



W.P.(MD)No.20142 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.(MD)No.20142 of 2014

and

M.P(MD) No.1 of 2014

R.Raja

... Petitioner

Vs.

1.The Commissioner of Municipal Administration,
Chepauk,
Chennai - 5.

2.The Commissioner,
Madurai Corporation,
Madurai.

... Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the second respondent to provide the full salary or subsistence allowance every month commencing from 01.12.2013 within the time stipulated by this Court.



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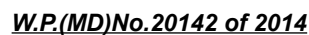
For Petitioner : Mr.T.Lajapathi Roy
For Respondents : Mr.J.John Rajadurai - for R1
Government Advocate
Mr.T.S.Mohammed Mohideen - for R2

ORDER

This writ petition has been filed for a Mandamus seeking for a direction to the second respondent to provide the full salary or subsistence allowance every month commencing from 01.12.2013.

2. Heard, Mr.T.Lajapathi Roy, learned counsel appearing for the petitioner, Mr.J.John Rajadurai, learned Government Advocate appearing for the first respondent and Mr.T.S.Mohammed Mohideen, learned counsel appearing for the second respondent.

3. The learned counsel for the petitioner submitted that the petitioner was on medical leave from 04.02.2013 to 27.02.2013. After completion of his medical leave, he was neither allowed to join duty nor



4. In the mean time, he was called to attend an enquiry on 26.09.2014 and he received the notice through postal service only on 07.10.2014. He sent a representation, dated 06.11.2014 informing that he was not able to attend the enquiry on 26.09.2014, since the notice reached subsequent to the date of enquiry.



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5. It is further submitted by the learned counsel for the petitioner that he had sent a representation, dated 23.07.2013 informing his fitness and seeking permission to work, that was followed by another representation, dated 12.08.2013. Thereafter, he sent representations on 05.11.2014 and 06.11.2014 seeking for payment of subsistence allowance. Despite his repeated requests, either to permit him to work or pay his subsistence allowance, the second respondent has not considered his request. The petitioner was deprived of his salary during the aforesaid period. Therefore, the present writ petition has been filed.

6. In reply, learned counsel for the second respondent submitted that the petitioner was unauthorisedly absent. Therefore, the charge-memo was issued to him and a notice was sent for his appearance before the Enquiry Officer. Despite receiving notice, he wantonly failed to appear before the Enquiry Officer and offer his explanation. On the basis of the records, it is found that the petitioner unauthorisedly remained absent and failed to produce documents to show his fitness to



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join the work. Ultimately, the Enquiry Officer found that the charges levelled against the petitioner stood proved. Then the Commissioner of Corporation by his proceedings, dated 31.12.2014, imposed the punishment of stoppage of increment with cumulative effect for three years. It is established from the records available before the Enquiry Officer that the petitioner deserted the service and therefore, suitable punishment was imposed. As he had not worked during the relevant period, his claim of salary /subsistence allowance cannot be entertained on the principle of "no work no pay" and hence, he prays for dismissal of this writ petition.

7. Considered the rival submissions and perused the materials available on record.

8. It is seen from the records produced that the petitioner has not participated in the enquiry conducted by the Corporation and therefore, all the four charges framed against him were found to be proved. On the basis of the enquiry report, punishment was also imposed



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as indicated above. One of the submissions made by the learned counsel for the second respondent is that the petitioner had accepted the punishment and not challenged the punishment imposed. If it is not open to him to claim his salary/subsistence allowance for the period of his desertion.

9. Admittedly, in this case, there was an enquiry conducted on the alleged misconduct of the petitioner. It is equally admitted that the petitioner was not placed under suspension during the period when the enquiry was conducted. From the aforesaid representations given by the petitioner, it is evident that the petitioner requested the second respondent to permit him to work or to pay subsistence allowance. It is particularly referred that he approached the second respondent with medical fitness certificate, after expiry of medical leave with a request to give permission to join work. These representations were sent through registered post. It is not denied by the second respondent that the petitioner had not sent these representations. The fundamental principle is that if the petitioner's claim seeking permission to work cannot be



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entertained for valid reasons, the authorities concerned should have suspended the petitioner and paid him subsistence allowance during the enquiry period.

10. In the case before hand, the petitioner was neither suspended from service nor permitted to work. Therefore, the approach of the second respondent in conducting an enquiry without resorting to the aforesaid procedures established by law, cannot be appreciated. Therefore, this court finds substance in the submissions of the learned counsel for the petitioner that the petitioner is entitled for subsistence allowance as claimed in his representation. Though there is no order issued to suspend the petitioner, admitted position is that the petitioner had not worked during the aforesaid period for the reason that the second respondent had not permitted him to work.

11. Taking into consideration of the over all factual situation and also the submissions of the learned counsel for the second respondent that the petitioner has involved in similar misconduct of



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unauthorized absence and also faced with departmental enquiry for his other alleged misconduct, this court restricts the relief of the petitioner only with regard to payment of subsistence allowance during the period of his denial of employment and direct the second respondent to pay subsistence allowance for the period from 01.02.2013 to 23.01.2015, as per rules. The entire exercise shall be completed within a period of twelve weeks from the date of receipt of copy of this order.

12. With the above directions, this Writ Petition is disposed of.

No costs. Consequently, connected miscellaneous petition is closed.

05.07.2022

Internet: Yes

Index :Yes/No

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G.CHANDRASEKHARAN, J.

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