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W.P.No.16679 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.16679 of 2021

R.Balamurugan

...

Petitioner

/vs/

1. The Principal Secretary to Government,
Government of Tamil Nadu,
Department of Higher Education,
Secretariat, Chennai – 600 009.

2. Annamalai University,
Represented by its Registrar,
Annamalai Nagar,
Chidambaram, Cuddalore District – 608 002.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records of the second respondent pertaining to Office Memorandum No.C-3/97477/2017 dated 18.02.2021 and quash the same and consequently direct the second respondent to treat the period from 19.12.2017 to 03.07.2019 as duty period along with monetary and other benefits.

For Petitioner ... Mrs.R.Revathy



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for Mr.M.Kavikannan

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For Respondents ... Mr.T.Chezhiyan
Additional Govt. Pleader for R1
Mr.E.C.Ramesh
Standing Counsel (Anna University) R2

ORDER

This Writ Petition has been filed to call for the records of the second respondent pertaining to Office Memorandum No.C-3/97477/2017 dated 18.02.2021 and quash the same and consequently direct the second respondent to treat the period from 19.12.2017 to 03.07.2019 as duty period along with monetary and other benefits.

2. Mrs.R.Revathy, the learned counsel for the petitioner submitted that the petitioner is an Associate Professor in second respondent University and he was sent on deputation to College of Engineering, Thirukkuvalai, Nagapattinam District during the month of December, 2017; however the petitioner did not join the college and challenged the order of deputation by way of filing a Writ Petition in this regard in W.P.No.618/2018 and the same was dismissed for not having impleaded the Anna University as party; liberty was given to the petitioner to file a fresh writ petition by properly impleading



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the parties; accordingly the petitioner filed a fresh writ petition in

W.P.No.6175/2018 and in which an interim order has been passed by directing the third respondent therein to consider whether petitioner can be accommodated either in parent university or deputation; but the third respondent submitted that since the petitioner did not join, some other person has already been deputed and joined; again an interim order has been passed on 16.08.2018 to consider the petitioner to place anywhere either in the second respondent University or any other place on deputation; however, the petitioner remained without offering any post.

2.1 On 04.01.2019, the said Writ Petition was allowed and the respondents were directed to accommodate the petitioner in third respondent Annamalai University as a special case and also to consider him for fixation of seniority and pass consequential order; however the said order was complied on 03.07.2019 and orders has been issued for allowing the petitioner to rejoin in the University on 04.07.2019 subject to the outcome of the writ appeal filed by the second respondent therein; but actually no writ appeal has been filed; however the period between 19.12.2017 and



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03.07.2019 during which period the petitioner was not allowed was treated as “Leave on Loss of Pay” and hence that portion of the order was challenged by the petitioner before the first respondent and the first respondent re-directed it to be considered before the second respondent Syndicate; the second respondent has rejected the request of the petitioner and hence the petitioner has filed this writ petition challenging the said impugned order dated 18.02.2021.

3. Mr.T.Chezhiyan, the learned Additional Government Pleader, submitted that the petitioner was allowed to rejoin only on condition that his period of absence will be treated as “Leave on Loss of Pay”; having agreed to the above condition, now the petitioner is estopped from challenging the same.

4. In the order dated 03.07.2019 issued consequent to the orders of this Court dated 04.01.2019, there is no mention about the regularization of period of absence of the petitioner between 19.12.2017 to 03.07.2019. But the second respondent has stated in his counter that it was only on the request



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of the petitioner to treat the period of absence between 19.12.2017 to 03.07.2019 as “Leave on Loss of Pay” by applying the principles of “*no work no pay*”, the order has been issued. In fact the petitioner has been fighting before this Court by way of filing several writ petitions after he was deputed to College of Engineering, Thirukuvalai.

5. Despite various interim orders have been issued by this Court to consider the petitioner’s posting either at College of Engineering, Thirukuvalai or at the second respondent University, no orders have been passed by the second respondent and the petitioner remained without joining till 03.07.2019. In fact the order passed in the Writ Petition W.P.No.23287 and 6175 of 2018 was on 04.01.2019. The second respondent has taken nearly six months to obey the orders of the Court and issued the order permitting him to join only on 03.07.2019.

6. The petitioner did not give any undertaking to anyone to waive the entitlement in respect of the impugned period between 19.12.2017 to 03.07.2019 as submitted by the second respondent. However the petitioner



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ought to have agitated about his entitlement in respect of his period of absence during the writ proceedings in W.P.No.23287 & 617/2018.

7. No doubt the petitioner who did not join in the deputed place has been insubordinate and knocked the doors of the Court by way of filing several writ petitions. It would be appropriate if the second respondent has initiated action against the petitioner for his insubordination instead of delaying his posting. It was not due to the petitioner's unwillingness that he did not work during the relevant point of time but it was due to compelling circumstances in which he needed to file several litigations in order to make the second respondent to issue postings. In fact at the time when the order dated 03.07.2019 was passed, the period of absence between the period 19.12.2017 to 03.07.2019 ought to have been regularized in the manner known to the second respondent. But it is simply stated that further orders will be passed depending on the outcome of the writ appeal which has not been filed at all.

8. The inconvenience of absenting from duty was not caused due to the



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own volition of the petitioner but the circumstances resulted out of the deputation of College of Engineering, Thirukuvalai. Even subsequent to the orders of this Court, the petitioner was not unwilling to work but due to the second respondent's continual refusal to take him to work, he needed to be absent for a long period. But these facts were not considered while passing the impugned order dated 18.09.2019. Hence, I feel the impugned order is arbitrary and unreasonable and it is likely to be set aside.

9. In view of the reasons stated above, this Writ Petition is allowed and the Office Memorandum No.C-3/97477/2017 dated 18.02.2021 issued by the second respondent is hereby quashed and the second respondent is directed to treat the period from 19.12.2017 to 03.07.2019 as duty period and grant monetary benefits and other benefits to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

18.12.2023

Index: Yes / No

Speaking order / Non-speaking order

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R.N.MANJULA ,J.



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To:

1. The Principal Secretary to Government,
Government of Tamil Nadu,
Department of Higher Education,
Secretariat, Chennai – 600 009.
2. Annamalai University,
Represented by its Registrar,
Annamalai Nagar,
Chidambaram, Cuddalore District – 608 002.

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