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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2022

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE N.MALA

W.A.No.528 of 2022
against
W.P.No.10325 of 2020

Annamalai University
Rep.by its Registrar
Annamalai University,
Chidambaram.

...Appellant / 3rd Respondent

Vs

1. Dr.D.Elamparuthi
2. The Government of Tamil Nadu,
Rep.by its Secretary,
Higher Education Department,
Secretariate, Chennai.
3. The Director,
Directorate of Collegiate Education,
Chennai - 600 008.
4. The State Commissioner,
Welfare of the Differently-abled,
No.5, Kamarajar Salai,
Lady Wellington College Campus,
Chennai 600 005.
5. The Principal,
Government Arts and Science College for Women,
Santhankulam,
Thoothukudi District.

... Respondents

Prayer: Writ appeal is filed under clause 15 of the Letter Patent praying to set aside the order dated 26.08.2020 in W.P.No.10325 of 2020.



Prayer in W.P.No.10325 of 2020:-This Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified Mandamus, calling for the records of the 2nd respondent in his proceedings in Na.Ka.No. 6354/ D5/ 2020 dated 25.02.2020 in so far as the petitioners posting from 3rd respondent university to the 5th respondent college is concerned and the order of the 3rd respondent in his proceedings in office memorandum No.C-C7 / 12493 / 2020 dated 10-07-2020 and quash the same and consequently direct the respondents to continue to permit the petitioner to work under the 3rd respondent University as before.

For Appellant : Mr.K.Sathish Kumar
For Respondents : Mrs.M.N.Sumathy for R1
Mrs.Mythreye Chandru
Special Govt.Pleader
for R2 to R5

J U D G M E N T

S.VAIDYANATHAN, J.
&
N.MALA, J.

The present appeal has been preferred against the order dated 26.08.2020 in W.P.No.10325 of 2020.

2. The case of the writ petitioner is that he was working as a Lecturer in Directorate of Distance Education in the Appellant University. He was initially appointed as Lecturer on 19.04.2007 and subsequently, his services were confirmed in the Department of Distance Education on 18.12.2008. In 2017, the Teaching Staff employed in the Department of Distance Education were taken over due to merger of the Department and he was re-designated as Assistant Professor in the Department of Business Administration. The Writ Petitioner belongs to Scheduled Caste Community and he is also Physically handicapped with 60% Orthopaedic disability. On 25.02.2020 the 3rd Respondent herein passed an order posting several Teaching Staff engaged in the Department of Business Administration of the Appellant University, in various other Colleges in the State. In pursuance of the third respondent's order dated 25.02.2020 a consequential order was issued by the Appellant University on 10.07.2020 and as many as 39 Teaching Staff of the University have been transferred to various other colleges across the State, including the writ petitioner. Insofar as the Writ Petitioner is concerned, he was posted in the Government Arts and Science College for Women, Sathankulam, Thoothukudi District for a



period of three years. The mass transfers were said to be necessitated in view of the fact that these teaching staff have become surplus over and above the sanctioned strength of the University in their respective departments. It is further case of the Writ Petitioner that of course, it is true that the Writ Petitioner alone cannot be singled out in the matter of posting of surplus teaching staff to various other colleges in the State, considering his 60% orthopaedic disability, he may be accommodated in the University itself or in any of the nearby institution, as it is practically impossible for him to travel from the place of his residence to the Appellant University. It is also the case of the Writ Petitioner that despite submitting all the medical certificates in support of his disability status, his request for retention at Annamalai University on the ground of his disability was not considered and therefore writ petition was filed. The learned Single Judge disposed of the writ petition with a direction that the petitioner is entitled for payment of salary and allowances for the interregnum period as per the usual conditions of service, governing the engagement of the petitioner to the University services. Aggrieved by the said observation of the learned Single Judge, the Appellant University is before this Court.

3. The learned counsel for the Appellant University submitted that the learned Single Judge ought to have rejected the salary and monetary benefits to the petitioner for the absent period between 28.02.2020 and 07.01.2021, since the Appellant University is already under financial constrain even for paying salary to the surplus teaching and non-teaching post. Hence the Appellant/University has filed the present appeal.

4. The learned counsel for the first respondent submitted that the writ petitioner's absence between 25.03.2020 and 31.07.2020 cannot be treated as abstinence from his work, but absence due to the lockdown imposed to control the spread of Covid - 19. Further, the Government of Tamil Nadu directed to treat the period of absence as duty. The delay caused by the appellant University in not implementing the order of the learned Single Judge cannot be credited to the writ petitioner's account as abstinence from work. He worked between the date on which the order impugned in W.P.No.10325 of 2020 was served, till his joining duty on 08.01.2021 and he has not absented from his duty in an unauthorised manner. Therefore, the principle of "no work, no pay" is not applicable in his case, as his absence ought to have been considered as on duty, in view of the various facts stated above, for which the writ petitioner is no way responsible. In fact, during this period from 27.02.2020 to 07.01.2021, classes were suspended by all the educational institutions, throughout the country, due to the outbreak of Covid-19 pandemic. All the teachers were paid their salaries,



during this period for no work done by them. It is ludicrous on the part of the Appellant University to isolate the writ petitioner alone and invent a reason to deny wages on the principle of no work no pay, during the lock down.

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5. The learned Special Government Pleader for respondents 2 to 5 submitted there were several Government Orders for exempting physically challenged person to attend duty and that during the pandemic period physically challenged persons were exempted from attending duty

6. Heard both sides.

7. The entire issue in this case revolves in respect of payment of salary and allowances to the writ petitioner for the interregnum period and the relevant portion of the order is extracted as below:-

"(iii) The petitioner herein on being redeployed in the University services, he is entitled to payment of salary and allowances for the interregnum period as per the usual conditions of service governing the engagement of the petitioner to the University services".

Since the Appellant-University has consented to withdraw the order of transfer, in respect of physically challenged person and accommodate him in a nearby place, this Court is not inclined to accept the appeal and not inclined to interfere with the order of the learned Single Judge. The learned counsel appearing for the appellant-University would submit that even though they have agreed to accommodate the writ petitioner in a nearby place, at no point of time University has agreed to pay salary and allowances for the interregnum period and that the order of deduction to pay wages for a period of no service would be treated as "no work, no pay" and that the writ petitioner would not be entitled to any benefits.

8. Mr.Sumathy, learned counsel for the 1st Respondent / writ petitioner submitted that writ petitioner was unwell and he was on Medical Leave between 27.02.2020 to 04.04.2020 and Medical Certificate has been produced. She would fairly submit that the writ petitioner has not given Medical Certificate for the subsequent period and though the writ petitioner has recovered, due to pandemic and the consequent lock down, there was no work transacted and hence, she prayed that the writ petitioner would be entitled to wages for the entire period.

9. Mrs.Mythreye Chandru, learned Special Government Pleader appearing for the respondents 2 to 5 would submit that during pandemic period, physically challenged persons were exempted from attending duty.



10. The learned counsel for the appellant-University submitted that the leave application submitted for the period from 27.02.2020 to 04.04.2020 was rejected by order dated 10.07.2020 and in that communication, it was duly intimated to the writ petitioner that he was relieved from the services on 27.02.2020 itself.

11. Admittedly, the writ petitioner is a physically challenged person, who was exempted from work during the pandemic situation and that he was transferred to a place situated 400 kms far away. It is also not in dispute that the said order of transfer has been subsequently withdrawn. Hence, we are of the view that the writ petitioner would be entitled to the monetary benefits, as directed by the learned Single Judge. However, taking note of the pandemic situation and also the fact that the entire world has got frozen due to Covid-19, we direct the Appellant University to pay 75% of the wages for the period from 05.04.2020 till he reported for work. The period from 27.02.2020 to 04.04.2020 has to be treated as Medical Leave, as from March 2020, there was a complete lock down in the State of Tamil Nadu and the writ petitioner, being physically challenged person, must be entitled to exemption from work. It is made clear that the 75% of wages shall be given till the order of the learned Single Judge (for 4 months) and for the subsequent period, viz., after the order of this Court dated 26.08.2020, the Writ Petitioner is entitled to full wages.

12. With the above observation the Writ Appeal is allowed. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

dpq

1. The Secretary,
Government of Tamil Nadu,
Higher Education Department,
Secretariat, Chennai.
2. The Director,
Directorate of Collegiate Education,
Chennai - 600 008.



3. The State Commissioner,
Welfare of the Differently-abled,
No.5, Kamarajar Salai,
Lady Wellington College Campus,
Chennai 600 005.

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4. The Principal,
Government Arts and Science College for Women,
Santhankulam, Thoothukudi District.

+1cc to the Government Pleader, S.R.No.26335

W.A.No.528 of 2022

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NSK/06/07/2022