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W.P.No.25549 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.25549 of 2010 &
M.P.No.1 of 2010

1.P.Lakshmipathi (Died)

2.Premavathi

... Petitioners

P2 substituted as LR in the place of deceased petitioner as per order dated 28.01.2014 by TSSJ in M.P.No.1 of 2011 in W.P.No.25549 of 2010

Vs

1.State of Tamil Nadu

Rep., by its Principal Secretary,
Public Works Department,
Fort., St., George,
Chennai – 600 009.

2.The Chief Engineer(General)

Public Works Department,
Chepauk, Chennai – 600 005.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the

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records relating to the order passed by the first respondent in Letter No.17397/112/08-13, dated 24.04.2009 and quash the same consequently directing the second respondent to implement the order passed in proceedings No.E2(1) 113912/93-94, dated 13.03.1994, without any change in the wait period between 07.05.1993 to 18.04 1994 (11 months and 12 days) and pay all emoluments with interest attached thereto.

For Petitioner : Mr.A.R.Nixon

For Respondent : Mr.A.M.Ayyadurai GA

ORDER

The petitioner had filed this Writ Petition challenging the order of rejection of his request seeking to pay the salary for the period from 07.05.1993 to 18.04.1994.

2.Heard Mr.A.R.Nixon, learned counsel appearing for the petitioner and Mr.A.M.Ayyadurai, learned Government Advocate appearing for the respondents.

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3.The learned counsel appearing for the petitioner would submit that the petitioner was directed to hand over the charge on 07.05.1993 to a person who had been transferred to the post, he was holding and thereafter, he was not served with any posting orders. The petitioner had made representations on 10.06.1993, 19.08.1993 and 21.10.1993 seeking posting orders in Salem or Dharmapuri District. By proceedings dated 13.03.1994, the second respondent herein had posted him in the Ground Water Section I, Salem and the petitioner had joined the duty on 18.04.1994. However, the petitioner had not been paid any salary for the period namely 07.05.1993 to 18.04.1994. He had made representations calling upon the respondents to make the payment of salary for the aforesaid period. But however, by the impugned order the respondents had rejected his request by holding that the petitioner had been directed by the second respondent dated 02.07.1993 to report before the Superintending Engineer, Special Circle Salem. The learned counsel for the petitioner would vehemently submit that the petitioner had not been served with any such posting order.

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4. He would further submit that by representation dated 10.06.1993, he had sought for a posting either at Salem or in Dharmapuri District. Had such a communication been received by the petitioner, the petitioner would have reported to the Superintending Engineer, Salem and there was no question of the petitioner making further representations in August 1993 and October 1993. He would contend that no such orders were served on the petitioner and the petitioner should be deemed to be kept under compulsory wait from 07.05.1993 till the order dated 13.03.1994 and therefore, he would be entitled for salary during the said period and therefore, he would request this Court to set aside the impugned order and direct the respondents to pay the salary for the said period.

5. Countering his arguments, Mr.A.M.Ayyadurai, learned Government Advocate appearing for the respondents taking support from the counter filed by the second respondent would contend that the

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petitioner was served with the communication dated 02.07.1993, through the Superintending Engineer, South Arcot Circle, Cuddalore directing him to report before the Superintending Engineer, Special Building Circle, Salem for further postings. It is the petitioner who had failed to report as per the communication of the second respondent, dated 02.07.1993, as he wanted a posting only at a specified place as required by him in Salem or Dharmapuri. Therefore, the claim of the petitioner that he had been kept under compulsory wait cannot be countenanced. He would further submit that the Government cannot act to the whims and fancies of a Government servant and post him to the place desired by him. He would also rely upon the Rule 9(6)(B)(3) of the Fundamental Rules dealing with the issue of compulsory wait and submit that since the petitioner was issued with the communication dated 02.07.1993, to report to the Superintending Engineer, Special Building Circle, Salem and on failure to report so, would not entitled him to be treated as a person who was kept under the compulsory wait and therefore, there is no infirmity in the order impugned in the Writ

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Petition and hence, the Writ Petition is liable to be dismissed.

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6. I have considered the rival submissions made on either side and perused the materials placed on record.

7. It is an admitted fact that the petitioner had been relieved on 07.05.1993, pursuant to an order of transfer passed in respect of another person. It is also an admitted fact that the petitioner had made a representation dated 10.06.1993, to the second respondent requesting them for a posting and till such time to keep him under compulsory wait.

8. It is the case of the respondent that the petitioner had been making representation seeking him to be posted in Salem or around Dharmapuri District, such a statement had also been categorically made in the counter filed by the second respondent. When that being so, I am not able to countenance the stand taken by the second respondent of the

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service of communication dated 02.07.1993, issued by the second respondent. It is the case of the second respondent that the petitioner had been making a request for a posting in Salem or Dharmapuri District. If it was the intention of the petitioner to work at a particular place of office desired and if a communication, dated 02.07.1993 had been communicated to the petitioner, I see no impediment if the petitioner going and reporting before the Superintending Engineer, Special Building Circle, Salem, as it is the place of choice of the petitioner. Except to make a bald statement in the counter affidavit that the communication dated 02.07.1993, had been sent to the petitioner through the Superintending Engineer, no documents had been placed before this Court to substantiate the service of such communication to the petitioner.

9. I am also further fortified in holding that such communication has not been communicated to the petitioner for the simple reason that inspite of admission of receipt of representations in the month of

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August 1993, October 1993 and February 1994 of the petitioner seeking for postings, the communication dated 02.07.1993, has not been reiterated by the respondents to the petitioner. Therefore, I am of the view that even though such a communication had emanated from the second respondent, the said communication had not been served upon the petitioner. If such a communication had atleast been addressed to the Superintending Engineer, Special Building Circle, Salem, he would have atleast called upon the petitioner to report duty, pursuant to the communication dated 02.07.1993. It is not the case of the respondents that the Superintending Engineer, Special Building Circle, Salem has issued any such communication to the petitioner. Therefore, I am of the view that no posting orders were given to the petitioner, pursuant to his relieving from the Villupuram Division on 07.05.1993, till the communication dated 13.03.1994, calling upon the petitioner to report duty at Ground Water Section I, Salem and therefore, he would have to be deemed to have been kept under compulsory wait between 07.05.1993 and 18.04.1994, till 13.03.1994,

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the date on which the order of posting was given to him and he would be entitled for salary as claimed by him between the said period.

10. In view of the aforesaid conclusion, I am of the view that the order impugned in this Writ Petition is liable to be set aside and is accordingly set aside.

11. In the result, the Writ Petition is allowed and the impugned order is set aside. The petitioner would be entitled to a salary for the period between 07.05.1993 and 13.03.1994 and the respondents shall disburse the salary to the petitioner within a period of eight (8) weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

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Speaking order : Yes/No
Neutral Citations : Yes/No

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K.KUMARESH BABU,J.

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