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W.P.Nos.29793, 29794, 29830 and 29831 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.29793, 29794, 29830 and 29831 of 2011

A.Ramaswamy

... Petitioner
in W.P.No.29793 of 2011

S.Prabakaran

... Petitioner
in W.P.No.29794 of 2011

G.Rajaraman

... Petitioner
in W.P.No.29830 of 2011

T.Balasubramanian

... Petitioner
in W.P.No.29831 of 2011

Vs.

1.The Secretary to Government
Public Works (F2) Department
Fort St.George, Chennai-9

2.The Chief Engineer
Gound Water Resources Data Centre
Taramani, Chennai – 113.

... Respondents
in all Writ Petitions.



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PRAYER in W.P.No.29793 of 2011: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in connection with the impugned order passed by him in G.O.(D).No.62, Public Works F2 Department dated 24.02.2011 and quash the same and direct the respondents to create a supernumerary post of Assistant Director (Geology) w.e.f.10.11.1995 to 11.04.1997 for the petitioner and further direct the respondents to treat the period from 10.11.1995 to 11.04.1997 as duty for all purposes and grant him all consequential service and monetary benefits, including pensionary and retirement benefits.

PRAYER in W.P.No.29794 of 2011: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in connection with the impugned order passed by him in G.O.(D).No.62, Public Works F2 Department dated 24.02.2011 and quash the same and direct the respondents to create a supernumerary post of Assistant Director (Geology) w.e.f.10.11.1995 to 06.04.1997 for the petitioner and further direct the respondents to treat the period from 10.11.1995 to 06.04.1997 as duty for all purposes and grant him all consequential service and monetary benefits, including pensionary and retirement benefits.

PRAYER in W.P.No.29830 of 2011: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling



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for the records of the 2nd respondent in connection with the impugned order in G.O.(D).No.392, Public Works (F2) Department dated 16.11.2011 and quash the same in so far as denying the monetary benefits to the petitioner concerned for the period from 25.11.1995 to 04.12.1998 and direct the respondents to grant monetary benefits to the petitioner for the period from 25.11.1995 to 04.12.1998 and further direct the respondents to draw and disburse the salary for the above period within a reasonable time.

PRAYER in W.P.No.29831 of 2011: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in connection with the impugned order in G.O.(D).No.392, Public Works (F2) Department dated 16.11.2011 and quash the same in so far as denying the monetary benefits to the petitioner concerned for the period from 25.11.1995 to 22.09.1998 and direct the respondents to grant monetary benefits to the petitioner for the period from 25.11.1995 to 22.09.1998 and further direct the respondents to draw and disburse the salary for the above period within a reasonable time.

In all Writ Petitions:-

For Petitioners : Mr.Venkataramani, Senior Counsel
for Mr.T.Ayngara Prabhu

For Respondents : Mr.T.K.Saravanan
Government Advocate



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COMMON ORDER

The Writ Petitions are filed challenging the order dated 24.02.2011 made in G.O.D.No.62 in an by which, the claim of the petitioners to regularise their period of service between 10.11.1995 to 11.09.1997, 10.11.1995 to 06.04.1997, 25.11.1995 to 04.12.1998 and 25.11.1995 to 22.09.1998 respectively as duty was rejected by the respondents.

2.The brief facts leading to filing of this Writ Petition is that by an order dated 31.08.1995, the petitioners herein were reverted from the post of Assistant Director to the post of Assistant Geologists and Assistant Geophysicist respectively. Aggrieved thereof, the petitioners have approached the Tamil Nadu Administrative Tribunal and an interim order of Status quo was passed on 06.11.1995 and 15.11.1995 respectively. It is essential to extract the said order:

"The Senior Standing Counsel would submit that one week time is required for furnishing the necessary particulars, Mr.Doraisamy, the learned senior counsel would submit that the order of reversion has been passed in till today they have been continuing as such and now in view of the vacancy position,



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they expect continuation in the same post without any reversion. In the above circumstance, Status-Quo as on today shall be maintained till 13.11.1995"

3.Further, it is seen that the interim order of *status quo* was also extended. Thereafter, when the matters were pending, the Writ Petitioners without prejudice to the outcome of the above Original Applications, made an application to the respondents to regularise their period of absence from 10.11.1995 to 11.09.1997, 10.11.1995 to 06.04.1997, 25.11.1995 to 04.12.1998 and 25.11.1995 to 22.09.1998 respectively as Extraordinary Leave on Loss of Pay and the same was accepted by the respondents and an order was passed on 12.07.2002, which reads as hereunder:

"Thiru A.Ramasamy, Assistant Director (Geology) on reversion as Assistant Geologist due to revision of seniority has proceeded on leave from 01.09.1995 to 09.11.1995. He has now represented to regularise the absence from 10.01.1995 to 11.04.1997 as Extraordinary Leave (E.O.L.) on loss of pay without prejudice to the O.A.No.5548/95 filed by him with Tamilnadu Administrative Tribunal. He has given an undertaking that any excess amount paid to him shall be remitted back to Government.



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His request is examined in detail with reference to the provisions under F.R.73, F.R.85 (a) and (b) and delegations under G.O.Ms.No.2151/PWD/dated 27.12.1988. The leave availed by him from 01.09.1995 to 09.11.1995 with reference to the provisions under F.R.73, F.R.85 (a) & (b) and delegations in G.O.Ms.No.2151/P.W.D/ dated 27.12.1988 the period of absence without leave letter from 10.11.1995 to 11.04.1997 in continuation of regular leave is sanctioned as Extra ordinary leave on loss of pay by retrospectively commuting the absence without pre-judice to the outcome of the O.A.No.5548/1995 filed with the Tamilnadu Administrative Tribunal by him and without prejudice to the disciplinary action to be initiated if any."

4. Thereafter, the Original Applications filed by the petitioners came to be transferred to the file of this Court and were re-numbered in W.P.Nos.15380 and 15381 of 2006 and was disposed of by a common order dated 27.03.2008 and paragraph Nos.2 and 3 of the order passed in the said Writ Petitions are extracted hereunder:

"2. While admitting the original applications the Tamil Nadu Administrative Tribunal has passed an interim order of status quo. According to the learned senior counsel appearing for the



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petitioners subsequent to this, during the pendency of the writ petitions, by order dated 12.4.1997 the petitioners were promoted as Assistant Directors basing on the interim order subsequently passed by the Tribunal. Consequently according to the learned Senior Counsel, as on date, the petitioners are not pressing the relief sought for in these original applications/writ petitions. However, the petitioners were absent from duty from 10.11.1995 to 11.04.1997. This period of absence from duty is not regularised till date. According to the learned Senior Counsel one other Assistant Director by name Vijaya Baskar who also faced reversion in September 1995, basing on the orders passed by the Tribunal he was again promoted and he joined the duty as Assistant Director and the period of his absence from duty from 1.9.1997 to 31.5.2002 was considered and orders were passed in G.O.Ms.No.141 Public Works Department dated 29.3.2006. Now, the request of the learned Senior Counsel is, in the same line, the petitioners case also should be considered with regard to their absence from duty from 10.11.1995 to 11.4.1997.

3.Since the petitioners have been promoted again in the year 1997 and they are continuing as Assistant Directors, the period of absence from 10.11.1995 to 11.4.1997 has to be regularised. Hence, the petitioners are at liberty to make a representation to the concerned authority within a period of three weeks from the date of receipt of a copy of this order and on receipt of such representation, the authority to



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whom the representation is made is directed to consider and pass orders in accordance with law taking note of the order passed in the case of the said Vijaya Basker within a period of four weeks thereafter."

5.Pursuant to the direction issued in Paragraph 3 of the above order, the petitioners made representation on 15.04.2008, which is rejected by the respondents, on the ground that the said period have already been regularised as Extraordinary Leave on Loss of Pay and therefore, there is no question of re-visiting the said order. The petitioners have also relied upon similar relief been granted to one P.Vijaya Baskar and the impugned order distinguishes the case of the said P.Vijaya Baskar. Aggrieved thereby the present Writ Petitions are filed.

6.Heard the learned counsel on either side and perused the material records of the case.

7.The Writ Petitions were resisted by filing a counter affidavit reiterating the facts which are mentioned in the impugned order.



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8. Heard, Mr.Venkataramani, learned Senior Counsel appearing on behalf of the petitioners. The learned Senior Counsel would submit that it can be seen that the request made by the petitioners to treat the said period as Extraordinary Leave on Loss of Pay was without prejudice to the outcome of the main Original Applications. Ultimately in the main Original Applications, liberty was sought by the petitioners to make a representation and such liberty was given by this Court to make representations and the respondents are directed to consider the matter in accordance with law. The legal position would be that, when there is an order of *status quo* and when the petitioners were not relieved, the error was on the part of the respondents in not allowing the petitioners to join and work in the said post. Had the petitioners been relieved, even as on the date of *status quo*, by the subsequent order, the *status-quo* would not have been extended by the Tribunal. In that view of the matter, it can now very well be inferred that the fault is on the part of the respondents and for that matter, the petitioners cannot loose their valuable service of about two years or more. The same results in grave prejudice to them as it has implications even in the pensionary benefits received by the



9.As a matter of fact, the learned Senior Counsel taking the detailed order passed in respect of the P.Vijaya Baskar, would submit that the case of said P.Vijaya Baskar is also similar case of grant of *status quo* by the Court and the individual not been permitted to report for duty. Therefore, there can be no distinction which can be drawn from the case of P.Vijaya Baskar and that of the petitioners. Therefore, the respondents cannot resort to differential treatment to different persons and their actions are arbitrary and violative of Article 14 of the Constitution of India.

10.Per contra, the learned Government Advocate appearing on behalf of the respondents would submit that it is the act of the petitioners themselves in not reporting for duty, pending the Original Applications. If the petitioners were not relieved and the respondents were in violation of the order of *status quo*, no steps were taken by them in respect thereof. Ultimately, they themselves agreed to treat the period as Extraordinary Leave on Loss of Pay and accordingly, an order has been passed. Therefore, when finally the matter



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came up and when the original prayer of the petitioners in the applications was given up, the respondents considered the representation in accordance with law and have rejected the prayer of the petitioners. The facts of the case in respect of P.Vijaya Baskar was different and cannot be applied to the case of the petitioners.

11.I have considered the rival submissions and perused the material records of the case.

12.Firstly, it can be seen that on their own without any orders of this Court, the petitioners had made representation, that the period of their absence pending the order of the *status quo* can be treated as Extraordinary Leave on Loss of Pay and accordingly, the same was done by order dated 12.07.2002. Even though the same is mentioned without prejudice to their rights in O.A.No.5548 of 1995, the same would only mean that merely because, the respondents are praying to treat the period as Extraordinary Leave on Loss of Pay, that the consideration of the said prayer by itself, would not dis-entitle them in pressing their prayer in the Original



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Applications. The order ultimately passed in the transferred Writ Petition is extracted above, whereunder, it can be seen that the learned Senior Counsel appearing on behalf of the petitioners would specifically not press the original prayer. That being the situation, when the order of reversion being upheld and when there is no finding by this Court, while disposing of the matter finally, as to any violation of the order of *status quo*, then the final direction was only to consider the representation in accordance with law and therefore, no exception can be taken in the conclusion of the respondents that already the period of absence have been treated as Extraordinary Leave on Loss of Pay and therefore, there was no necessity to revisit the same. Even though the learned Senior Counsel would draw parity between the case of Vijaya Baskar and the petitioners, unless it is further established that the grant of the relief to the said Vijaya Baskar was in accordance with the rules, parity cannot be claimed. The illegality or otherwise in respect of grant of benefit to Vijaya Baskar cannot be gone into, in the present case of the petitioners herein, in the absence of the said individual.

13. Therefore, I hold that even though parity was shown in respect



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of treating of the period in respect of the said Vijaya Baskar, the further requirement that the intervening period was rightly treated as duty as in the case of Vijaya Baskar could not be demonstrated before this Court and all the facts of the case in respect of the petitioners and the said Vijaya Baskar are also not on record. In the absence of the same, I am unable to countenance the submission of the learned Senior Counsel in respect of the claim by placing reliance in respect of the said individual.

14. Therefore, finding no merits, the relief could not be granted to the petitioners. Accordingly, these Writ Petitions are dismissed. No costs.

30.11.2023

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Index: Yes

Speaking Order: Yes

Neutral Citation: Yes

To

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D.BHARATHA CHAKRAVARTHY, J.,

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