



W.P.No.18438 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.18438 of 2013

K.Venkatesan

...Petitioner

-Vs-

1. The State of Tamilnadu,
Rep. by its Secretary,
Highways Department,
Secretariat,
Chennai – 600 009.
2. The Chief Engineer (General),
Highways Department,
Chepauk,
Chennai – 600 005.
3. The Chief Engineer,
Highways Quality Assurance
and Research Station,
Guindy,
Chennai – 600 025.

... 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 connected with the impugned order passed by the third respondent in his letter No.6375/B2/2012 dated 09.11.2012 and quash the same and consequently direct the respondents to sanction his due



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pension and other retirement benefits in terms of Tamilnadu Pension Rules.

For Petitioner : Mr.R.Rengaramanujam

For Respondents : Mr.V.Veluchamy
Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the order dated 09.11.2012, passed by the third respondent in his letter No.6375/B2/2012, thereby denying the terminal benefits to the petitioner.

2. The petitioner had joined in the post of Junior Engineer in the Highways and Rural Works Department with effect from 04.11.1970. He had worked in so many places during his employment. However, the petitioner went on leave from 24.05.1980 to 14.08.1980 and the said leave was sanctioned and salary was paid to him. Thereafter, he resumed duty on 16.08.1980 and continued service till 08.06.1981. Thereafter, he applied for leave, the details of which are as follows :-



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Sl.No	Period	Days	Leave
1.	09.06.1981 to 08.07.1981	30 days	Earn leave
2.	09.07.1981 to 07.08.1981	30 days	Earn leave
3.	08.08.1981 to 06.10.1981		Earned leave of his credit
4.	07.10.1981 to 05.12.1981	60 days	Leave on private affairs
5.	06.12.1981 to 04.06.1982	180 days	Loss of pay

3. With regard to the availing the above said leave, the third respondent had addressed the second respondent in his letter No.16245/B1/81 dated 16.02.1982. From 14.05.1981 onwards, the petitioner was absent. Further he also attained the age of superannuation in the year 2002 itself. Only in the year 2008, the petitioner made representation requesting to disburse his terminal benefits and pension.

4. Thereafter, the petitioner submitted so many representations and the third respondent passed a detailed order on 25.01.2011, thereby informing the petitioner that from 09.06.1981 till the date of attainment of superannuation viz., 31.10.2022, the petitioner absented from service and as such only on verification of action taken as against him, the request of the petitioner will be considered. Even thereafter, the petitioner made several representations seeking pensionary benefits.



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Thereafter, by the impugned order dated 09.11.2012, the third respondent rejected the request made by the petitioner seeking pensionary benefits.

Hence, the petitioner filed this present writ petition with the above said prayer.

5. The learned counsel appearing for the petitioner would submit that the petitioner fell ill and as such he could not report to duty. Though the petitioner had absented from duty, the third respondent did not take any disciplinary proceedings as against the petitioner. So far, the petitioner was not served with show cause notice or charge memo and no enquiry was conducted as against the petitioner for his unauthorized absence.

5.1. He further submitted that in similar circumstances, this Court, in the judgment reported in **2011 SCC OnLine Mad 2187** in the case of **M.Veerabhadrapa Vs. the Commissioner of Panchayat Union, Hosur**, held that no disciplinary action was initiated against the employee and no charge memo was issued and no enquiry was conducted. Therefore, this Court directed the authority concerned to



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settle the terminal benefits to the employee taking into account the non-employment period as duty period.

5.2. He also relied upon the judgment reported in **2019 SCC Online Mad 28165** in the case of **R.M.Chitra Vs. Tamil Nadu State Transport Corporation Ltd., & ors**, in the case of unauthorized absent, this Court held that the deceased employee had been in service from the year 1981 and therefore, the order of dismissal was modified as compulsory retirement with consequential benefit. He relied upon yet another judgment of the Hon'ble Division Bench of this Court reported in **2014 SCC Online Mad 11732** in the case of **Indian Overseas Bank Vs. General Secretary All India Overseas Bank Employees Union, Chennai & anr**, which held as follows :-

“9. We are not in a position to accept the above contention of the learned counsel for the appellant, in view of the fact that no enquiry was conducted before passing the order of retirement particularly when the the absence of the workman was not wilfull. Hence, we are inclined to clarify the order of the learned Single Judge to the effect that the entire period of absence and the period of non-employment in the post of Record Keeper



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should be treated as duty for the purpose of calculating gratuity, pension and other retirement benefits except back wages. The appellant Management is directed to do the said exercise of calculating the gratuity, pension and other retirement 6 benefits and pay the same to the first respondent, including the arrears of pension payable from the date of retirement, within a period of four weeks from the date of receipt of a copy of this judgment, after adjusting a sum of Rs.92,691.24, which was already paid to the first respondent, treating the concerned workman is deemed to have opted for pension scheme, which according to the first respondent he has already done.

Therefore, he prayed to allow this writ petition.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. Except the first case cited by the learned counsel appearing for the petitioner, in other two cases, the employees were dismissed from service for unauthorized long absence. The employees raised an industrial dispute and thereafter approached this Court. Therefore, this Court held that for the long period of unauthorized absence, the punishment of removal from service is disproportionate and as such



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modified the same. In the first case cited by the petitioner's counsel, there was a delay of six years and the employee failed to extend his leave.

8. Whereas in the case on hand, the facts are completely different. The petitioner was absent from service for the past 27 years. He had not reported to duty from 09.06.1981 and even after attainment of superannuation viz., on 31.10.2002, he did not choose to seek for any benefits. He made his first representation only in the year 2008. Though there was no record to show that the respondents had taken departmental action as against the petitioner for his unauthorized absence from 09.06.1981, the petitioner did not even respond or give any reason for his long absent of 27 years.

9. Admittedly, the petitioner did not apply for any leave and he failed to submit any medical records so far to prove that he was ill for continuous years. The petitioner unauthorizedly absented from his duty for 27 years, without even taking responsibility of his post. In fact, his whereabouts were not known to the respondents, since he did not report to the respondents after 09.06.1981. When that being so, the petitioner is



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not entitled for any relief as prayed for by him. Therefore, the third respondent rightly rejected the request made by the petitioner and this Court finds no infirmity or illegality in the impugned order. Hence, the writ petition is devoid of merits and is liable to be dismissed.

10. Accordingly, the Writ Petition stands dismissed. There shall be no order as to cost.

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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WEB COPY

To

1. The Secretary,
State of Tamilnadu,
Highways Department,
Secretariat,
Chennai – 600 009.
2. The Chief Engineer (General),
Highways Department,
Chepauk,
Chennai – 600 005.
3. The Chief Engineer,
Highways Quality Assurance
and Research Station,
Guindy, Chennai – 600 025.



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G.K.ILANTHIRAIYAN. J.

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