



W.P.(MD)No.5189 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.11.2022

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.5189 of 2015

S.Rajendran

... Petitioner

Vs.

1. The District Collecotor,
Ramanathapuram,
Ramanathapuram District.

2. The Revenue Divisional Officer,
Paramakudi,
Ramanathapuram District.

3. The Tahsildar,
Kadaladi Taluk,
Ramanathapuram District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the first Respondent in Na.Ka.A4. 80075/2010, dated 16.03.2015 quash the same and consequently direct the respondents to regularize the petitioner's



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services between 01.01.2007 and 02.01.2008 and between 30.12.2008 and 06.09.2009 and award all attendant benefits within a time frame fixed by this Honourable Court.

For Petitioner : Mr.M.Saravanan

For Respondents : Mr.P.Thambidurai
Government Advocate (Civil side)

ORDER

This Writ Petition is filed challenging the impugned order, dated 16.03.2015 and consequently, direct the respondents to regularize the petitioner's service between 01.01.2007 and 02.01.2008 and between 30.12.2008 and 06.09.2009 and award all attendant benefits.

2. The petitioner is working as Village Administrative Officer. When he was serving in Kadaladi Taluk, the petitioner applied for medical leave due to respiratory disorder. On the expiry of medical leave i.e., on 02.07.2007, by producing medical certificate, the petitioner submitted a joining report to the third respondent. The third respondent



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has prepared a letter forwarding the application and the petitioner was directed to appear before the second respondent on 03.07.2007.

Subsequently, the petitioner made several representations to the second respondent in this regard. However, the second respondent issued an order, dated 03.01.2008 posting the petitioner as Village Administrative Officer at Maranthai. The petitioner joined duty on the very same day and submitted an application to the second respondent to treat the period from 01.07.2007 to 02.01.2008 during which the petitioner was kept under compulsory wait as duty period. The second respondent is duty bound to give an explanation to the Government for keeping the petitioner under compulsory wait for more than six months. Therefore, the second respondent has obtained the letter from the petitioner stating that the compulsory waiting period can be treated as eligible leave, in case, the same is not accepted as duty period. Since the second respondent pressurized that unless the letter is given, no posting order will be issued. The petitioner having no other option, gave the said letter. The petitioner again fell ill and duly applied and availed medical leave from 18.09.2008 to 29.12.2008. On the expiry of said leave period, on



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29.12.2008, the petitioner appeared before the second respondent and apply for permitting the petitioner to join duty and to issue posting orders. Thereafter, the petitioner was posted at Tharaikudi as per second respondent's order dated 21.08.2009. The petitioner received the said order on 07.09.2009 and joined the duty on the same day. Thus the petitioner had been kept under compulsory wait from 30.12.2008 to 06.09.2009. The petitioner has submitted a representation to the second respondent to treat the compulsory wait period from 29.12.2008 to 06.09.2009 as duty period. The second respondent has not passed orders for a very long period to regularize the compulsory wait period. Hence, the petitioner submitted a representation to the Commissioner of Revenue Administration on 01.08.2010 through proper channel. Subsequently, the second respondent passed an order, dated 04.12.2013 after a prolonged delay to the following effect:



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01.07.2007 to	02.01.2008	Not regularized seeking orders from the District Collector
18.09.2008	03.12.2008	77 days unearned leave on Medical Certificate
04.12.2008	29.12.2008	26 days unearned leave on private affairs
30.12.2008	01.06.2009	154 days unearned leave on private affairs
02.06.2009	06.09.2009	97 days leave on loss of pay

3. The contention of the petitioner is that the second respondent has specifically stated in his order, dated 04.12.2013 that the petitioner has given a petition from 02.07.2007 to the third respondent praying to issue posting order and in pursuance of the same, the second respondent issued order only on 03.01.2008 posting the petitioner at Maranthai Group Village and the petitioner had been kept under compulsory wait without issuing posting order for 180 days from 01.07.2007 to 02.01.2008. Likewise, the second respondent has also pointed out that in pursuance of the petition, dated 29.12.2008, given by the petitioner on expiry of the medical leave, the second respondent issued orders of posting, dated 21.08.2009 and as such the petitioner had



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been under compulsory wait for a period of 251 days from 30.12.2008 to 06.09.2009. The second respondent after having fairly stated that the petitioner was kept under compulsory wait without issuing orders ought not to have issued the order to treat the said period as unearned leave on medical grounds (77 days), unearned leave on private affairs (26 days), unearned leave on private affairs for 154 days and leave on loss of pay for 97 days. The order of the second respondent is ex-facie illegal and un-sustainable in law. Therefore, the petitioner is entitled to full attendant benefits and service benefits. The second respondent further stated in his order, dated 04.12.2013 that the issue relating to the regularization of the period between 01.07.2007 to 02.01.2008 is pending before the first respondent. Hence, the petitioner submitted an appeal to the first respondent on 07.03.2014, since the petitioner was due to retire on 30.06.2016. Thereafter, the petitioner filed a writ petition in W.P.(MD)No.18055 of 2014 and this Court, vide order dated, 10.11.2014, directing the first respondent to dispose of the appeal within a prescribed time. The first respondent passed an order, dated 16.03.2015 stating that the compulsory wait period cannot be



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regularized, since the petitioner did not submit a report before the second respondent after the leave. But the second respondent himself in his letter, dated 04.12.2013 stated that the petitioner reported for duty after the medical leave. Therefore, the petitioner contended that the first respondent order was illegal and erroneous. Moreover, as per FR54 the government employee is entitled to medical leave on medical certificate and the same ought to be regularized as duty period and prayed to allow the writ petition.

4. The first respondent has filed a counter affidavit stating that the period has been regularized as per Rules prevailing thereunder. The respondent also contended that the petitioner ought to have appeared before the competent authority in person after the expiry of medical leave. But the petitioner has not appeared before the second respondent and requested only by sending representation through post and hence the petitioner was kept under compulsory wait. However, the petitioner is entitled to 540 days of medical leave, but he already availed 463 days. Hence, 463 days was regularized. Hence according to the petitioner



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leave account, he is entitled to avail only 77 days of medical leave and that 77 days has been regularized from 18.09.2008 to 03.12.2008. There is no availability of medical leave. The petitioner is having alternative remedy before the Government. Therefore, the respondent prayed to dismiss the writ petition.

5. Heard Mr.Saravanan, learned Counsel appearing for the petitioner, Mr.P.Thambidurai, learned Government Advocate (Civil side) and perused the records.

6. It is seen from the records that the petitioner was ill due to respirator disorder. For the first spell, the petitioner has submitted medical leave and obtained leave for a period of 77 days. The respondents have regularized the said period. Thereafter, the petitioner has joined duty along with the medical certificate. Subsequently, the petitioner availed second spell medical leave by making an application. When the petitioner joined the duty along with the medical certificate, the third respondent directed the petitioner to approach the second



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respondent. The second respondent has placed the petitioner under compulsory waiting period that too for more than 171 days and 230 days without any reason. It is an admitted fact that as per the third respondent communication, the petitioner has availed leave based on medical certificate. Therefore, the impugned order which states that the petitioner has not submitted any medical certificate is absolutely erroneous.

7. This Court is inclined to allow the writ petition and hence the impugned order is quashed. The first respondent is directed to regularize the entire period as medical leave on medical certificate as per FR 54. Consequently, the petitioner is entitled to all service, monetary and terminal benefits and the same shall be disbursed within a period of eight (8) weeks from the date of receipt of a copy of this order. With the above said direction, this Writ Petition is allowed. No costs.

04.11.2022

Index : Yes / No
Internet : Yes / No
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To

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S.SRIMATHY, J

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