



W.P.No.17455 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.17455 of 2022

Dr.V.Shanmugasundaram

...Petitioner

Vs

1. The Joint Director,
Directorate of Collegiate Education,
DPI Campus, College Road,
Chennai-600 006.

2. The Registrar-in-Charge,
Annamalai University
Annamalai Nagar -,608 002.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the order dated 19.03.2022 in Na.Ka.No.4172/D4/2022 of the 1st respondent and the Office Memorandum dated 10.05.2022 in No.C-C7/9466/2022 of the 2nd respondent and quash the same and consequently direct the respondents to disburse the salary of the petitioner as Assistant Professor for the period from 28.02.2020 to 10.11.2020.



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For Petitioner : Mr.AR.Karthiklakshmanan

For Respondents : Mr.M.Bindran
Addl. Government Pleader
For R.1
Mr.S.Sivasubramani
For R.2

ORDER

The petitioner along with 38 Assistant Professors, who were earlier working in Annamalai University, were deputed to other Government Colleges for a period of three years on contract basis. The petitioner was deployed to the Government Arts and Science College at Valparai, Coimbatore District. At the relevant point of time, COVID-19 Pandemic was already declared. Thereafter, the Government had declared lock down from 25.03.2020. In this background, the petitioner claims that he could not join the College at Valparai owing to COVID-19 Pandemic and thereafter, he could join duty only on 11.11.2020. When he had sought for disbursement of salary for the period from 28.02.2020 to 10.11.2020, the same was rejected through the Order passed by the second respondent dated 10.05.2022.



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2. The learned counsel for the petitioner places reliance of G.O.Ms.No.304, Revenue and Disaster Management Department, dated 17.06.2010 and submitted that the period of absence of the Government employees during the COVID-19 Pandemic requires to be regularised as duty period in view of G.O.Ms.No.304, Revenue and Disaster Management Department, dated 17.06.2010 as well as other Government orders.

3. Learned counsel for the second respondent submits that along with the petitioner, 38 persons were also deployed from Annamalai University to various Government Colleges and all the other persons have joined the respective Government colleges and therefore, the petitioner, having failed to join the service, cannot be extended with any lenience and since he has joined the duty only on 11.11.2020, he would be entitled for salary only from that date alone.

4. Heard both sides and have perused the materials available on reocrd.

5. It is common knowledge that the infection of COVID 19 virus on the society at large was very prevalent from the month of December 2019 onwards.



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Thereafter, the World Health Organisation had declared the virus as a Pandemic on 11.03.2020 and adopting the same, the Government of India has also declared it as a Pandemic on 15.03.2020. Consequently, complete lock down was also declared by Government of Tamil Nadu on 25.03.2020, which was periodically being extended. At the relevant point of time, situation arose where the Government employees were not able to attend duty or join duty on completion of their leave period. In this background, G.O.Ms.No.304, Revenue and Disaster Management Department, dated 17.06.2010 came to be passed, whereby, the period commencing from 25.03.2020 to 17.05.2020 and from 19.06.2020 to 30.06.2020 came to be regulated in the following manner:-

“ 5. The Government have decided to issue the following clarifications to regulate the period of absence of Government employees during the period under lock-down including the intense lock-down from 19.06.2020 to 30.06.2020 as below and direct accordingly:-

*(i) the period of absence of Government employees during the lock-down from 25.03.2020 to 17.05.2020 be **treated as duty**, since no transport facility was available;*

(ii) those officers/officials who applied for their



*eligible leave prior to lock-down (i.e.,) prior to 25.03.2020 and not able to join duty on completion of the leave period due to lock-down upto 03.05.2020, be treated as **deemed to have joined duty** on their date of completion of leave period applied (in the case of leave on medical grounds, subject to production of Medical Fitness Certificate).*

(iii) those officer/officials who have not attended office as per 50% roster drawn w.e.f.18.05.2020 (after arrangement of minimum transport facilities) even for UEL on PA (HALF PAY)/EL WA without Medical Certificate and without pay and allowances) for the period from 18.05.2020 till he/she resume duty;

(iv) if any officer/officials who have not attended the office on specific allotted day as per roster he/she has to submit leave application from the day he/she attended office last, till he/she resumes duty (eligible leave i.e., C.L./E.L/UEL on PA (half pay)/EL without pay allowance & without Medical Certificate);



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(v) if a Govt. servant is on medical treatment other than Covid-19, he/she may be sanctioned UEL on M.C., if applied (Medical Certificate to be produced)'

(vi) if the Government servant himself is Covid Positive and under treatment (of) if his/her family members are affected with Covid and he/she is quarantined (or) if their residence is in the containment zone requiring quarantine due to Covid-19, the entire period of treatment/quarantine as certified by appropriate Medical authorities be treated as **Special Casual Leave;**

(vii) in respect of Differently-abled employees, the Welfare of Differently abled Persons department issued various orders from time to time exempting the differently-abled persons from attending duty for each lock-down. Such periods of exemption granted by the Welfare of Differently Abled Persons department be **treated as duty.**



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(viii) in respect of Pregnant women, the GOI, Ministry of Personnel in the reference fifth read above, have decided not to include Pregnant Women in the roster during lock-down. In the same analogy the pregnant women Government employees be exempted from attending duty and the period of above exemption be treated as duty;

(ix) in respect of employees with co-morbidities, the GOI, Ministry of Personnel in the reference fifth read above, have decided not to include employees with co-morbidities in the roster during lock-down. In the same analogy, Government employee who are aged 55 years and above with co-morbidities, upon production of medical certificate, be exempted from attending duty and the period of above exemption be treated as duty;

(x) The above guidelines shall be applicable to employees of Commissions, Boards, Corporations, Universities, Companies, Institutions, Societies, etc., of the State Government.”



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6. In the same Government Order, it is stated that the above guidelines are applicable for the entire periods of lock-down till the Government announces the end of the lock-down under the Disaster Management. Ultimately, in the year 2021, the lock-down was lifted by the Government. Owing to the prevalence of Covid-19 Pandemic, the petitioner was not able to join duty at Valparai. In this background, he had filed a writ petition before this Court in W.P.No.9599 of 2020 challenging the order of deputation, deputing him to Valparai. During the pendency of that writ petition, the University had re-deployed the petitioner to Government Arts and Science College, Lalgudi on 07.11.2020, to enable him to join duty. In view of the same, the writ petition came to be closed on 07.11.2020, recording the re-deployment order.

7. The only objection of the learned counsel for the University is that when the 38 other persons, who were originally re-deployed from Annamalai University to various other colleges have joined in their respective colleges, the petitioner's case alone cannot be taken as an exception and in view of his joining duty only on 11.11.2020 at Lalgudi, he is not entitled for the salary for the period from 28.02.2020 to 10.11.2020.



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WEB COP 8. I am not in agreement with the submission of the learned counsel appearing for the University for two reasons:-

8.1. Firstly, when the Government itself has passed orders, regulating the period of absence of the Government employees from 25.03.2020 to be treated as duty period and extending such guidelines till the lifting of the lock-down in the year 2021, quoting the cases of other Government employees, who had joined duty as an impediment, cannot be sustained.

8.2. Secondly, when the petitioner had earlier challenged the order of deputation expressing his inability to join duty at Valparai owing to the prevalence of COVID-19 pandemic, this Court had suggested to the University to reconsider reposting the petitioner to some other near place and accordingly, the second respondent had also complied with the suggestion of the Court and passed an order on 07.11.2020, re-deploying the petitioner to Lalgudi. In this background, the petitioner had joined duty at Lalgudi on 11.11.2020. Apparently, the second respondent themselves had ratified the situation,



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wherein, the petitioner had failed to join duty on deputation through the original order dated 26.02.2020, which would amount to condoning the lapse of not joining. Having ratified the fact that the petitioner had not joined at Valparai and permitted him to join at Lalgudi, they cannot now take a stand that since 38 other persons who were originally deployed had joined, the petitioner's case does not require for consideration. Above all, the Government itself had passed orders condoning the absence of its employees during the pandemic period. This apart, even assuming that if the petitioner had joined at Valparai, he may not have attended duty owing to the lock-downs and his period of absence would still be considered as duty period.

9. For all the foregoing reasons, this Court is of the affirmed view that by virtue of Government orders, regulating the period of absence of the Government employees during the COVID-19 Pandemic period, as 'duty period', the petitioner would be entitled for salaries for the period from 28.02.2020 to 10.11.2020..



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10. In the result, the impugned orders dated 19.03.2022 passed by the first respondent and the Official Memorandum issued by the second respondent dated 10.05.2022 are hereby quashed. Consequently, there shall be a direction to the second respondent herein to pass appropriate orders, treating the period of absence of the petitioner from 28.02.2020 to 10.11.2020, as “duty period” and disburse the salaries of the petitioner for the post of Assistant Professor for the aforesaid period. Such order of disbursement shall be made, within a period of six weeks from the date of receipt of a copy of this order.

11. With the above direction, the writ petition is allowed. No costs.

08.11.2023

Index:Yes

Speaking order

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To

1. The Joint Director,
Directorate of Collegiate Education,
DPI Campus, College Road,
Chennai-600 006.

2. The Registrar-in-Charge,
Annamalai University
Annamalai Nagar -608 002.



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M.S.RAMESH,J.,

SR

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