



WP(MD)No.10591 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.08.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD)No.10591 of 2019
and
W.M.P.(MD)No.8118 of 2019

R.Valsalan

... Petitioner

/vs./

1.The Chief Educational Officer,
Kanyakumari District,
Nagercoil.

2.The Headmaster,
Vilavancode Government Higher Secondary School,
Vilavancode,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in connection with the impugned order passed by him vide his proceedings in Na.Ka.No.5836/Aa6/2015 dated 15.04.2016 and quash the same as illegal and arbitrary and consequently direct him to regularize the interregnum period of challenging the transfer dated 07.10.2015 (i.e. period from 07.10.2015



WP(MD)No.10591 of 2019

to 20.01.2016) as duty period and pay salary for the same in the light of the order passed by this Court in WP(MD)No.39866 of 2006 and WP(MD)No.35679 of 2006 dated 30.09.2009 within the time limit that may be stipulated by this Court.

For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mr.V.Nirmal Kumar

Government Advocate

ORDER

Through the order dated 07.10.2015, the petitioner, who was serving as a Physical Education Teacher was transferred from Vilavancode Government Higher Secondary School to Kollamcode Government Higher Secondary School. When he had challenged the order of transfer before this Court, the same came to be allowed by a Judgment of the Division Bench of this Court in WA(MD)No. 1312 of 2015 dated 14.12.2015 holding that the order of transfer was motivated and on an extraneous consideration. The relevant portion of the Judgment reads as follows:

“7. Be that as it may, we find that the order of transfer has been motivated by extraneous consideration. The extraneous consideration relied upon by the Chief Educational



WP(MD)No.10591 of 2019

WEB COPY

Officer is a complaint allegedly given by the appellant's wife. But the complaint was also only in oral and not in writing. Therefore, it is a fit case where the order of transfer requires to be interfered with. Hence, the writ appeal is allowed and the order of the learned Judge is set aside and the impugned order is also set aside. No costs. Consequently, connected Miscellaneous petition is closed."

2. When such an order of transfer has been set aside on the ground that it was motivated, the concerned employee is deemed to be in service from the date of transfer, without reference as to whether he had worked in the transferred place.

3. Particularly, when it is found that the order of transfer is motivated and made on an extraneous consideration, the respondents cannot expect such an employee to join in the transferred place also. Thus, the service of the petitioner would revert back to the date of transfer, after the order of transfer was set aside by this Court.



WP(MD)No.10591 of 2019

WEB COPY

4.It is stated that the petitioner herein had thereafter joined in the original place of posting on 20.01.2016. Consequently, the petitioner would be entitled for the salaries together with other service benefits between 07.10.2015 and 20.01.2016. In view of the same, the present impugned order dated 15.04.2016, rejecting the petitioner's claim for such monetary benefits on the ground of 'No Work No Pay' cannot be sustained.

5.In the result, the impugned order, dated 15.04.2016, on the file of the first respondent is hereby quashed. Consequently, there shall be a direction to the first respondent herein to pass appropriate orders, regularising the petitioner's service period between 07.10.2015 and 20.01.2016, as duty period for all purposes and disburse all the service and monetary benefits arising out of such period, within a period of eight (8) weeks from the date of receipt of a copy of this order. This Writ Petition stands allowed accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

23.08.2022

Index : Yes / No
Internet : Yes / No
sm

4/6



WP(MD)No.10591 of 2019

WEB COPY

TO:

- 1.The Chief Educational Officer,
Kanyakumari District,
Nagercoil.
- 2.The Headmaster,
Vilavancode Government Higher Secondary School,
Vilavancode,
Kanyakumari District.



WEB COPY



WP(MD)No.10591 of 2019

M.S.RAMESH, J.

Sm

Order made in
W.P.(MD)No.10591 of 2019

Dated:
23.08.2022