



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.21480 of 2014

WEB COPY

Karuppaiah

... Petitioner

Vs.

1.The Commissioner/Director
Department of Sericulture,
Bakus Complex, Anaimeedu, Salem.

2.The Assistant Director of Sericulture,
Paraipatti, Palani Road,
Sericulture Complex,
Dindigul, Dindigul District.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 2nd respondent in Na.Ka.No.1810/Aa/2004-1 dated 10.12.2004 and quash the same as illegal and further directing the respondents to pay the arrears of salary to the petitioner for the period of 500 days (ie., from 28.02.1995 to 11.07.1996).

For Petitioner : Mr.S.J.Chakkaravarthy
For Respondent : Mr.M.Jeyakumar
Additional Government Pleader

ORDER

The impugned order dated 10.12.2004 regulating the period of absence of the writ petitioner for 680 days is under challenge in the present writ petition.

2.The learned counsel appearing on behalf of the writ petitioner made a submission that the writ petitioner was appointed in the Sericulture Department in the year 1980 and he was serving as an Assistant Director of Sericulture and his services were regularized during the year 1982. The writ petitioner was transferred from Dindigul district to Dharmapuri District in proceeding dated 03.09.1994 by the Regional Deputy Director of Sericulture, Madurai.

3.Aggrrieved by the order of transfer transferring the writ petitioner from Dindigul to Dharmapuri, the writ petitioner filed O.A. Number 4699 of 1994 before the Tamilnadu Administrative Tribunal. Challenging the order of transfer and the original



application was allowed by the Administrative Tribunal on 12.09.1994 holding that the order of transfer issued by the regional deputy director of sericulture, Madurai, dated 03.09.1994 was without jurisdiction and without any basis.

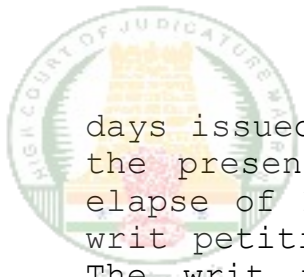
4.The learned counsel for the writ petitioner states that in spite of the order passed by the Tribunal, the respondents has not issued any posting order implementing the orders of the Tribunal. The writ petitioner sent several representations to the respondent and the respondents had not responded to the writ petitioner resulting to the absence of 680 days. In other words, the petitioner states that he was going on submitting representation for 680 days and was waiting for orders of the respondent, without performing any public duties and responsibilities. Under these circumstances the learned counsel for the writ petitioner states that not joining in the place as per the orders of the Administrative Tribunal is not at the instance of the writ petitioner but at the account of the fault committed by the respondent. On receipt of the orders passed by the administrative tribunal, the respondents ought to have issued posting order immediately to the writ petitioner. The writ petitioner was waiting for the posting order for about 680 days and he also made several representations.

5.However, a charge memo under the Rule 17(b) was issued against the writ petitioner and subsequently, the writ petitioner attained the age of superannuation and the disciplinary proceedings were also dropped and he was allowed to retire from service. At the time of filing of the present writ petition, the writ petitioner was aged about 61 years and now he would be around 66 years.

6.The main contention of the writ petitioner is that the order of transfer was quashed by the administrative tribunal and there was an enormous delay on the part of the respondent in implementing the orders of the Tribunal which resulted absence of 680 days for which the writ petitioner is not responsible.

7.The learned additional government pleader appearing on behalf of the respondent made a submission that the period of absence was regulated as per the leave rules and as per the eligibility of the writ petitioner and accordingly he was allowed to retire from service and all his terminal and pensionary benefits were settled and now the writ petitioner is receiving pensions, in respect of the period in which the writ petitioner had not worked in the post he is not entitled to claim salary and the principles of no work no pay is to be applied.

8.Considering the arguments as advanced by the respective learned counsels appeared on behalf of the writ petitioner as well as the respondent, this court has to consider at the first instance that the impugned order regulating the period of absence for 680

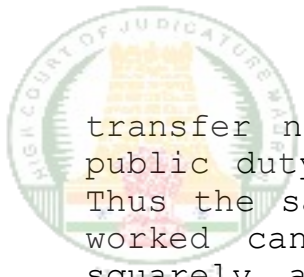


days issued by the respondent in proceeding dated 10.12.2004. However the present writ petition is filed on 19th December 2014 after a elapse of 10 years from the date of passing of the order. Thus the writ petition is to be rejected on the ground of laches in limini. The writ petitioner has challenged the order in regulating the period of absence issued in the year 2004 by filing a writ petition in the year 2014. The writ petition itself cannot be entertained and it is to be rejected on the ground of laches.

9. Even on merits, no work no pay principle is to be applied. There is a trend among the Government servant that wherever an order of administrative transfers are challenged before the Court of law they are not attending the duty and remained absent. Such a conduct of the public servant can never be encouraged nor be tolerated. Even in case where the administrative transfer order are challenged before the court of law the public servants are bound to serve in a post in which they were already working and only after the orders of the court and after implementation of the court order by the competent authorities. They can join in the remaining place or in the place wherever the posting order are issued. Contrarily the public servants are not supposed to remain in unauthorized absent and thereafter claim salary for the period in which they have not at all served for the public.

10. The public servant is bound to serve in the interest of public as well as for the welfare of the public administration. The government welfare schemes are implemented through the government servants. Thus, they cannot neglect the public duty for their personal gains. as far as the transfer orders are concerned undoubtedly the public servants are entitled to challenge the same if the transfer orders are issued on mala fide grounds or without jurisdiction or in violation of statutory rules. While challenging the transfer order they should continue to work in the place wherever they are transferred and till the disposal of such writ petition and only after the disposal of the writ petition and after passing an order implementing the court order the writ petitioner has to go back to their original place as per the original posting order. Contrarily they cannot remain absent from performing the public duties and responsibilities till the cases are decided or after the orders are passed by the court. Such an attitude can never be accepted but to be deprecated. Public Servant cannot remain absent without performing duties. Under these circumstances all such cases where transferred orders are under challenge. The public servants are bound to serve in the place wherever they are transferred or posted till the cases are disposed of and the orders of the High Court are implemented or if the posting orders are issued by the competent authorities, as the case may be.

11. This being the principle and the conduct to be followed by the Government servants, in the event of challenging an order of



transfer no public servant can remain absent from performing his public duty and thereafter claim salary for the period of absence. Thus the salary for the period in which the public servant had not worked cannot be granted. The principle of "no work no pay" squarely applies to all such cases and therefore, there is no infirmity in respect of the order passed regulating the period of absent as leave eligible. In fact in respect of such absence the authorities are bound to institute the disciplinary proceedings against the public servant. However in the present case the writ petitioner has been exonerated from the disciplinary proceedings and the period of absence was also regulated and accordingly he was allowed to retire from service and the pensionary benefits are also settled.

12.This being the factum there is no infirmity as such in respect of the order and this apart, the impugned order dated 10.12.2004 is challenged by way of writ petition in the year 2014, more specifically, on 19th December 2014 after a elapse of 10 years from the date of passing of the impugned order. Thus the writ petition is liable to be rejected on the ground of laches also. Accordingly, the writ petition stands dismissed both on merits as well as on the ground of laches. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To:

1.The Commissioner/Director
Department of Sericulture,
Bakus Complex,
Anaimeedu, Salem.

2.The Assistant Director of Sericulture,
Paraipatti, Palani Road,
Sericulture Complex, Dindigul,
Dindigul District.

+1 CC to Mr.S.J.CHAKKKARAVARTHY, Advocate SR-81889.
+1 CC to SPL GP SR-81952.

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