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W.P.No.12436 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.12.2022

Coram:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.12436 of 2014

K.Thiyagarajan

..Petitioner

Vs.

- 1.The Director of School Education,
College Road, Chennai-600 006
- 2.The Joint Director of School Education (Vocational),
College Road, Chennai-600 006
- 3.The Chief Educational Officer,
Cuddalore District, Cuddalore
- 4.The District Educational Officer,
Cuddalore District, Cuddalore
- 5.The Secretary, Schools of Neyveli Lignite Corporation Ltd.,
M.G.Road, Block No.XVIII, Neyveli 607 803,
Cuddalore District.

..Respondents.

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of certiorarified mandamus calling for the records of the order



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issued in Na.Ka.No.002581/VI/E1/2012 dated 06.01.2012 by the 2nd respondent and in Letter No.688/Secretary/NLC Schools /2013 dated 25.03.2013 issued by the 5th respondent and quash the same and issue a direction to the respondents to treat the period between 03.07.2009 and 17.01.2010 as a period spent on duty and consequently direct the respondents not to deduct 199 days from the leave credit of the petitioner.

For petitioner : Mr.R.Saseetharan

For respondents : Mrs.S.Mythreye Chandru, Spl.G.P., for R1 to R4
Mr.Nithianandam for R5.

ORDER

This writ petition is filed praying to quash the order dated 06.01.2012 passed by the 2nd respondent and dated 25.03.2013 issued by the 5th respondent and sought for issuance of a direction to the respondents to treat the period between 03.07.2009 and 17.01.2010 as a period spent on duty and consequently direct the respondents not to deduct 199 days from the leave credit of the petitioner.

2. It is averred in the writ petition that the petitioner was initially appointed



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as single Part Time Vocational Instructor at Pachayappa Higher Secondary School, Chidambaram, Cuddalore District on 28.07.1996. Thereafter, absorbed as vocational instructor Grade-I in the same school as per the order of the Chief Educational Officer dated 16.10.1992 in the scale of pay applicable to the post of B.T.Assistant.

3. The Government of Tamil Nadu issued G.O.Ms.No.525 dated 29.12.1997 and the GO mentioned about student teacher strength ratio as 1 : 40. Pursuant to the said G.O., the petitioner was found as surplus teacher of Pachayappa Higher Secondary School, Chidambaram and the education department has decided to wind up the vocational course in the school.

4. Vide Proceedings of the Joint Director of School Education by the order dated 04.06.2009, the petitioner was found surplus and redeployed to NLC Girls Higher Secondary school, Cuddalore, which is the needy school. But the 5th respondent-NLC School failed to accommodate the petitioner in the post of Vocational Instructor Grade-I in the Vocational Group of Draftsman Civil.



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5. The petitioner filed W.P.No.13534 of 2009 before this court for a direction to the 5th respondent school to implement the order of the Joint Director of School Education (Vocational) -2nd respondent dated 04.06.2009 and to absorb him as Vocational Instructor Grade -I in the 5th respondent.

6. By order dated 17.07.2009, this court issued a direction to the Joint Director of School Education (Vocational) and 5th respondent herein to implement the order dated 04.06.2009, within a period of four weeks from the date of receipt of the said order. This court further directed the 1st respondent to make suitable arrangement to pay the salary of the petitioner pending disposal of implementation of order dated 04.06.2009.

7. The petitioner thereafter made a representation to the 5th respondent school on 20.08.2009 to absorb him as Vocational Instructor Grade I, in Draftsman / Civil Vocational Group. But the 5th respondent school filed W.A.No.1570 of 2009 challenging the direction issued by the learned Single Judge. A Division Bench of this court by order dated 19.11.2009 disposed of the



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said writ appeal on the following lines:-

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“ 6. Learned Special Government Pleader Mr.G.Sankaran has stated that the transfer order is a deployment along with post to the appellant school and therefore, there would be no impediment for the appellant school to claim the salary. In his statement, learned Special Government Pleader made it clear that the transfer of first respondent to the appellant school is an additional post to the appellant school and not affecting the existing strength.

7. Above statement of learned Special Government Pleader is recorded. Two weeks' time from the date of receipt of a copy of this judgment is granted to the authorities to complete the exercise. On completion of the said exercise, the Chief Educational Officer shall communicate the orders/proceedings to the appellant school within a period of two weeks thereafter, marking a copy to the first respondent. On receipt of the orders/proceedings of the Chief Educational Officer, the first respondent to join the appellant school. On joining of the first respondent, the appellant school shall claim the salary payable to the first respondent from 04.06.2009.

8. With the above observations and directions, the writ appeal is disposed of. No costs. “

8. Thereafter, respondents 1 to 4 forwarded the necessary proceedings to the



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5th respondent school for implementation of the order of the Division Bench.

However, the 5th respondent while regularising the period of service of the petitioner did not regularise 199 days and treated the said period as a period spent on leave. The impugned order passed on 25.03.2013 by the 5th respondent is in total non compliance of the order of the Division Bench of this Court dated 19.11.2009 and therefore it is no doubt, unsustainable.

9. The 5th respondent in total disregard to the orders of this court, not paid the salary to the petitioner and thereafter, failed to regularise the services of the petitioner even after a specific direction was issued by this court to the 5th respondent school to claim the salary payable to the petitioner from 04.06.2009. This court is of the considered opinion that the petitioner is entitled to claim regularisation of 199 days as a period spent on duty i.e., from 03.07.2009 to 17.01.2010. It is pertinent to note that the 5th respondent was granted aid and therefore, the 5th respondent has to comply with the order of the respondents 1 to 4 as the respondents 1 to 4 were directed by this court to implement the directions issued in this regard. The 5th respondent being a Public Employer and the school receiving teaching grant cannot impose pre-conditions and such conditions cannot



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be arbitrary or unconscionable.

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10. In the result, this writ petition is allowed. The impugned order dated 25.03.2013 is set aside. The 5th respondent is directed to treat the period between 03.07.2009 and 17.01.2010 as a period spent on duty. The above said exercise shall be carried out within a period of four weeks from the date of receipt of a copy of this order. No costs.

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Index:Yes/No

Internet:Yes/No

Speaking Order: Yes/No

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J.NISHA BANU, J.

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To

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