



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.04.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

WEB COPY

W.A. (MD)No.930 of 2021

G.Rajan

... Appellant/Petitioner

Vs.

The Superintendent,
Central Prison,
Palayamkottai.

... Respondent/Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court made in W.P.(MD) No.13921 of 2014, dated 12.06.2019.

Prayer in WP(MD). 13921/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in connection with the impugned order passed by him in Ref. No. 426/P1/2013 dated 05.06.2014 and quash the same and further direct the respondent to treat the period from 29.04.2013 to 09.10.2013 as duty for all purposes and grant him all consequential service and monetary benefits.

For Appellants : Mr.R.J.Karthick

For Respondent : Mr.K.P.Krishnadass,
Special Government Pleader

J U D G M E N T

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

Heard Mr.R.J.Karthick, learned Counsel appearing for the appellant and Mr.K.P.Krishnadass, learned Special Government Pleader appearing for the respondent.

2. This appeal is directed against the order dated 12.06.2019, in W.P(MD).No.13921 of 2014. The said writ petition was filed by the appellant challenging the proceedings of the respondent dated 05.06.2014 and for a consequential direction to treat the period from 29.04.2013 to 09.10.2013, as duty for all purposes and grant him all consequential service and monetary



3. The learned Writ Court dismissed the writ petition on the ground that the order impugned in the writ petition was rightly passed and that the period of absence between 29.04.2013 to 09.10.2013, was treated as 'no-work-no-pay' and the period to be regulated as loss of pay without medical certificate. The petitioner had challenged the said order by contending that he had challenged the order of transfer in W.P(MD).No.5841 of 2013 and an order of interim stay was granted on 10.04.2013 and after receiving the order of transfer, he reported to the Central Prison, Palayamkottai, but was not allowed to join duty. The writ petition was ultimately dismissed on 07.10.2013, but subsequently, posting order was not given and he made representations and thereafter, joined on 09.10.2013 and the period between 29.04.2013 and 09.10.2013, should be treated as period of compulsory wait or in other words to be treated as duty.

4. Further the appellant has placed reliance on the observations and directions issued by the Hon'ble Division Bench in W.A(MD).No.1255 of 2013, dated 16.12.2013. It was an appeal filed against the dismissal of W.P(MD).No.5841 of 2013. The learned Writ Court dismissed the writ petition on the ground that already a concession has been granted by treating the period as 'no-work-no-pay' and granting further concession by treating it as a period on duty does not arise. Under normal circumstances, we would have agreed with the learned Writ Court in the said finding, but for the observations and directions issued by the Hon'ble Division Bench, in an appeal filed by the appellant in W.A(MD).No.1255 of 2013. This order binds the respondent-Department. We say so because, the Hon'ble Division Bench by judgment dated 06.12.2013, also dealt with the aspect, as to how the period of absence to be reckoned/regulated.

5. At this juncture, it is relevant to note the following dates and events:

On 06.04.2013, the order of transfer was passed, which was challenged by way of writ petition and an order of interim stay was granted on 10.04.2013. Subsequently, the writ petition was dismissed on 07.10.2013, and the appellant was permitted to join duty on 09.10.2013. The writ appeal which was filed was disposed of on 06.12.2013. Therefore, the period of absence between 29.04.2013 and 09.10.2013, is roughly about 5 ½ months, which needs to be regulated in terms of the directions issued by the Hon'ble Division Bench.

6. At this juncture, it is relevant to quote the operative portion of the judgment:

"...Even though the petitioner has no locus to



order has not been set aside and the same has been upheld by the learned Single Judge, we expect the administration to consider in retaining him till 30.04.2014 and also his case to give a place of posting in and around the place before the date of impugned order of transfer. However, we are not expressing anything on merits of matter and not issuing any direction to that effect. If he has not joined the transferred place after the disposal of the writ petition, we make it clear that he will not be entitled to the wages on the principle of 'no work no pay'.

From the above directions, it is clear that the period of absence has to be treated applying the principle 'no-work-no-pay'.

7. The respondent-Department did not get liberty from the Hon'ble Division Bench, for further directions to regulate the period of absence. Thus, once the Hon'ble Division Bench has dealt with the issue and held that the period to be regulated as a period of 'no-work-no-pay', nothing further could have been done by the respondent and therefore, the order dated 05.06.2014, impugned in the writ petition is not sustainable, as it goes beyond the directions issued by the Hon'ble Division Bench.

8. For the above reasons, the writ appeal is allowed and the order passed in the writ petition is set aside. Consequently, the order impugned in the writ petition dated 05.06.2014, is set aside and the respondent is directed to treat the period as ordered by the Hon'ble Division Bench as 'no-work-no-pay' and the period should not be regulated as loss of pay without medical certificate. The above directions shall be complied with within a period of 12 weeks from the date of receipt of a copy of this judgment. No costs.

Sd/-

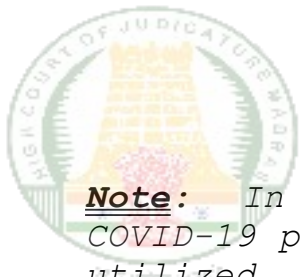
Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar (CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
The Superintendent,
Central Prison,
Palayamkottai.

+1 CC to MR.R.J.KARTHICK, Advocate (SR-18336[F]
dated 03/05/2021)

+1 CC to SGP (SR-18407[F] dated 03/05/2021)

W.A. (MD) No. 930 of 2021
30.04.2021

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