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W.A(MD)No.1480 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

W.A(MD)No.1480 of 2017

and

C.M.P(MD)No.11698 of 2017

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Block Development Officer,
Thiruchuli Panchayat Union,
Thiruchuli,
Virudhunagar District.

... Appellants/Respondents

Vs.

E.Rajaram

... Respondent / Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order, dated 31.07.2017 made in W.P(MD)No.7761 of 2009 on the file of this Court.

Prayer in WP(MD). 7761/ 2009 :

Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in his Proceedings in Na.Ka.R3/2222/09 dated 30.06.2009 and quash the same as illegal and violation of Principles of natural justice and further direct the Respondents to pay the retirement benefits to the petitioner.

For Appellants : Mr.P.Mahendran
Additional Government Pleader

For Respondent : Mr.M.Jothibasu

JUDGMENT

**(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)**

This Writ Appeal is directed against the order, dated 31.07.2017 passed in W.P(MD)No.7761 of 2009.

2.The said Writ Petition was originally filed by the respondent/writ petitioner for a Writ of Certiorarified Mandamus, to quash the impugned order, dated 30.06.2009 passed by the first

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appellant/first respondent and consequently, to direct the appellants/respondents to pay the retirement benefits to the respondent.

3.The respondent was a noon-meal organizer in Thopalakarai Panchayat Union Middle School, Thopalakarai Village, Tiruchuli Panchayat Union, Virudhunagar District and he was issued with an order of suspension on 13.09.2004 for his unauthorised absence from 07.06.2004. Besides, after the audit, it was found that he had also committed certain irregularities by misappropriating certain sum. For all the above allegations, he was dismissed from service on 30.06.2009.

4.The only contention of the learned counsel for the respondent, that was raised before the learned Single Judge, was that the respondent was not afforded with an opportunity of personal hearing and there was no proper enquiry conducted.

5.It was contended by the learned Additional Government Pleader appearing for the appellants that the respondent was kept under suspension from 13.09.2004 and he was dismissed from service on 30.06.2009, when it was found that there was a misappropriation for a sum of Rs.23,049/-. Charges were framed in the year 2009 and charge-memo was issued.

6.The learned Single Judge had found that though the respondent was suspended for his unauthorised absence on 13.09.2004, the suspension was even continued beyond the statutory period. Admittedly, the respondent had remitted the amount that was alleged to have been misappropriated by him, by depositing the same on 13.10.2008 and 12.03.2009. The impugned order was passed based on the statement of one Rajaram and the respondent was not given an opportunity to explain his case. Only on the grounds that the respondent was not given an opportunity of hearing to putforth his case and since the respondent had remitted the amount alleged to have been misappropriated by him, the Writ Petition was disposed of. While disposing of the Writ Petition, the learned Single Judge had directed the first appellant to pay 50% of the backwages to the respondent from the date of his suspension till the date of his retirement within a period of four weeks.

7.The learned Additional Government Pleader appearing for the appellants would point out that admittedly the respondent had stated in the reply to the charge-memo that he was away in Thiruppur from 06.07.2004 due to his family circumstances and that he was unable to attend his work because of mental agony. Based on the said reply given by the respondent, the learned Additional Government Pleader would point out that the respondent would not be entitled for 50% of the backwages, as he has not only unauthorisedly absented himself from duty, but he was also not in the Town during the relevant period. It is also to be noted that admittedly the respondent had



not made any request for payment of subsistence allowance or even sought for payment of backwages till he was terminated from service.

8.Hence, we are of the opinion that the order of termination without notice and proper enquiry cannot be sustained and the same is confirmed, as held by the learned Single Judge. However, the payment of 50% of the backwages to the respondent from the date of his suspension till the date of his retirement cannot be granted to the respondent, as he is not eligible for the same in the facts and circumstances of the case. Therefore, the order of the learned Single Judge is modified only to that effect by setting aside the order of termination, which stands confirmed and insofar as the payment of backwages is concerned, the same is set aside. Accordingly, the Writ Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps

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

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Block Development Officer,
Thiruchuli Panchayat Union,
Thiruchuli,
Virudhunagar District.

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-4541[F] dated 11/02/2021)

+1 CC to SPL GP (SR-4630[F] dated 11/02/2021)

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