



W.P.(MD)No.14944 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.14944 of 2020

and

W.M.P.(MD)No.12571 of 2020

S.Saravanan

... Petitioner

Vs.

1. The State of Tamil Nadu,
Through its Secretary,
School Education Department,
Fort St.George, Chennai.
2. The Joint Director of School Education (Personnel),
Office of the Directorate of School Education Department,
College Road, Chennai - 600 006.
3. The Chief Educational Officer,
(Sarva Shiksha Abhiyan),
Office of the Chief Educational Officer,
PTA Building,
Sri Brahadambal G.H.S.S. Campus,
Pudukkottai - 622 001.



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4. The Supervisor,
(Sarva Shiksha Abhiyan),
Block Resource Centre,
Aranthangi,
Pudukkottai - 614 616.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the impugned order in second respondent dated 29.08.2020 by proceedings in Na.Ka.No. 61571/C4E3/2017 and the consequent order of the third respondent dated 25.09.2020 by his proceedings in Na.Ka.No.1158/A3/OPAKA/2018 quash the same as illegal and further direct the respondents to treat the period from 10.10.2008 to 30.06.2016 as duty and continuity of service with full monetary benefits in accordance with the Rule 54 Rulings 9 of the Tamil Nadu Fundamental Rules.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.S.Shaji Bino
Special Government Pleader



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ORDER

This Writ Petition has been filed to call for the records of the impugned order passed by the second respondent vide proceedings in Na.Ka.No.61571/C4E3/2017, dated 29.08.2020 and the consequent order of the third respondent, dated 25.09.2020 vide proceedings in Na.Ka.No. 1158/A3/OPAKA/2018, quash the same as illegal and further direct the respondents to treat the period of the petitioner from 10.10.2008 to 30.06.2016 as duty and continuity of service with full monetary benefits in accordance with the Rule 54 Rulings 9 of the Tamil Nadu Fundamental Rules.

2. The case of the petitioner is that the petitioner has participated in the selection process to the post of District Coordinator / Block Resource Teacher Educator and he was appointed as District Coordinator in District Project Centre at Ramanathapuram District Office on 23.09.2008. Prior to that, the petitioner married one Arockiya Rita on 13.07.2002, out of their wedlock, they blessed with two children. The wife of the petitioner



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committed suicide. In this connection, a case in Crime No.634 of 2008 was registered against the petitioner, on the file of the Kenikarai Police Station, Ramanathapuram for the alleged offences under Sections 304(B), 498(A) and 306 of IPC. Hence, the second respondent vide proceedings dated 07.11.2008, suspended the petitioner from service with effect from 10.10.2008. After trial, the learned Additional Sessions Judge, (Fast Track Court) Ramanathapuram, by judgment dated 04.11.2009, in S.C.No.100 of 2009, convicted the petitioner and sentenced him to undergo rigorous imprisonment for the said offences. Based on the conviction rendered by the Criminal Court, the second respondent by proceedings dated 28.06.2010 removed the petitioner from service. In the meanwhile, the petitioner preferred an appeal before this Court in CrI.A.(MD)No.345 of 2009 against the conviction and sentence made in S.C.No.100 of 2009, dated 04.11.2009. This Court, by judgment dated 08.07.2015, acquitted the petitioner from all the charges. The petitioner, therefore, submitted a representation, seeking reinstatement in service. However, the second respondent, by proceedings dated 21.06.2016, reinstated the petitioner as Teacher Education (Maths) in Block Resource Centre, Aranthangi, Pudukkottai District and on



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01.07.2016, he has joined duty. Thereafter, the petitioner has made a representation to the third respondent to calculate the suspension period as well as removal period by treating the said period spent on duty and to sanction the backwages for the said period. However, the second respondent has passed an order on 29.08.2020 stating that the said period was assigned as the period of loss of pay and the same was confirmed by the third respondent on 25.09.2020. Challenging the same, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the Government servants, who were suspended in view of pendency of any criminal case or conviction and subsequently the criminal case ended in acquittal, either honourably or otherwise, the Government servants have to be reinstated by revoking the suspension and in case of such reinstatement, the Government servants shall be entitled to claim the said period of suspension as duty period, for which, the Government servant would also be entitled to claim full salary as well as all other attendant benefits. In support of the said submission, the learned counsel would rely upon Ruling No.9(b)



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of Fundamental Rule 54, as inserted by G.O.(Ms)No.228, Personnel and Administrative Department, dated 13.04.1989. As per Ruling 9(b) of Fundamental Rules 54, *the Government Servant is dismissed or removed from service or compulsorily retired on the ground of conduct which has been led to his conviction on a criminal charge; and the Government servant is subsequently reinstated in service on his acquittal by the Court either on merits or on the ground that the charge has not been proved against him or by giving benefit of doubt or on any other technical ground, he must be regarded as having been prevented from discharging his duties and the period of his absence including the period of suspension shall be treated as duty for all purposes and he shall be paid full pay and allowances which he would have been entitled to, had he not been under suspension, or dismissed or removed or compulsorily retired from service.* Further, the said Government Order is also elaborately discussed by this Court in W.P.(MD)No.5562 of 2016, dated 09.05.2017, wherein the Writ Petition was allowed by issuing direction to the respondents to pay full backwages as well as other service benefits. Accordingly, he prayed for appropriate orders.



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4. The learned Special Government Pleader appearing for the respondents would submit that the petitioner has made a request by way of sending representation dated 23.10.2017 to treat the suspension and removal period as spent on duty and to sanction the backwages for the said period. The petitioner's request was considered by the second respondent. Originally, the petitioner joined the Department on 24.09.2008 and removed from service on 28.06.2010. Subsequently, he was reinstated into service and joined duty on 01.07.2016. The petitioner did not complete his probation period and there was no authorised leave available for the petitioner. Except the Earned Leave which was surrendered to the Government, there is no other permissible leave available for the petitioner to regularise his absent period as spent on duty. Since there is no leave available for the petitioner, they have regularised the period from 10.10.2008 to 30.06.2016 as non duty period based on 'No Work No Pay' principle. Hence, there is no illegality committed by the respondents 2 and 3 in passing the rejection orders which are challenged in this Writ Petition.



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5. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

6. The facts in the present case are not in dispute. Admittedly, the petitioner rendered service as District Coordinator and before completion of his probation, he was implicated in Crime No.634 of 2008 due to suicide committed by his wife. Based on the compliant, he was arrested and remanded to judicial custody. Subsequently, the petitioner was suspended with effect from 10.10.2008. After investigation, the Law Enforcing Agency filed a charge sheet and thereafter, the Criminal Court convicted the petitioner and sentenced to undergo rigorous imprisonment for the said offences in S.C.No.100 of 2009, dated 04.11.2009. Subsequently, the petitioner's services were terminated on 28.06.2010 by the second respondent. In the meanwhile, the petitioner preferred an appeal against the conviction and sentence made in S.C.No.100 of 2009, dated 04.11.2009 and this Court, by judgment dated 08.07.2015, acquitted the petitioner of all the charges. The reinstatement of the petitioner in service has already been ordered by the second respondent. However, the only question is whether he



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is entitled to backwages from the date of dismissal till the date of reinstatement. Though Rule 9(b) of Fundamental Rules 54, is in his favour, however, it has been the consistent view of the Courts that when a person is not physically employed, applying the concept of 'No Work No Pay', the petitioner is not entitled for any backwages. However, in the present case, the petitioner's services were regularised but backwages were not paid to him. Admittedly, the petitioner was not discharging any duty due to conviction and he was reinstated on acquittal.

7. In view of the above, applying the concept of 'No Work No Pay', this Court is not inclined to grant relief sought for in the Writ Petition. However, the petitioner is entitled to count the service for the period of absence for the purpose of pension and all other aspects including seniority.

8. With the above observations, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.



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NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

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The State of Tamil Nadu,
School Education Department,
Fort St.George, Chennai.
2. The Joint Director of School Education (Personnel),
Office of the Directorate of School Education Department,
College Road, Chennai - 600 006.
3. The Chief Educational Officer,
(Sarva Shiksha Abhiyan),



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