

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2020

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.35790 of 2007

R.Krishnamurthy

..Petitioner

Vs

1.Indian Institute of Technology,
rep.by its Registrar,
Adyar, Chennai - 600 036.

2.Assistant Registrar (Admn),
Indian Institute of Technology,
Adyar, Chennai - 600 036.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking issuance of a writ of certiorarified mandamus to call for the records from the 2nd respondent relating to the impugned order dated 09.10.2007 bearing Ref.No.F.Admn.II/B4/2007/787 and quash the same as illegal, arbitrary, without jurisdiction and consequently direct the respondents to pay

(i)remaining half day salary from 15.03.1999 to 26.10.1999 for the period the writ petitioner worked for full day.

(ii) salary for the suspended period (less subsistence allowance paid)

(iii) Difference in Pension and Leave Salary encashment on the basis of salary the petitioner was entitled to draw on the date of his superannuation.

(iv) Medical allowance @ Rs.100/- for the period February 2004 to January 2006.

together with interest @ 9% per annum.

For Petitioner : Mr.K.Srinivasamurthy
for M/s.Row & Reddy

For Respondents : Mr.Karthik mukundan
for R1
No appearance for R2

O R D E R

The petitioner has come forward with this writ petition, seeking for a issuance of writ of certiorarified mandamus, to quash the order of the second respondent dated

09.10.2007 and also to direct the respondents to pay all the consequential benefits.

2.1 According to the petitioner, initially, he was working as a Mechanic in the respondent Institution and subsequently, he was promoted as a Supervisor, in the Chemical Engineering Department. From the date of his joining, all the staff of the Department including the petitioner signed the attendance register once a day i.e forenoon, which was the customary practice. Subsequently, the respondent issued circulars dated 02.03.1999 and 04.03.1999 directing the staff to sign the attendance register on both the sessions i.e. forenoon and afternoon. The petitioner protested the same and filed a writ petition in W.P.No.8139 of 1999 and the same was dismissed on 25.10.1999. Thereafter, the petitioner was suspended from service on 27.10.1999. Subsequently, a charge memo dated 11.11.1999 was issued against the petitioner, alleging that he did not sign the attendance register twice a day and he filed the writ petition before this Court without obtaining prior permission from the authorities. Thereafter, explanation was called for. In spite of his explanation, the respondents proceeded with the enquiry. Subsequently, without prejudice to the enquiry proceedings, the petitioner retired from service after attaining the age of superannuation on 31.01.2000.

2.2 It is further stated that on 19.04.2000, the respondent Management issued a show cause notice. Challenging the same, the petitioner filed W.P.No.8201 of 2000 and the same was partly allowed by this Court quashing the show cause notice stating that the respondents cannot continue the disciplinary proceedings, since the petitioner was allowed to retire from service on superannuation on 31.01.2000 and directed the respondents to settle the terminal benefit within a period of two months. Aggrieved over the said order, the respondent Management filed W.A.No.319 of 2004 before this Court. The Division Bench of this Court by order dated 28.06.2007, dismissed the said Appeal and directed the respondent Management to pay the withheld amount along with interest at the rate of 9% per annum to the petitioner and also permitted the petitioner to approach the respondents, if any further amount is payable to him. Hence, the petitioner made a representation before the respondents requesting them to pay the withheld amount of Rs.1,00,000/- along with interest at the rate of 9%, half-a-day salary from 15.03.1999 to 26.10.1999, salary for the period of suspension, medical allowances and leave salary encashment with 9% interest.

2.3 Subsequently, the second respondent by letter dated 20.08.2007 sanctioned the withheld amount along with 9% interest totalling to Rs.1,08,915/-, but, they failed to furnish the calculation sheet. Hence, the petitioner submitted a detailed representation on 03.09.2007 seeking regular pension of Rs.3,949/- from 01.02.2000; remaining salary for

the period which he was placed under suspension from 01.11.1999 to 31.01.2000, after deducting the subsistence allowance; medical allowance @ Rs.100/- per month from 01.02.2000; difference in leave salary encashment of Rs.1,09,710/- together with interest at the rate of 9%. The second respondent by an order dated 09.10.2007 sanctioned the medical allowance and regular pension on the basis of the salary, which he was drawing prior to his suspension and not the salary, which he was entitled from the date of his superannuation and also rejected the other claims. Challenging the said order, the petitioner is before this Court.

3.The learned counsel for the petitioner would submit that the petitioner challenged the disciplinary proceedings, which was initiated after his retirement and this Court allowed the writ petition and quashed the disciplinary proceedings. Challenging the same, the respondents filed Writ Appeal. The Division Bench of this Court dismissed the appeal and directed the respondents to pay all the entitlements with interest @ 9% per annum to the petitioner. Subsequently, the petitioner made a representation before the respondents and the second respondent paid only the withheld amount, but, they have not paid other entitlements. Hence, the present writ petition.

4. The learned counsel for the first respondent would submit that in order to improve the work culture, the respondent Management issued circulars dated 02.03.1999 and 04.03.1999 and directed the petitioner and other staff to sign the attendance register on both the sessions. However, the petitioner disobeyed the instructions of the respondents and filed writ petition and the same was dismissed by this Court. Subsequently, he was suspended from service. Thereafter, the petitioner filed a writ petition and the same was allowed by this Court, however, this Court has not specifically given a direction that the petitioner is entitled for salary for the suspension period. Therefore, the representation of the petitioner was not considered.

5. Heard the learned counsel for the petitioner, the learned counsel for the respondents and perused the materials available on record.

6.Admittedly, the petitioner was working as a Mechanic in the respondent Institution and subsequently, he was promoted as Supervisor in the Chemical Engineering Department. The respondent Management admitted that their staff had initially signed the attendance only once a day i.e. forenoon. Subsequently, the respondents issued circulars and directed the staff to sign the attendance register on both the sessions i.e. forenoon and afternoon and the same was protested by the petitioner and he has not signed the attendance register twice a day i.e. from 15.03.1999 to 26.10.1999. Hence, he was placed under suspension and subsequently, he retired from service

after attaining the age of superannuation on 31.01.2000. Thereafter, the respondent Management on 19.04.2000 issued a show cause notice. Challenging the same, the petitioner filed W.P.No.8201 of 2000 and this Court partly allowed the writ petition quashed the show cause notice and held that the respondents cannot continue the disciplinary proceedings. Aggrieved over the same, the respondents filed the Writ Appeal before the Division Bench of this Court. The Division Bench of this Court dismissed the writ appeal and directed the respondents to pay all the entitlements eligible to the petitioner. Thereafter, the petitioner made a representation to the respondents. The second respondent sanctioned some amount only, but, failed to pay the amounts eligible during the suspension period after deducting the subsistence allowance and difference of pay of the salary and half-a-day salary from 15.03.1999 to 26.10.1999, stating that he had not signed the attendance register, that means the petitioner had not worked during that period.

7. On a perusal of the records, it is seen that before issuing the circulars, the petitioner and other staff had signed the attendance register only once a day i.e. forenoon. Thereafter, the Department issued circulars to sign in both the sessions and the same was upheld by this Court. It is the contention of the learned counsel for the first respondent that since the petitioner had not signed the afternoon session that means he had worked only half-a-day and hence, he is not entitled for salary for half-a-day. However, during the period from 15.03.1999 to 26.10.1999 the petitioner was allowed to sign once a day and the respondents have not taken any steps. Subsequently, only on 27.10.1999 he was suspended from service. During his superannuation on 31.01.2000, the petitioner was paid only for half-a-day salary, as if he worked only for the forenoon session. If the respondent Management considered that the petitioner disobeyed their order of not signing the afternoon session, they would have taken action immediately and suspended the petitioner. But, he was allowed to sign only for the forenoon session for six months. Thereafter, the respondents initiated disciplinary proceedings for his absence from duty from 15.03.1999 to 26.10.1999. Subsequently, the petitioner was allowed to retire from service on 31.01.2000. Thereafter, the Division Bench of this Court quashed the disciplinary proceedings and directed the respondents to pay the entire salary and other regular pension to the petitioner, but, the respondents failed to pay the same.

8. Therefore, as directed by the Division Bench of this Court, the respondents are directed to pay salary during his suspension period, after deducting the payments, if any and also directed the respondents to pay half-a-day salary from 15.03.1999 to 26.10.1999 and other benefits as prayed for, if any already not paid together with interest at the rate of 9% per annum within a period of four weeks from the

date of receipt of a copy of this order.

9.With the above direction, the writ petition is allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Registrar,
Indian Institute of Technology,
Adyar, Chennai - 600 036.

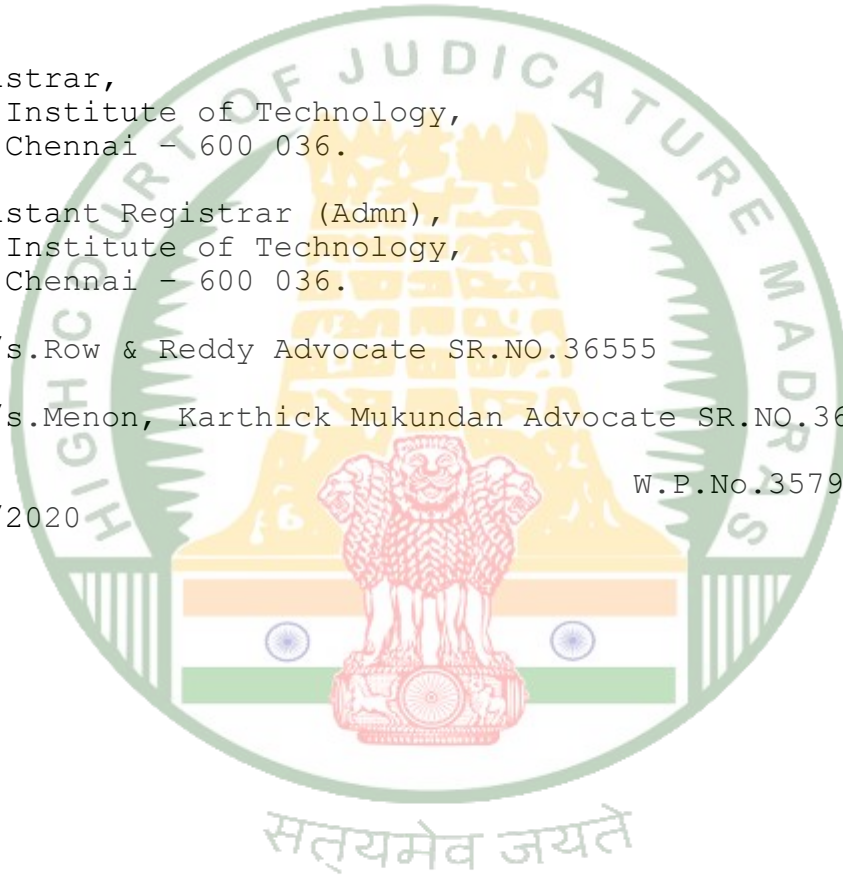
2.The Assistant Registrar (Admn),
Indian Institute of Technology,
Adyar, Chennai - 600 036.

+1cc to M/s.Row & Reddy Advocate SR.NO.36555

+1cc to M/s.Menon, Karthick Mukundan Advocate SR.NO.36568

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SDR 17/12/2020



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