



W.P.(MD)No.11090 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD)No.11090 of 2021

and

W.M.P.(MD)Nos.8702 and 8704 of 2021

K.Babu Jeyachandran

... Petitioner

Vs.

1. The Director of School Education,
College Road,
Chennai - 600 006.
2. The Chief Educational Officer,
Pudukkottai,
Pudukkottai District.
3. The District Educational Officer,
Pudukkottai District.
4. The Correspondent,
TELC Higher Secondary School,
Pudukkottai - 622 001,
Pudukkottai District.



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5. The Correspondent,
Vallampuri Vadukanathan Higher Secondary School,
Poonamaravathi,
Pudukkottai District.

6. The Correspondent,
Sree Sivakami Ambal High School,
Rangaitem,
Pudukkottai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the third respondent District Educational Officer in Na.Ka.No.6076/Aa2/2020 dated 28.11.2020, quash the same and direct the second and third respondents to sanction and release forthwith the arrears of salary and allowances to the petitioner in the cadre of B.T.Assistant (English) for the period from 23.06.2011 to 30.10.2018 with continuity of service and attendant benefits.

For Petitioner : Mr.K.Ragatheesh Kumar
for M/s.Isaac Chambers

For Respondents : Mr.S.Shaji Bino
Special Govt. Pleader for R1 to R3

No appearance for R4 to R6



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ORDER

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The brief facts of the case, are as follows:

(i) The petitioner herein was appointed as a Middle Grade Graduate Teacher with effect from 03.01.2003 in the fourth respondent School. As per G.O.Ms.No.99, School Education-Income Expenditure-2 Department, dated 27.06.2006, he was placed as regular B.T.Assistant with effect from 01.06.2006.

(ii) In pursuance of the Staff Fixation done by the Chief Educational Officer / second respondent herein, dated 19.05.2010, seven Secondary Grade Teachers in the fourth respondent School, were rendered as surplus. Consequently, the petitioner herein, along with others, were redeployed to the fifth respondent School through an order, dated 23.05.2011 and accordingly, were relieved from the post on 22.06.2011. However, the petitioner could not join in the fifth respondent's School, since there was no post of B.T.Assistant (English) available in that School.



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(iii) Thereafter, the petitioner's request to the respondents 2 and 3 to retain him in the original School was of no avail, which prompted him to file a Writ Petition before this Court in W.P.(MD)No.12774 of 2011 and this Court, by order dated 21.11.2011, had directed the authorities to consider the request of the petitioner. Since such directions were not complied with in time, the petitioner had filed another Writ Petition in W.P.(MD)No.721 of 2012, challenging the order of redeployment dated 23.05.2011, wherein, the petitioner's post was wrongly mentioned as Secondary Grade Teacher. During the pendency of this Writ Petition, the second respondent herein had passed an order on 13.02.2012, correcting the post of the petitioner in the redeployment order as B.T.Assistant (English), instead of Secondary Grade Teacher. However, the grievance of the petitioner that there was no post of B.T.Assistant (English) in the redeployed School, was not addressed. This again promoted the petitioner to file another Writ Petition in W.P.(MD) No.13311 of 2012, seeking for a direction to the authorities for redeploying him any other School which had vacancy in the post of B.T.Assistant (English).



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(iv) During the pendency of the Writ Petition, the second respondent had passed an order on 26.10.2018, redeploying the petitioner to a vacant post of B.T.Assistant (English) in RC Higher Secondary School, Illupur and the petitioner now continues to serve therein.

(v) In the interregnum, between the original order of redeployment and the final order posting him to RC Higher Secondary School, Illupur, i.e., between 23.06.2011 to 30.10.2018, the petitioner was not paid with his salary. In this connection, when he had made a request to the third respondent seeking for release of his salary for this period, his request came to be rejected through the impugned order dated 28.11.2020, stating that since the petitioner had not worked in any of the Schools during this period, he was not entitled for the salary on the principle of "No Work, No Pay". This order is under challenge in the present Writ Petition.

2. The learned counsel for the petitioner placed reliance on the decisions of the Hon'ble Supreme Court in the case of ***S.M.Srikantha v. Bharath Earth Movers Limited*** reported in (2005) 8 SCC 314, as well as



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the judgments of the Division Bench of this Court in the case of ***State of Tamil Nadu, Represented by its Secretary to Government and others v. C.Vasu and another*** reported in **2018 SCC OnLine Mad 10195** and ***M.S.Munivenkatappa v. State Bank of India and others*** reported in **2007 (2) CTC 135** for the proposition that when a Teacher is willing to work, but has not been posted in the transferred place owing to the mistake of the Educational Authorities, the said Teacher is entitled for salary for the period of his non-employment.

3. Per contra, the learned Special Government Pleader appearing for the official respondents placed reliance on the averments in the counter affidavit and submitted that when the petitioner herein has admittedly not worked in any of the Schools between the period of claim, the principle of "No Work, No Pay" would apply and therefore, there is no infirmity in the impugned order rejecting the claim of salary for non-employment period.

4. I have considered the said submissions made by the learned respective counsel appearing for the parties and perused the materials placed before this Court.



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5. Admittedly, the petitioner herein was originally redeployed to a School which did not have a vacancy for the post of B.T.Assistant (English). This order was passed on 23.05.2011 and the petitioner's claim for salary commences from 23.06.2011. Thereafter, the petitioner was unable to join in any other place in view of the inaction on the part of the respondents in failing to post him in some other School. Complaining on the inaction of the respondents, he had approached this Court on three earlier occasions through filing of Writ Petitions. In pursuance of the orders of this Court, the respondents, though had rectified the error in describing the post of the petitioner as B.T.Assistant (English) instead of Secondary Grade Teacher, had once again failed to re-allot the petitioner to a School, which had a vacancy for the post.

6. During the pendency of the last Writ Petition filed by the petitioner, the respondents had identified a School that had a vacancy and that too, at the instance of the oral direction of this Court, which fact has not been denied in the counter affidavit. Thus, in view of the efforts taken by



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the petitioner, it could be said that the petitioner was always willing to work, which willingness was rendered futile owing to the inaction of the respondents to post him to a School that had a vacancy.

7. In the first judgment relied on by the learned counsel for the petitioner in the case of ***S.M.Srikantha*** cited *supra*, the Hon'ble Supreme Court had held that when an employee is willing to work, but no work was offered by the employer, such an employee would be entitled for the salary for the non-employed period. The relevant paragraphs read as follows:

"28. The next question is, as to what benefits the appellant is entitled to. As he withdrew the resignation and yet he was not allowed to work, he is entitled to all consequential benefits. The learned counsel for the respondent Company no doubt contended that after 15-1-1993, the appellant had not actually worked and therefore, even if this Court holds that the action of the respondent Company was not in consonance with law, at the most, the appellant might be entitled to other benefits except the salary which should have been paid to him. According to the counsel, the principle of "no work, no pay" would apply and when the appellant has



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admittedly not worked, he cannot claim salary for the said period.

29. We must frankly admit that we are unable to uphold the contention of the respondent Company. A similar situation had arisen in J.N. Srivastava and a similar argument was advanced by the employer. The Court, however, negatived the argument observing that when the workman was willing to work but the employer did not allow him to work, it would not be open to the employer to deny monetary benefits to the workman who was not permitted to discharge his duties. Accordingly, the benefits were granted to him. In Shambhu Murari Sinha II also, this Court held that since the relationship of employer and employee continued till the employee attained the age of superannuation he would be entitled to "full salary and allowances" of the entire period he was kept out of service. In Balram Gupta, in spite of specific provision precluding the Government servant from withdrawing notice of retirement, this Court granted all consequential benefits to him. The appellant is, therefore, entitled to salary and other benefits."



8. Following the aforesaid decision, the Hon'ble Division Bench of this Court in **M.S.Munivenkatappa** case cited *supra*, reiterated the proposition in the following manner:

"12. As it is found that the respondents have unilaterally treated the application of the petitioner for voluntary retirement to that of resignation, the said action of the respondents is not valid in the eye of law. Once it is found that the action of the respondents is illegal, it has to be held that the respondents have illegally prevented the petitioner from discharging his duties from 1.10.1999 and if the respondent's illegally prevented the petitioner from attending to the duties, respondents are bound to pay salary for the period for which the petitioner was not allowed to perform his duties.

*13. (a) The Honourable Supreme Court in the decision reported in **Srikantha S.M. v. Bharath Earth Movers Ltd.**, 2005 (8) SCC 314, considered the unjust denial on the part of the employer to assign work and held that the employee is entitled to get salary and other benefits and the principle of 'No work, No pay' cannot be applied in such cases. In paragraphs 28 to 30, the Honourable Supreme Court held as follows:*

"28. The next question is, as to what benefits the



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appellant is entitled to. As he withdrew the resignation and yet he was not allowed to work, he is entitled to all consequential benefits. The learned counsel for the respondent Company no doubt contended that after 15.1.1993, the appellant had not actually worked and therefore, even if this Court holds that the action of the respondent-Company was not in consonance with law, at the most, the appellant might be entitled to other benefits except the salary which should have been paid to him. According to the counsel, the principle of no work, no pay would apply and when the appellant has admittedly not worked, he cannot claim salary for the said period.

29. We must frankly admit that we are unable to uphold the contention of the respondent Company. A similar situation had arisen in J.N. Srivastava, 1998 (9) SCC 559 and a similar argument was advanced by the employer. The Court, however, negated the argument observing that when the workman was willing to work but the employer did not allow him to work, it would not be open to the employer to deny monetary benefits to the workman who was not permitted to discharge his duties.



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Accordingly, the benefits were granted to him. In Shambhu Murari Sinha v. Project & Development India Ltd., 2002 (3) SCC 437 also, this Court held that since the relationship of employer and employee continued till the employee attained the age of superannuation he would be entitled to full salary and allowances of the entire period he was kept out of service. In Balram Gupta, 1987 Supp SCC 228 in spite of specific provision precluding the government servant from withdrawing notice of retirement, this Court granted all consequential benefits to him. The appellant is, therefore, entitled to salary and other benefits.

30. For the foregoing reasons, in our opinion, the appeal deserves to be allowed and is accordingly allowed. The action of the respondent Company in accepting the resignation of the appellant from 4.1.1993 and not allowing him to work is declared illegal and unlawful. It is, therefore, hereby set aside. The orders passed by the learned Single Judge and the Division Bench upholding the action of the Company are also set aside. The respondent Company is directed to treat the appellant in continuous service up to the age of superannuation



i.e. 31.12.1994 and give him all benefits including arrears of salary. The Company may adjust any amount paid to the appellant on 15.1.1993 or thereafter. The appeal is accordingly allowed with costs." "

9. Similar view was also taken in the case of **C.Vasu** (*supra*) which reads as follows:

"12. Stand of the appellants is that during the period between 13.10.1983 and 07.08.1986, the first respondent did not work and thereafter, on the principle of 'No Work No Pay', the period cannot be regularised. There is no hard and fast rule for applying the principle of 'no work no pay'. In this context it is useful to refer the followings decisions of the Hon'ble Supreme Court and this Court.

(i) The Hon'ble Supreme Court in Union of India v. K.V.Janakiraman, reported in (1991) 4 SCC 109 : 1991 SC 2010 , in Paragraph 7 of the judgment, held as follows:

"The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from



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work for his own reasons, although the work is offered to him. It is for this reason that F.R.17(1) will also be inapplicable to such cases."

At this juncture, it is relevant to extract Section 17(1) of the Fundamental Rules.

"Subjects to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence."

(ii) In Burn Standard Co. Ltd. v. Tarun Kumar Chakraborty reported in 2003 SCC (L&S) 1015, the first respondent therein was kept out of service and not permitted to work. The appellants contended that due to pendency of a case filed by the association, they bona fide believed that they could not permit him to join duty. The Hon'ble Supreme Court accepting the contention of the



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respondent therein, employer, held that if there was no impediment in law in permitting the employee in joining the duty, then there is no justification in denying the salary to him. Accordingly, the Court, directed the appellant to pay the salary and other emoluments for the period not covered by the litigation and interim orders.

(iii) In Srikantha S.M. v. Bharath Earth Movers Ltd., reported in (2005) 8 SCC 314 reported in 2005 (8) SCC 314, an employee submitted his resignation to relieve him from duties as per the Rules. The employer-company accepted his resignation on the same day and directed him to be relieved with "immediate effect". However, on the same day, the Company granted him Casual Leave from 05.01.1993 to 13.01.1993 and 14.01.1993 being a holiday, informed him that he would be relieved by the close of working day, i.e., on 15.01.1993. In the evening of that day, the company relieved him. However, before that day, the employee sent a letter to the Company, withdrawing his resignation. The Hon'ble Supreme Court, in such circumstances, held that the employee remained in service upto the postulated day and the company was bound to give effect to the withdrawal of resignation.

(iii)(a) In the above reported judgment, the employee was not allowed to work after the postulated day and therefore,



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he filed a Writ Petition, challenging the action of the employer, relieving him from service. The employee contended that the resignation had already been withdrawn and therefore, he should be permitted to continue in service. The Writ Petition was dismissed, on appeal, the Hon'ble Division Bench also concurred with the view of the learned Single Judge. On further appeal, the Supreme Court reversed the decision of the High Court and held that the employee had withdrawn his resignation before it was given effect to by the Employer and therefore, granted the relief prayed for, by the employee. As regards backwages, the Company contended that since the employee did not work for the later period, he would not be entitled to salary on the principle of "No work No pay". Rejecting the submission made on behalf of the Company, the Hon'ble Supreme Court at Paragraph 29 of the judgment held as follows:

"We must frankly admit that we are unable to uphold the contention of the respondent company. A similar situation had arisen in J.N.Srivastava and a similar argument was advanced by the employer. The Court, however, negatived the argument observing that when the workman was willing to work but the employer did not allow him to work, it would not be open to the



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employer to deny monetary benefits to the workman who was not permitted to discharge his duties. Accordingly, the benefit were granted to him. In Shambhu Murari Sinha II also, this Court held that since the relationship of employer and the employee continued till the employee attained the age of superannuation he would be entitled to "full salary and allowances" of the entire period he was kept out of service. In Balram Gupta inspite of specific provision precluding the government servant from withdrawing notice of retirement this Court granted all consequential benefits to him. The appellant is, therefore, entitled to salary and other benefits."

(iv) In Punjab SEB v. Kuldip Singh reported in (2005) 13 SCC 362, the Hon'ble Supreme Court considered the case of Junior Engineer, who was not promoted to the post of Assistant Engineer (AE) by the State Electricity Board, as he had not taken the departmental examination. Subsequently, he passed the examination. One S was appointed as Assistant Engineer and his appointment was made subject to the rights of a candidate who may be appointed in regular course. When the said Junior Engineer (respondent therein) acquired qualifications after passing



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the departmental examination, neither S was reverted nor the respondent was promoted as Assistant Engineer. However, S preferred a suit, in which, interim injunction was granted restraining the State Electricity Board from reverting him to the post of Junior Assistant. Ultimately the suit came to be dismissed. On the Writ Petition filed by the respondent, the High Court directed the Electricity Board to decide the dispute on merits. Thereafter, the respondent was promoted to the post of Assistant Engineer with effect from 14.12.2001, instead of 20.03.1990, being the date, he had passed the departmental examination. A second Writ Petition was filed by the respondent, claiming notional promotion with effect from 20.03.1990 with all backwages and consequential benefits with interest at the rate of 18% until the payment was made. Before the High Court, the State Electricity Board contended that the respondent was not entitled to notional promotion or backwages for any period prior to 2001, as the number of posts had been reduced by way of amendment to the Rules. The second Writ Petition was also allowed and the High Court directed the Electricity Board to create a supernumerary post and pay all arrears of salary together with interest at the rate of 9% within two months from the date of passing of the order. On appeal, the Supreme court declined to accept the contention



of the State Electricity Board and allowed the appeal only to the extent of rate of interest.

(v) In State of Kerala v. E.K.Bhaskaran Pillai reported in (2007) 6 SCC 524, the Hon'ble Supreme Court, while deciding the correctness of the judgment of the Kerala High Court, directed that the respondent therein would be entitled to higher pay on account of retrospective promotion. At Paragraph 4 of the judgment, the Hon'ble Supreme Court held as follows:

"So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facts which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full backwages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in the criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes, in the matter when the person is superseded and he has challenged the same before Court or Tribunal and he succeeds in that and direction is given for reconsideration of his case the Court may grant sometimes full benefits with retrospective effect and



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sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also."

(v)(a) In the above reported case, persons junior to the respondent therein were promoted to the higher post, whereas, he was wrongly denied promotion. Thereafter, he was promoted with retrospective effect, without pay on the basis of "No work no pay". Learned Single Judge refused to grant him monetary benefits in the promotional post with retrospective effect. In the Review application, benefit was given from the date, when he filed the Original Application in the High court, i.e., 15.06.1992.

(vi) A Hon'ble Division Bench of this Court in Munivenkatappa v. State Bank of India, reported in 2007 (2) CTC 135, considered a case where the request of the appellant therein for voluntary retirement was unilaterally treated as resignation and by applying the principle of "No



work No pay", the employer refused to give him the monetary benefits. A Hon'ble Division Bench of this Court at Paragraph 12, held as follows:

"Once it is found that the decision of the respondents is illegal, it has to be held that the respondents have illegally prevented the petitioner from discharging his duties from 01.10.1999 and if the respondent's illegally prevented the petitioner from attending to the duties, respondents are bound to pay salary fro the period for which the petitioner was not allowed to perform his duties."

(vii) In V.Mani v. The Secretary to Government reported in 2008 (2) CLT 241, this Court, after following the above decisions, at Paragraph 13, held that,

"13. The legal principles which emerge from the decisions cited supra are that the normal rule of "No work, No pay" is not applicable to cases where the employee although was willing to work, is kept away from work by the authorities for no fault of him. The principle of "No Work No Pay" cannot be accepted as a Rule of Thumb, in a case where the administration has wrongly denied his due, the Government servant/employee should be given the



benefits, as per the Fundamental Rules, including monetary benefits, subject there being any change in law or some supervening factors. As held by the Division Bench in Munivenkatappa's case, once it is found that the decision of the respondent is illegal, it has to held that the respondents have illegally prevented the employee from discharging his duty and consequently he is entitled to the emoluments for the period for which he was not allowed to perform his duties. In all these decisions, the Apex Court as well as this Hon'ble Court have held that if the government servant or employee is denied of a benefit or deprived of his legitimate right due to the fault of the department/employer, then the government servant/employee should not be made to suffer, but for specific circumstances, such as change in law or some supervening circumstances."

13. In the case on hand, the first respondent was relieved by the school and lateron reinstated. It is not the case of the appellants that he was not willing to work during the period in dispute. In W.P.No.18091 of 1996 dated 17.08.2000, this Court directed regularisation from the date of initial appointment with all consequential benefits. In the said order the first respondent / writ petitioner therein has



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narrated as to how he was relieved from the school. He has averred the details of the appeal filed by the management before the Tribunal and the order passed. Therefore, it is not open to the appellants, to deny regularisation for the interregnum period. "

10. All the aforesaid extracts are self-explanatory. Thus, in all these decisions, when the law has been laid down to the effect that when an employee is willing to work, but has not been given appropriate posting / re-deployment orders by the employer, he would be entitled for salaries for such period of non-employment. While that being so, the reasons adduced by the third respondent herein in the impugned order, dated 28.11.2020 that the petitioner would not be entitled for salary for his non-employment on the principle of "No Work, No Pay", cannot be sustained.

11. In the result, the impugned order, dated 28.11.2020 on the file of the District Educational Officer / third respondent, is quashed. Consequently, there shall be a direction to the respondents 2 and 3 to pass appropriate orders sanctioning the arrears of salaries and other allowances



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to the petitioner, in the post of B.T.Assistant (English) for the period between 23.06.2011 to 30.10.2018, together with continuity of service and all other attendant benefits, within a period of eight weeks from the date of receipt of a copy of this order.

12. With the above directions, this Writ Petition stands allowed.

No costs. Consequently, connected Miscellaneous Petitions are closed.

30.06.2022

Index : Yes
Speaking Order : Yes

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1. The Director of School Education,
College Road,
Chennai - 600 006.
2. The Chief Educational Officer,
Pudukkottai,
Pudukkottai District.
3. The District Educational Officer,
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M.S.RAMESH, J.

vji

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