



W.P.No.38715 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

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S.Palaniappan

.... Petitioner

vs

1. The Secretary to Government,
School Education Department,
Fort St.George,
Chennai – 600 009.
2. The Director of School Education,
College Road,
Chennai – 6.
3. The Chief Educational Officer,
Namakkal,
Tiruppur District.
4. The Secretary,
Sankar Higher Secondary School,
Sankagiri (West),
Namakkal District.

.... Respondents

Writ Petition filed under Article 226 of the Constitution to issue a
Writ of Certiorarified Mandamus to call for the records pertaining to the



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proceedings of the second respondent in Na.Ka.13743/D1/E1/2015 dated 11/08/2015 and quash the same and further direct the respondents to treat the period from 25.05.2012 to 03.10.2012 as compulsory wait with all consequential benefits.

For Petitioner : Mr.S.Kamadevan

For Respondent : Mr.M.Rajendran
Additional Government Pleader
for R1 & R2
No appearance for R3 & R4

ORDER

This writ petition has been filed challenging the order of the 2nd respondent dated 11.08.2015, rejecting the claim of the petitioner seeking to treat the period from 25.05.2012 to 03.10.2012 as compulsory wait with all consequential benefits.

2. The case of the petitioner is that he joined as Physical Educational Teacher on 11.09.1995 at Sengunthar Mahajana Higher Secondary School, Gurusamypalayam, Namakkal District, which is an aided School. Subsequently, he was promoted as BT Assistant on 01.03.2011. While so, an order dated 27.12.2011 came to be passed by the third respondent stating



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that his post was found to be surplus and re-deployed along with the post to SPB Higher Secondary School, Pallipalayam, Namakkal District. Though an order came to be passed on 27.12.2011, the erstwhile Management School did not relieve the petitioner and he continued till the completion of the academic year 2011-2012. Against the order the order of redeployment, the petitioner filed W.P.No.13477/2012 and on 16.05.2012, this Court passed an order of interim stay of the order of redeployment dated 27.12.2011 and subsequently, the stay was extended. Thereafter, on 06.07.2012, the writ petition was dismissed with an observation that the petitioner could make a representation to consider in the available vacancies on the basis of students strength and the petitioner be accommodated on the basis of the redeployment seniority. On 11.08.2012, the petitioner made representation to the 2nd respondent, in terms of the orders passed by this Court. On 21.08.2012, the 2nd respondent, rejected the request stating that there is no vacancy for the post of B.T. Assistant in the Sengunthar Mahajana Higher Secondary School, Gurusamypalayam. On 06.09.2012, when the petitioner went to join in the transferred school viz., SPB High School Pallipalayam the management refused to allow the petitioner to join duty. On 13.09.2012, the 2nd respondent warned and directed SPB High School to allow the



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petitioner to join duty, but the Management was adamant and not obeyed the order. The petitioner again, made representation to the 2nd respondent on 28.09.2012 stating that he is unable to join in the transferred school and the management is not allowing him to join duty. On 29.09.2012, the 2nd respondent passed revised orders cancelling the earlier transfer and posted the petitioner in the 4th respondent school and the petitioner joined in the 4th respondent school on 04.10.2012. Again, the petitioner made representation to the respondents on 06.12.2014 to treat the period from 25.02.2012 to 03.10.2012 as compulsory wait as he could not join in the transferred school after the second orders dated 21.08.2012 was passed by the 2nd respondent. But the 2nd respondent has passed an order on 11.08.2011, rejecting the request of the petitioner. Hence, this writ petition.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the 1st and 2nd respondents.

4. i) Learned counsel for the petitioner would submit that though the petitioner's post was found surplus and orders were passed on 27.12.2011, he was allowed to continue in the previous school and while there was an



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attempt to relieve him during summer vacation, he filed writ petition and this Court granted stay on 16.05.2012 and the same was in force till the disposal of the writ petition and that being the admitted position, the order passed by the 3rd respondent becomes ineffective and suspended and he is deemed to be continuing in the old station for all purposes.

ii) Learned counsel would further submit that the writ petition filed by the petitioner was disposed of with a direction to the third respondent to reconsider the same for re-transfer to the same school. By taking note of the same, another order was passed on 21.08.2012 affirming the earlier order dated 27.11.2011. But the order could not be given effect to, since the transferee management refused to accept the joining report of the petitioner. Thereafter, another revised order was issue don 28.09.2012 cancelling the order dated 27.11.2011 reiterating the proceedings dated 21.08.2012. Therefore, there was a delay in passing the order with sanctioned post, for which, the petitioner cannot be found fault with.

5. Per contra, the learned Additional Government Pleader would submit that though the redeployment order was passed on 27.12.2011, the petitioner was allowed to continue till completion of academic year



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31.05.2012. After completion of the academic year, the petitioner was relieved from Sengunthar Mahajana Higher Secondary School, Namakkal. The petitioner, instead of joining in SPB Higher Secondary School, in which, he was redeployed, he filed W.P.No.13477/2012 and this Court passed a final order and in obedience to the order, the 3rd respondent vide order dated 21.08.2021, directed the petitioner to join in SPB High School. Since there was no requirement of another Maths B.T.Assistant at SPB High School, from which, the petitioner was re-deployed, he was posted to Sankar Higher Secondary School, Sankagiri (West) and the petitioner joined duty on 04.10.2012 in the said School. After joining, he made representation for regularisation and payment of salary from 25.05.2012 to 30.10.2012. The petitioner filed W.P.No.1432/2015 before this Court to consider his representation to treat the period from 25.05.2012 to 03.10.2012 as compulsory wait. This Court directed the 2nd respondent to consider the representation of the petitioner for non-payment of salary from 25.05.2012 to 03.10.2012. Since the post of Maths B.T.Assistant at Sengunthar Mahajana Higher Secondary School, was found surplus, the petitioner was transferred to SPB High School on 25.05.2012. Instead of joining in the newly transferred place after his relief, he joined only on 04.10.2012.



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During the period from 25.05.2012 to 03.10.2012, the petitioner had not applied for any leave to any authorities concerned. If the petitioner would have joined immediately after his relief, treating period from 25.05.2012 to 03.10.2012, as compulsory wait, does not arise. Hence, he would pray for dismissal of the writ petition.

6. This Court considered the submissions made on either side and perused the materials available on records.

7. In similar circumstances, this Court, vide order dated 29.01.2010, made in W.P.Nos.24288 of 2009 and 1024 of 2010, in para No.8 & 9, has held as follows:

"8. Though this Court has sympathy over the claim made by the petitioner, but, considering the fact that he became surplus due to zero strength in his original school land the scheme for deployment is intended only to accommodate such persons in a needy school, this court is not inclined to entertain the said Writ Petition. The petitioner's claim for nearby accommodation, the State itself had decided to re-employ him in Tiruppur district, which is more closer than the School at



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Virudhunagar District.

9. In view of the above, both the Writ Petition stands dismissed. because of the fact that the Little Flower Higher Secondary School's adamant stand the petitioner could not be accommodated that it took some time for the alternative place to be found for his re-deployment the petitioner is given fifteen days time to join duty at the RVG Higher Secondary school, Kurichi Kottai, Thiruppur District, from the date of receipt of a copy of this order. On his joining in the new School, the period of his non-employment from the date of his original deployment till the date of his joining will be regulated by the authorities and it shall be considered as duty for all purposes, in view of the peculiar circumstances of the case. However, there will be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

8. In the present case also, the writ petition filed by the petitioner was disposed of with a direction to the 3rd respondent to reconsider for re-transfer to the same school. Therefore, another order was passed on 21.08.2012 affirming the earlier order dated 27.11.2011. But the order could not be given effect to, since the transferee management refused to accept the



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joining report of the petitioner. Thereafter, another revised order was issued on 28.09.2012, canceling the order dated 27.11.2011, reiterating the proceedings dated 21.08.2012. Hence, the place where the petitioner has to join and work has become questionable one for some time and finally, settled by passing orders on 28.09.2012, transferring the petitioner to 4th respondent school and hence, there was a delay and this delay had caused on the part of the respondents.

9. Further, under Rule 9 of the Fundamental Rules, "*when a government servant has compulsorily to wait for orders of posting, such period of wait shall be treated as duty*". In the instant case, though the order of redeployment and transfer was passed on 27.11.2011, the same was not given effect to due to the interim stay granted by this court. Once the orders passed by the authorities are stayed by a court of law, the same will become inoperative and non-est in the eye of law. After disposal of the writ petition, the petitioner could not join in the post till a revised order was issued by the 3rd respondent transferring him to the 4th respondent school. The delay in passing the order with the sanctioned post could not be put against the petitioner. Therefore, this Court is of the opinion that the petitioner's claim



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to treat the period from 25.05.2012 to 03.10.2012 as compulsory wait, has to be granted.

10. In the result, the Writ Petition is allowed. The impugned order dated 11.08.2015 passed by the 2nd respondent, is hereby quashed. The respondents are directed to treat the period from 25.05.2012 to 03.10.2012 as compulsory wait with all consequential benefits. No costs.

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Index:Yes/No
Speaking/Non-speaking order
vsi

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J.NISHA BANU,J.

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