

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.27550 of 2013

M.Joseph

.. Petitioner

Vs.

1. Tamil Nadu Civil Supplies Corporation,
Rep. by its Senior Regional Manager,
Coimbatore Region - 613104.

2. Tamil Nadu Civil Supplies Corporation,
Rep. by its Managing Director,
No.42, Thambusamy Road,
Chennai - 600 010.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents to treat the period from 14.08.2011 to 20.09.2012 as duty period in terms of Regulation 4(h) Chapter I of Tamil Nadu Civil Supplies Corporation Ltd Service Regulations, 1989 and release the pay and allowance for the said period with penal interest.

For Petitioner : Mr.S.Venkataraman

For Respondents : Mr.C.Munusamy
Special Government Pleader

O R D E R

Writ petition has been filed seeking a direction to the respondents to treat the period of petitioner's absence between 14.08.2011 and 20.09.2012 as duty period and also to pay the wages and other benefits payable to him for the said period.

2. The petitioner was working as a Junior Quality Inspector. Earlier he was working at Thanjore Region, thereafter he was transferred to Coimbatore Region and posted at Mettupalayam. Thereafter, on the orders passed by the first respondent dated 25.07.2011, he was transferred to Poosaripalayam. While, the petitioner was working at Poosaripalayam, he had applied for medical leave, however, the first respondent treated the petitioner's absence as unauthorised absence and by an order dated 05.08.2011, relieved him from Coimbatore Region, and

requested the 2nd respondent to transfer some other Junior Quality Inspector to Coimbatore Region in the place of the petitioner. Challenging the above said order, the petitioner has earlier filed a writ petition in W.P.No.22440 of 2012, and this Court by an order dated 22.08.2012, set aside the order passed by the first respondent dated 05.08.2011, on the ground that the first respondent Regional Manager has no power to transfer the petitioner beyond Coimbatore Region, that the said order has been passed without jurisdiction and directed the first respondent to issue posting order to the petitioner within a period of two weeks. Pursuant to the same, the petitioner was again appointed at Poosaripalayam on 11.09.2012. Thereafter, the petitioner sent a representation to the first respondent to treat his absence from 14.08.2011 to 20.09.2011, as duty period, regularise his service and also pay salary for the same. Since the said representation of the petitioner was not considered, the present writ petition has been filed.

3. Mr.S.Venkataraman, learned counsel appearing for the petitioner submitted that this Court has held that the order relieving the petitioner from Coimbatore Region is illegal and without jurisdiction. This Court has set aside the said order and directed the first respondent to appoint the petitioner in Coimbatore Region itself, pursuant to the same, the petitioner was reinstated in service. Since the order relieving the petitioner was held as illegal, the petitioner's service should necessarily be regularised and the period of absence should be treated as the period of compulsory wait as per Regulation 4(h) (iv) of the Tamil Nadu Civil Supplies Corporation Limited Employees' Service Regulations, 1989. The learned Counsel further submitted that for no fault of the petitioner he has been relieved from service and thereafter pursuant to the orders passed by this Court he was reinstated into service by the first respondent and hence he is entitled for regularisation of service along with wages and other benefits.

4. Per contra, Mr.C.Munusamy, learned Special Government Pleader appearing for the respondents would contend that the petitioner was unauthorisedly absent from service and hence he was relieved from service. Pursuant to the orders passed by this Court, he was reinstated and there is no specific order from this Court to treat the absence period as duty period. In the absence of any specific direction from this Court, the petitioner's service cannot be regularised.

5. I have considered the rival submissions.

6. It is an admitted fact that the petitioner was relieved from service vide order dated 05.08.2011, and the said order has been set aside by this Court on the ground that the first

respondent has no power to issue relieving order to the petitioner and that power is only vested with the second respondent viz. the Managing Director of the Corporation, and directed reinstatement of the petitioner in Coimbatore Region itself, pursuant to the said order of this Court, the petitioner was reinstated into service. Once the relieving order has been set aside, the petitioner should necessarily be reinstated and deemed to be in service from the date on which he was relieved from service. Further, under Regulation 4(h)(iv) of the Tamil Nadu Civil Supplies Corporation Limited Employees' Service Regulations, 1989, the period of compulsory wait for order of posting has to be treated as duty period. The said Regulation is extracted hereunder:

"4(h) Duty includes:

- (i) Service as a probationer or apprentice, provided that such service is followed by successful declaration of probation or apprentice course as the case may be.
- (ii) Joining time.
- (iii) Any course of training or seminar or training duly deputed by the Corporation.
- (iv) Compulsory wait for orders of posting.
- (v) Period of absence on casual leave, Compensatory leave, Special casual leave, Declared holidays.
- (vi) That part of the period of suspension which is ordered to be treated as duty at a later stage."

Hence, the petitioner's service should be regularised and the respondent Corporation is liable to pay the entire wages and other benefits available to the petitioner for the said period.

7. In the result, the writ petition is allowed and the respondent Corporation is directed to pay all the wages and other benefits available to the petitioner for the period from 14.08.2011 to 20.09.2012, within a period of twelve weeks from the date of receipt of a copy of this order. No Costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kk

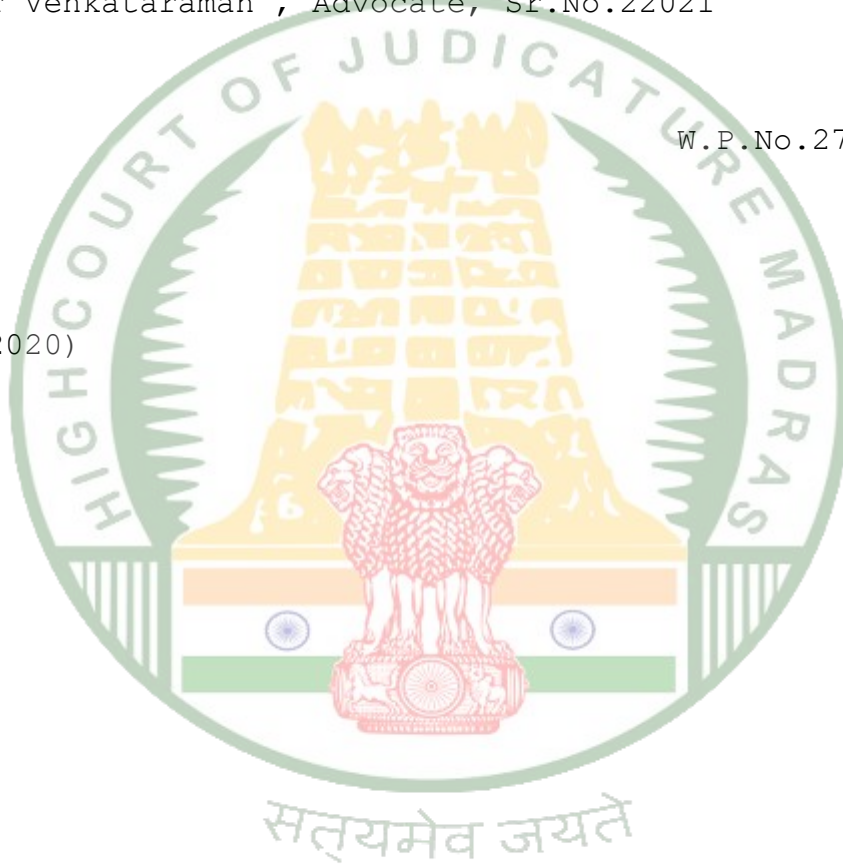
To

1. The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Coimbatore Region - 613104.
2. The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.42, Thambusamy Road,
Chennai - 600 010.

+1cc to Mr Venkataraman , Advocate, Sr.No.22021

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MG (CO)
GS (25/08/2020)



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