



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.17026 of 2020
& W.M.P.No.10297 of 2021

S.Selvam

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Petitioner

versus

1.The Secretary to Government,
Personnel & Administrative
Reforms (P) Department,
Government of Tamil Nadu,
Fort St.George, Secretariat,
Chennai - 600 009.

2.The District Educational Officer,
Sankari, Salem District.

3.The Management of Vaideeswara Higher Secondary School,
Mettur Dam - 2,
Salem District.

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Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to regularize the service of the petitioner with continuity in service from the date of appointment i.e. from 05.06.2002, with backwages and other benefits.

For Petitioner

:

Mr.V.Sivalingam
for M/s.C.S.Associates



For Respondent Nos.1 & 2 : Mr.P.Sanjai Gandhi
Government Advocate
For Respondent No.3 : Mr.Sai Raaj

ORDER

The petitioner has filed this petition seeking for a writ of mandamus, directing the respondents to regularize his service with continuity in service from the date of his appointment dated 05.06.2002 with backwages and other benefits.

2. The petitioner, who was appointed as a Record Clerk in the third respondent School was terminated *vide* order dated 27.02.2004 on the basis of G.O.Ms.212 Personnel and Administrative Reforms (P) Department, dated 29.11.2001. Subsequently, the petitioner filed a Writ Petition in W.P.No.7946 of 2004 which was disposed on 12.09.2007. In the said order, the following relief has been granted to the petitioner:-

“3. It is seen from the records that the petitioner was appointed as Record Clerk on 5.6.2002 in the substantial sanctioned vacancy by the third respondent. The same was approved by the second respondent by order 10.10.2002. But the said orders were cancelled by the impugned order dated 16.3.2003 on the sole ground that there was a ban during said relevant period. It is an admitted fact that the ban has been



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lifted. Learned counsel appearing for the petitioner fairly submitted that the petitioner will not insist for backwages.

4. Hence, the respondents are directed to re-consider the case of the petitioner afresh, taking note of the fact that he was appointed by the third respondent and the same was also approved by the second respondent, within a period of four weeks from the date of receipt of a copy of this order.”

3. It is to be noted that a time limit of four weeks was fixed for complying the said order. However, the said order has not been complied and it prompted the petitioner to file another Writ Petition in W.P.No.34146 of 2013. The said Writ Petition has been disposed on 17.12.2013 to consider the representations of the petitioner for reinstatement once again. Even in that order, a time limit of four weeks was given as under:-

“7. In view of the nature of relief sought for, this Court is of the considered view that without going into the merits of the matter it would be suffice to direct the respondents to consider the representations submitted by the petitioner for reinstatement and pass appropriate orders within a specified time.

8. Accordingly, the writ petition is disposed directing the respondents to consider the representations of the petitioner for reinstatement in accordance with law and pass orders



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thereon within a period of four weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs.”

4. In the order dated 17.12.2013, the petitioner has not given any undertaking that he will not claim backwages for the period starting from the expiry of four weeks i.e. from 12.09.2007 which is the date of the order passed in W.P.No.7946 of 2004 till the order dated 17.12.2013.

5. Despite time limit has been fixed twice by virtue of two orders of this Court, the petitioner has not been reinstated till 18.03.2015. Now the respondents claimed that the petitioner has been reinstated only as a Library Assistant and not as a Record Clerk and there is no continuity of service and he was drawing a different scale of pay and hence his claim for backwages is not maintainable.

6. The petitioner has not claimed backwages at the rate of the pay scale payable to the Library Assistant. The petitioner was struggling to get reinstatement in his original post as Record Clerk. It was up to the respondents to engage the services of the petitioner in compliance of the



orders of this Court either in the post of Record Clerk or in the post of Library Assistant, for which the petitioner is in no way responsible. Though it is acceptable for the respondents to claim that the petitioner is not entitled to backwages till 12.09.2007 during which point he himself has given an undertaking for not claiming backwages. But the delay caused thereafter was not due to any fault on the part of the petitioner.

7. Mr.P.Sanjai Gandhi, learned Government Advocate for the respondents 1 and 2 submitted that no backwages can be ordered for the period when the employee did not work and the principal of *no work no pay* has to be implemented strictly. To canvass the said point, he relied on the decision of the Hon'ble Supreme Court held in ***General Manager, Haryana Roadways Vs. Rudhan Singh*** reported in ***AIR 2005 SC 3966*** wherein it is stated as under:-

“8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment, i.e., whether after proper advertisement of the vacancy or inviting applications



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from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period, i.e., from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year.”

8. To deny backwages or to avoid backwages, there cannot be any straight jacket formula but it will differ from case to case basing on the



facts. If the respondents disregard the orders of this Court and had chosen to reinstate the person after 9 years he cannot come and say that they should take advantage of their own terms and the petitioner should be deprived of getting backwages. The claim of the respondents that the petitioner is not entitled to backwages since he did not work during that period cannot be countenanced.

9. With the above observations, this Writ Petition is allowed and the respondents are directed to regularize the service of the petitioner with continuity of service from the date of his appointment *i.e.* from 05.06.2002, with back wages and other benefits, within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

20.10.2023

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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R.N.MANJULA, J.

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To

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