



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.7621 of 2019

Kumaresan

... Petitioner

-VS-

1.The District Collector,
Theni District, Theni.

2.The Assistant Director of Panchayat,
District Collectorate Campus,
Theni, Theni District.

3.The Block Development Officer
(Village Panchayat),
Andipatti Panchayat Union,
Theni District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the impugned order of the 1st respondent in Na.Ka.No.17853/2018/29/6/8 dated 08.11.2018 and further direct her to give monetary benefits from 18.08.2011 to 04.10.2013 to the petitioner for the period of his non employment.

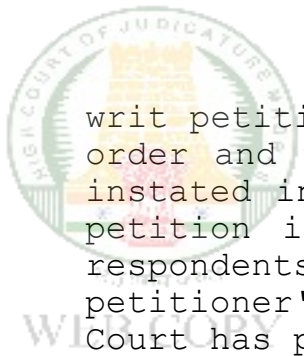
For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.N.Satheesh Kumar,
Additional Government Pleader

O R D E R

The order dated 08.11.2018 passed by the 1st respondent regulating the period of suspension as period on loss of pay is under challenge in the present writ petition.

2.The writ petitioner was working as Panchayat Clerk at Thirumalapuram and he was placed under suspension on initiation of disciplinary proceedings. A charge memo was issued and subsequently, the petitioner was removed from service. He filed a



writ petition in W.P.(MD) No.11885 of 2012 challenging the dismissal order and the writ petition was allowed and thereafter, he was re-instated in service. Thereafter, the petitioner filed another writ petition in W.P.(MD) No.9799 of 2014 seeking direction to direct respondents 1 to 3 therein to regularise the period of the petitioner's non-employment from 18.08.2011 to 04.10.2013. This Court has passed an order on 28.08.2019 as follows:-

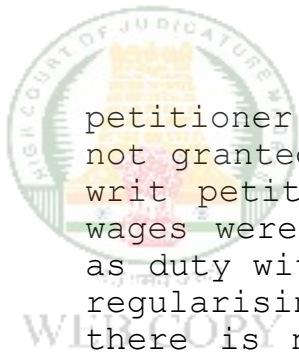
"3.The grievance of the writ petitioner is that the period of suspension is yet to be regularized. However, the eligibility as well as the period on which the writ petitioner had actually not worked, are to be taken into account and accordingly, the period of suspension is to be regularized in accordance with the rules in force. The principle of No Work No Pay will be applicable. However, the period is to be regularized for the purpose of qualifying service and for settlement of all other benefits during the retirement period.

4.Under these circumstances, the second respondent is directed to consider the representation submitted by the writ petitioner on 24.06.2013 and pass orders on merits and in accordance with law as expeditiously as possible, preferably, within a period of twelve (12) weeks from the date of receipt of a copy of this order."

3.The authorities competent considered the claim of the writ petitioner for regulating the period of suspension as duty. A speaking order has been passed by the District Collector, Theni in proceeding dated 08.11.2018 categorically stating that the petitioner is not entitled to treat the period of suspension as duty and passed an order regulating the period of suspension as period on loss of pay. Thus, the period of suspension is regulated for all other purposes including reckoning of the services as qualifying service. However the writ petitioner is not entitled for salary for the period of suspension.

4.This Court also in respect of the earlier writ petition in W.P.(MD) No.9799 of 2014 filed by the writ petitioner has clarified that the period of suspension is to be regularised. However, the eligibility of the petitioner to treat the period as duty is to be decided by the competent authority. In fact, the principle of 'No Work No Pay' was applicable.

5.In the present case, the petitioner admittedly had not worked during the period of suspension. Further, he was removed from service on certain technical grounds, the Writ Petition was allowed and he was reinstated. In such circumstances, the



petitioner is not entitled for back wages, as the back wages were not granted by this Court in the earlier writ petition filed by the writ petitioner challenging the order of removal. When the back wages were not awarded, the period of suspension cannot be treated as duty with full salary and therefore, the respondents are right in regularising the period of suspension as period on loss of pay and there is no infirmity as such. The period should be taken into consideration for the purpose of pensionary benefits as qualifying service.

6. With these clarification, this Writ Petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

abr

To

1. The District Collector,
Theni District, Theni.
2. The Assistant Director of Panchayat,
District Collectorate Campus,
Theni, Theni District.
3. The Block Development Officer
(Village Panchayat),
Andipatti Panchayat Union,
Theni District.

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-6695[F] dated 17/02/2022)

+1 CC to M/s.SPL GP (SR-6821[F] dated 17/02/2022)

W.P.(MD) No.7621 of 2019

16.02.2022

RK(24/02/2022) 3P 6C