



W.P.No.8860 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.8860 of 2011

and

M.P.No.1 of 2011

K.M.Elumalai

...Petitioner

-Vs-

1.The Additional Director General of
Police and Director General of Prisons,
Chennai - 600 008.

2.The Superintendent of Prisons,
Central Prison-I (Convicts), Puzhal,
Chennai - 600 066.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records relating to the impugned order of the second respondent in proceedings No.1912/Po-2/2011 dated 21.03.2011 and quash the same.

For Petitioner : Mr.P.Rajendran

For Respondents : Mr.P.Ganesan,
Government Advocate



W.P.No.8860 of 2011

ORDER

WEB COPY

By an order dated 20.06.2009, the petitioner herein, who was serving as a Grade-II Warder at Central Prison, Puzhal, was transferred to Central Prison, Salem. The transfer order was challenged immediately by the petitioner and by an order dated 08.10.2009, this Court had quashed the transfer order and the petitioner was directed to join duty on 21.10.2009. The respondents had placed reliance on an opinion of the Government Pleader in some other writ petitions in W.P.Nos.20205 and 20222 of 2007 and were of the view that since the petitioner did not report for duty between 21.06.2009 and 20.10.2009, the absence of these days would amount to desertion and therefore had treated it as "leave on loss of pay", through the impugned order dated 21.03.2011 and sought for recovery of the salary, which was already paid to him for this period. Aggrieved against this order, the present writ petition has been filed.

2. The impugned order suffers from two infirmities. Firstly, the order, treating the leave period as leave without pay, was passed without any prior notice to the petitioner and that too based on an opinion obtained by the Government Pleader in some other case. Since the order deprives the



W.P.No.8860 of 2011

petitioner of the salaries and is also for the recovery of the salary already paid, such an unilateral order is in violation of the principles of natural justice and hence, cannot be sustained. Secondly, after the transfer order was passed, the petitioner was relieved from the services at the Central Prison, Puzhal immediately on 20.06.2009 itself. The petitioner cannot thereafter report before the Puzhal Prison. However, since he was aggrieved, he had immediately chosen to challenge the transfer order before this Court and it is stated that the writ petition came up for admission on 24.06.2009 itself. When this Court had ultimately quashed the transfer order on 08.10.2009, the petitioner is deemed to have not been transferred at all and had continued in the services at Central Prison, Puzhal. In view of the order relieving him from Puzhal, he was not in a position to join at Puzhal Prison. This absence cannot be attributed to the petitioner and consequently, treat the period of absence as leave without pay.

3. The learned Government Advocate appearing for the respondents placed reliance on the averments in the counter affidavit and submitted that in identical cases, such absence by similarly placed Jail Warders were treated as leave without pay, on the basis of an opinion obtained by the Government



W.P.No.8860 of 2011

Pleader and it is on this analogy, the impugned order has been passed.

WEB COPY

4. As stated earlier, since the transfer order itself has been quashed by this Court, the petitioner is deemed to have continued in service at Central Prison, Puzhal and the consequential order, relieving him from the post, has disabled him from reporting at Puzhal Prison. Even otherwise, the opinion obtained in the case of some other Jail Warders may not be applicable to the facts of the petitioner's case. Even otherwise, the impugned order, without prior notice, calling for the petitioner's objections, cannot be sustained. As such, the grounds raised by the learned Government Advocate cannot be sustained.

5. In the result, the impugned order of the second respondent dated 21.03.2011 is quashed. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

09.03.2022

Index:Yes/No

Internet:Yes/No

Speaking order/Non-speaking order

hvk



W.P.No.8860 of 2011

WEB COPY

To

- 1.The Additional Director General of
Police and Director General of Prisons,
Chennai - 600 008.
- 2.The Superintendent of Prisons,
Central Prison-I (Convicts), Puzhal,
Chennai - 600 066.



WEB COPY



W.P.No.8860 of 2011

M.S.RAMESH,J.

hvk

**W.P.No.8860 of 2011
and
M.P.No.1 of 2011**

09.03.2022