

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.12.2020

DELIVERED ON: 11.12.2020

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.12891 OF 2020

AND

W.M.P.NO.15944 OF 2020

M.Suganandhan

...Petitioner

Vs

1. The Director of Public Libraries,
Office of the Director of Public Libraries,
737, Anna Salai,
Chennai - 600 002.

2. The District Library Officer,
Office of the Local Library Authority,
735, Anna Salai,
Chennai - 600 002.

...Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying Writ of Mandamus to direct the respondents to sanction the backwages due to the petitioner from 19.08.1998 to 31.10.2006 and pay the same with interest at 24% p.a. and within a time frame as may be fixed by this Hon'ble Court.

For Petitioner : Mr.S.Silambanan,
Senior Counsel

for M/s.Kavya Solambanan Associates

For Respondents : Mr.C.Munusamy,

Special Government Pleader

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O R D E R

The matter is taken up through web hearing.

This Writ Petition has been filed to issue a Writ of Mandamus to direct the respondents to sanction the backwages due to the petitioner from 19.08.1998 to 31.10.2006 and pay the same with interest at 24% p.a. and within a time frame as may be fixed by this Hon'ble Court.

2. The case of the petitioner is that he was working as Librarian Grade III under the control of the 2nd respondent. During his service, he remained absent for 59 days from 03.08.1997 and 30.09.1997 on medical grounds.

3. The 2nd respondent, in response to the medical leave application, directed the petitioner herein to appear before the Medical Board to assess the condition of the petitioner for approval of medical leave. However, despite repeated directives, the petitioner did not appear before the Medical Board. Ultimately, the leave application of the petitioner was not approved by the authorities.

4. In the absence of approval of the medical leave, the absence of the petitioner became unauthorised and therefore, the disciplinary action was taken against him and finally, he was removed from service on 19.08.1998. As aggrieved by the action of the authorities, the petitioner challenged the removal order. The petitioner approached the then Tamilnadu Administrative Tribunal challenging the removal order in O.A.No.8880/2000. The application was admitted by the learned Tribunal and a reply was also filed. Thereafter, on abolition of the Tribunal, the matter was transferred to this Court and renumbered as W.P.No.47275/2006. This Court, on 08.02.2011, disposed of the writ petition by observing as under.

"The impugned order in as much as has been passed removing the petitioner from service without conducting any enquiry as contemplated under relevant service rules, it is liable to be set aside. Accordingly, the impugned order stands set aside and the writ petition is allowed. The respondents are hereby directed to initiate proceedings against the petitioner in accordance with the relevant statutory rules, before inflicting any penalty. Whatever the relevant rules which applies for taking disciplinary action, the same must be adopted.

5. The petitioner had in the meantime, attained the age of retirement on 31.10.2006. Although the learned Judge of this Court had given liberty to the respondents to initiate proceedings against the petitioner in accordance with the relevant statutory rules, ultimately, no such action was forthcoming for sometime from the respondents. Subsequently, by proceedings dated 09.04.2013, the 2nd respondent felt that there was no provision to initiate disciplinary action against him after four years from the date of retirement of the government

servant and hence, dropped further proceedings against him. According to the petitioner, thereafter the papers were processed for granting of pension and after exchange of correspondence, ultimately, pension was sanctioned to the petitioner in 2016 and gratuity was also settled in 2017.

6. The grievance of the petitioner in this case is that despite the fact that the learned Judge of this Court has allowed the writ petition, challenging the removal on the ground that there was no compliance of any rule position and subsequently, the 2nd respondent himself had dropped further action in the matter, the petitioner ought to have been paid the salary and allowances for the period from the date of removal and till the date of his retirement.

7. The petitioner claiming arrears of salary and allowances for the period from 19.08.1998 till 31.10.2006, submitted representations but the same having not evoked any response, the petitioner is before this Court.

8. Mr.S.Silambanan, learned Senior Counsel appearing for the petitioner would submit that once the order of removal was set aside by this Court and the authority had taken a decision not to proceed further in the matter, despite liberty granted to them by this Court, in all fairness, the petitioner ought to have been settled with the salary and allowance payable for the period of his non-employment, which was found to be unjust by the Court.

9. The learned Senior Counsel for the petitioner would further submit that though there was no reply to his representations in this regard, the counter affidavit filed discloses that the petitioner was not entitled to be paid arrears of salary and allowance for the reason that a learned Judge of this Court in respect of the petitioner's wife case, has specifically, while quashing the order of dismissal from service of his wife, has observed that the petitioner therein was not entitled to be granted backwages from the date of dismissal to the date of superannuation. Citing the judgment of the learned Judge which was passed in a different writ petition, the present claim of the petitioner sought to be resisted.

10. According to the learned senior counsel, the observation of the learned Judge in the writ petition filed by the petitioner's wife has been incorporated as if such observation was made in the writ petition filed by this writ petitioner. Therefore, he would submit that this was a gross non-application of mind on the part of the 2nd respondent in consideration of the claim of the petitioner herein.

11. Per contra Mr.C.Munusamy, learned Special Government Pleader entered appearance for the respondents would submit that the petitioner is not entitled to be paid arrears of salary and allowance on the simple principle, "no work no pay". Admittedly, the petitioner had not worked during the period of his claim and therefore, he cannot be compensated with arrears without extracting any work from him. The petitioner having remained absent unauthorisedly and rightly action was taken against him, he cannot take advantage of his own mistake of not working and now, claiming arrears and allowances for a long period of time. He would therefore, submit that the writ petition lacks merit and liable to be dismissed.

12. This Court has considered the submission of the learned Senior Counsel, Mr.Silambanan for the petitioner and Mr.C.Munusamy, learned Special Government Pleader for the respondents.

13. The rejection of the petitioners claim by the 2nd respondent by quoting the learned Judge's observation in a different writ petition in respect of the petitioner's wife, is unfortunate and such reason must be forthrightly rejected. It only disclosed complete non-application of mind on the part of the 2nd respondent. Even otherwise, this Court has to see whether the petitioner is entitled to be paid arrears of salary and allowance for the period from 19.08.1998 till 31.10.2006. In this case, the learned Judge of this Court has found that the order of removal was passed without following the relevant service rules and concluded that the order was illegal and set aside the same. However, the learned Judge had given liberty to the authorities for taking action against the petitioner in terms of the relevant rules. Ultimately, by proceedings of the 2nd respondent dated 09.04.2013, the entire action against the petitioner was dropped.

14. When this Court found that the order was passed illegally in view of not following the mandatory service rules in imposing major penalty of removal from service that would only mean that the order of removal did not exist at all in the eye of law. If the order of removal was interfered with by this Court on certain technical reasons of non-adherence to procedural requirement and in that case, the claim of the petitioner herein would be viewed differently. But the order of removal was not preceded by mandatory enquiry as contemplated in the Rules. In which case, the petitioner is entitled to salary and allowances payable to him from the date of his removal from service i.e., 19.08.1998 and till date of his retirement on 31.06.2006. The concept of 'no work no pay' as pleaded by the respondent is valid in certain circumstances wherein this Court, as stated above interfered with the punishment of removal or

dismissal from service, on certain hyper technical consideration. When the Court has not specifically indicated in the order that the petitioner was not entitled to arrears of salary and allowance, it should be understood that the petitioner was entitled to be paid arrears of salary allowance etc. for the period in question.

15. In the case of his wife, who also remained unauthorisedly absent and was imposed with the penalty of dismissal, when the learned Judge dealt with that case and disposed of, the petitioner therein namely, the petitioner's wife was no more and the learned Judge passed the order at the instance of her legal heirs including the petitioner herein. In consideration of the facts in that case, the learned Judge held that the petitioners therein were not entitled to the backwages. Such conclusion in those set of facts and circumstances, cannot be ipso facto applied in this case when this petitioner's claim arose out of a decision of another learned Judge of this Court and that the claim of the petitioner could be considered only within the frame work of the order passed in writ petition in W.P.No.47275/2006 dated 08.02.2006.

16. In view of the above narrative and discussion, this Court finds that the claim of the petitioner is justified, particularly, when his removal order was not passed in terms of the Rule position and in that view, the order of removal had to be held as void abinitio.

17. In the result, the Writ Petition is allowed. The respondents are directed to pay arrears of salary and allowances to the petitioner for the period from 19.08.1998 till 31.10.2006. The respondents are also directed to pass appropriate orders in this regard within a period of eight weeks from the date of receipt of a copy of this order. The prayer for grant of interest is rejected. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Director of Public Libraries,
Office of the Director of Public Libraries,
737, Anna Salai,
Chennai - 600 002.

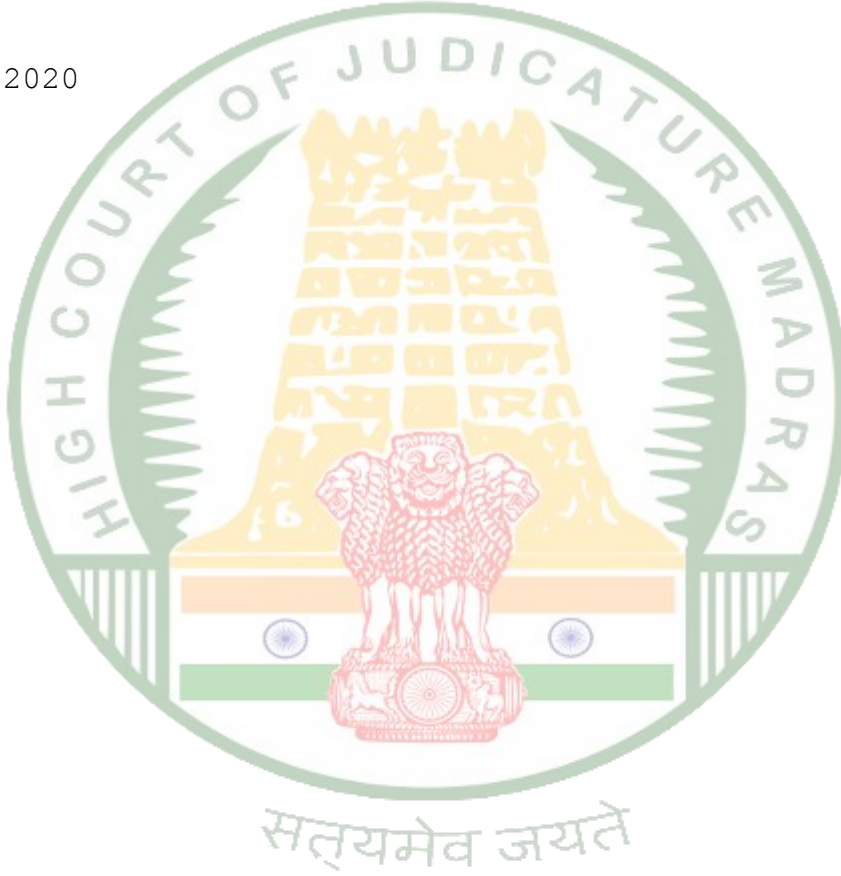
2. The District Library Officer,
Office of the Local Library Authority,
735, Anna Salai,
Chennai - 600 002.

+1cc to M/s.Kaavya Silambanan Associates, SR.NO.40506

+1cc to Government Pleader, SR.NO.40705

Pre-delivery order made in
W.P.No.12891 of 2020

AD(CO)
KKV/29/12/2020



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