



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.6557 of 2018

R.Rajendran

... Petitioner

Vs.

1. The Director,
Town Panchayat,
Kuralagam,
Chennai-108.
2. The District Collector,
Madurai District.
3. The District Collector,
Virudhunagar District.
4. The Assistant Director,
Town Panchayat,
Sivagangai Zone,
Sivagangai District.
5. The Assistant Director,
Town Panchayat, Madurai Zone,
Madurai District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the impugned order dated 04.12.2017 passed in Na.Ka.No.6365/2015/A7 and quash the same and directing the respondents to issue the salary along with all other benefits for the remaining period of 195 days to be treated as unearned leave on medical certificates.

For Petitioner : Mr.K.Suresh Kumar
For Respondents : Mr.VR.Shanmuganathan,
Special Government Pleader

ORDER

This writ petition is filed challenging the impugned order dated 04.12.2017 passed in Na.Ka.No.6365/2015/A7 by the first respondent and for a direction to the respondents to issue the salary along with all other benefits for the remaining period of 195 days to be treated as unearned leave on medical certificates.

2. The petitioner joined as part time Panchayat Clerk at Bodinaickanpatti Village Panchayat, Madurai District, on 01.03.1978 and continued up to 04.07.1982. After various promotions, he became Executive Officer on 30.06.2014 after serving 33 years.

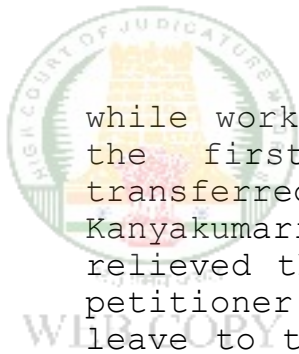


He was suffering from several diseases like diabetic, hyper tension and heart problem and was taking treatment from 01.01.2012 to 31.05.2012 and availed medical leave on production of medical certificate. While so, on 28.05.2012 he suffered by heart attack and was admitted in Appollo Hospital, Madurai. He underwent surgery on 29.05.2012. He extended his medical leave from 29.05.2012 to 30.06.2012 on production of medical certificate.

3. He was transferred from Madurai to Vathirayiruppu Town Panchayat, Virudhunagar District as Executive Officer on 01.07.2012. As per the order, the petitioner joined as Executive Officer in Vathirayiruppu Town Panchayat on 11.07.2012 and again he availed medical leave from 17.07.2012 to 30.11.2012 on production of medical certificate. The fourth respondent referred the petitioner to the Medical Board through their two letters dated 08.11.2012. The Medical Board issued certificate on 11.12.2012 for the period from 16.07.2012 to 15.09.2012 and again, issued another certificate on 27.11.2013 for the period from 01.05.2012 to 30.06.2012 and 01.07.2012 to 15.07.2012. The petitioner rejoined duty on 28.11.2012 on production of fitness certificate. On account of his illness and health condition, at his request, he was transferred to his native place, Madurai District and joined as Executive Officer on 03.12.2012 in Paravai Town Panchayat. He retired as Executive Officer, Vadipatti Town Panchayat, Madurai District, on 30.06.2014. The third respondent issued proceedings dated 02.06.2014 and ordered 132 days only for unearned leave on medical certificates and treated the remaining period of 195 days as loss of pay. The petitioner approached the first respondent by making representation. The first respondent by the impugned letter dated 04.12.2017, rejected the claim of the petitioner. Aggrieved against the said order of rejection, the petitioner has come out with the present writ petition.

4. The learned counsel appearing for the petitioner contended that the respondents failed to follow G.O.Ms.No.1119, dated 28.09.1979, issued by the Personnel & Administrative Reforms (FR-3) Department and letter No.58735/1983-1 dated 12.09.1983 of first respondent. The petitioner is entitled to avail 540 days as per G.O.Ms.No.1119, Personnel & Administrative Reforms (FR.3) Department, dated 28.09.1979. The first respondent failed to see that the petitioner applied for medical leave along with medical certificates. The respondents 2 & 3 did not reject the medical certificate produced by the petitioner. The first respondent did not consider that the respondents 2 & 3 failed to refer the petitioner within three days from the date of receipt of leave application, but referred the petitioner to the medical board only after 240 days of his application and prayed for allowing the writ petition.

5. The respondents filed counter affidavit and denied all the averments made in the affidavit. The learned Special Government Pleader appearing for the respondents submitted that the petitioner



while working as Executive Officer in the fifth respondent office, the first respondent by the proceedings dated 31.12.2011, transferred the petitioner to Kaliyakkavilai Town Panchayat, Kanyakumari District and consequently, the second respondent relieved the petitioner, by his proceedings, on the same day. The petitioner did not join in the transferred place. But, he applied leave to the fifth respondent. The fifth respondent has forwarded the leave application to the first respondent. Again, the petitioner was transferred from Kaliyakkavilai Town Panchayat, Kanyakumari District to Vathirayiruppu Town Panchayat, Virudhunagar District, by the first respondent. The petitioner joined duty on 11.07.2012. After joining the said place, the petitioner applied for medical leave from 17.07.2012 to 30.11.2012, for more than 60 days. Therefore, he was referred to Medical Board. The Medical Board examined the writ petitioner and certified that he is eligible for medical leave from 01.05.2012 to 30.06.2012, 01.07.2012 to 15.07.2012 and 17.07.2012 to 15.09.2012. The third respondent by the order dated 02.06.2014, regularised the leave period from 01.01.2012 to 30.04.2012 and 16.09.2012 to 22.11.2012 as loss of pay and from 01.05.2012 to 10.07.2012 and 17.07.2012 to 15.09.2012 as unearned leave on medical certificate and from 23.11.2012 to 28.11.2012 as earned leave. As per the Government Order in G.O.Ms.No.1119, Personnel & Administrative Reforms (FR.3) Department, dated 28.09.1979, an employee is entitled to 18 months leave on medical certificate. If an employee applied medical leave for more than 60 days, he will be referred to Medical Board and based on the certificate issued by the Medical Board, the employee will be sanctioned medical leave. The certificate of medical board is final. In the present case, the Medical Board certified that the petitioner is not entitled to medical leave from 01.01.2012 to 30.04.2012 and 16.09.2012 to 22.11.2012. Based on the said certificate, leave was regularised for the said period as unearned leave on medical certificate and from 01.01.2012 to 30.04.2012 and 16.09.2012 to 22.11.2012 was regularised as loss of pay. The order of the third respondent was confirmed by the first respondent. The same is valid and legal and prayed for dismissal of the writ petition.

6. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

7. From the materials on record, it is seen that the petitioner while working as Executive Officer in the fifth respondent office, the first respondent by the proceedings dated 31.12.2011, transferred the petitioner to Kaliyakkavilai Town Panchayat, Kanyakumari District and he was relieved on the same day. The petitioner did not join in the transferred place. The petitioner has suppressed his transfer order and he failed to join in the transferred place. The petitioner without mentioning the above



from Madurai to Vathirayiruppu and he joined duty on 11.07.2012. This shows that the petitioner has not approached the Court with clean hands. Further, the petitioner was applying for medical leave to the fifth respondent. Even though on 01.07.2012, he was transferred from Kaliyakkavilai Town Panchayat to Vathirayiruppu Town Panchayat, Virudhunagar District and he joined duty only on 11.07.2012 at Vathirayiruppu Town Panchayat. After he joined duty, he was referred to Medical Board. The Medical Board certified that the petitioner is entitled for medical leave for the period from 01.05.2012 to 30.06.2012, 01.07.2012 to 15.07.2012 and 16.07.2012 to 15.09.2012. Based on the certificate of Medical Board, the third respondent regularised the leave period and the same was confirmed by the first respondent.

8. In view of the above facts, the impugned order of the first respondent dated 04.12.2017, in Na.Ka.No.6365/2015/A7, is valid and legal and the writ petition is liable to be dismissed and accordingly, dismissed. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Director,
Town Panchayat,Kuralagam,
Chennai-108.
- 2.The District Collector,
Madurai District.
- 3.The District Collector,
Virudhunagar District.
- 4.The Assistant Director,
Town Panchayat, Sivagangai Zone,
Sivagangai District.
- 5.The Assistant Director,
Town Panchayat,
Madurai Zone, Madurai District.

am

W.P. (MD)No.6557 of 2018
01.11.2019

sma (26.11.2019) 4P 6C