



W.P(MD)No.26894 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.26894 of 2022

S.Sundararaj

... Petitioner

Vs

- 1.The Director of Collegiate Education,
Directorate of Collegiate Education,
College Road,
Chennai – 600 006.
- 2.The Joint Director of Collegiate Education,
Directorate of Collegiate Education,
Near Rani Anna College,
Gandhi Nagar,
Tirunelveli – 627 002.
- 3.The Secretary,
Tirunelveli Dakshinamara Nadar Sangam College,
T.Kallikulam – 627 113,
Tirunelveli District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records related to the impugned order of the second respondent dated 09.09.2022 in Na.Ka.No.8277/Aa1/2022 and the Communication issued by the third respondent dated 16.09.2022 and quash the same and issue a consequential



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direction to the respondents to calculate the service period of the petitioner as Lab Assistant in the third respondent College including the period from the date of termination - 07.06.2005 to the date of reinstatement 31.12.2016 (10 years, 5 months and 2 days) into the service register of the petitioner and take the same into account for the purpose of calculation of retirement and pensionary benefits and grant the monetary reliefs within a reasonable time period to be determined by this Court.

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.S.Shaji Bino
Special Government Pleader
for R.1 & R.2

Mr.H.Arumugam for R.3

ORDER

Heard the learned counsel on either side.

2. The writ petitioner was employed in the third respondent College as Lab Assistant. Disciplinary action was taken against him and he was terminated from service on 07.06.2005. Questioning the same, he filed W.P(MD)No.6419 of 2006. The said writ petition was partly allowed on 21.01.2013. The termination order was set aside. He was ordered to be reinstated. However, applying the principle of “No Work No Pay” backwages were denied. Aggrieved by the same, the Management filed W.A(MD)Nos.206 and 222 of 2013. The Hon’ble Division Bench vide order dated 28.02.2017



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sustained the order of the learned Single Judge. Even thereafter, the order was not complied with, contempt petition came to be filed. Since the Management declined to treat the intervening period as one on duty for other purposes, the petitioner was constrained to file W.P(MD)No.3668 of 2020. Vide order dated 07.01.2022 the Management was directed to dispose of the said representation on merits and in accordance with law. Pursuant to the said direction, the impugned order came to be passed. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the same and allow the writ petition as prayed for.

4. The learned Special Government Pleader as well as the learned counsel appearing for the Management submitted that the impugned orders do not warrant any interference and they sought time to file counter.

5. I am of the view that this case will have to be decided not with reference to pleadings but with reference to the earlier orders passed by this Court. A careful reading of the order dated 21.01.2013 made in W.P(MD)No.



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6419 of 2006 would indicate that the learned Judge went to the extent of holding that the termination order was nullity. However, a learned Judge refrained from remanding the matter to the file of the Management to proceed in the matter afresh. However applying the principle of “No Work No Pay” the writ Court denied the relief of payment of backwages. The order passed by the learned Single Judge was not interfered with by the Hon’ble Division Bench. The natural consequence is that the intervening period should be treated as one of duty. If the order of termination had been sustained and yet an order of reinstatement has been ordered that would mean that the intervening period will not be taken into account for any purpose. When the termination order was set aside and reinstatement was ordered, the intervening period will have to be taken into account for all other purpose. In this view of the matter, the orders impugned in the writ petition are set aside. This writ petition is allowed.

6. The respondents are directed to take into account the intervening period from 07.06.2005 to 31.12.2016 for the purpose of calculation of retirement and pensionary benefits. The monetary benefits will be disbursed to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order.



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7. This writ petition is allowed. No costs.

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Index : Yes / No

Internet : Yes/ No

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G.R.SWAMINATHAN, J.

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