quarters,
No.86/1, P.T. Rajan Road,
Madurai.

4.The Commanding Officer,
3 (TN) Naval Unit NCC, Lions Town,
Thoothukudi.

+1cc to Mr.C.MAYIL VAHANA RAJENDRAN, ADVOCATE, SR NO.102078

+1CC TO M/s.Special Government Pleader, SR No.102375

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and C.M.P. (MD) No.6036 of 2019
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