



W.P.(MD)No.5437 of 2007

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.5437 of 2007

V.S.S.Narayanan

... Petitioner

Vs.

The Executive Engineer,
Public Works Department,
Adaivinainar Reservoir Project Division,
Kudiyiruppu,
Kuttralam, Tenkasi Via,
Tirunelveli District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ, to call for the records relating to the Proceedings of the Executive Engineer, Public Works Department (WRO), Adavinainar Kovil Reservoir Project Division, Kudiyiruppu, the respondent herein made in N.No.Kamukkam/Ka.Kaa.2/2000, dated 10.05.2002 quash the same and consequently direct the respondent herein to treat the period of absence from 01.06.1999 to 31.01.2001 as duty and consequently direct the Respondent herein to disburse the arrears of salary due to the applicant in the post of Office Assistant within a short date that may be fixed by this Court.



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For Petitioner : Mr.H.Arumugam

For Respondent : Mr.R.Suresh Kumar,
Additional Government Pleader

ORDER

This writ petition is filed challenging the impugned order, dated 10.05.2002, consequently directing the respondents to treat the period of absence from 01.06.1999 to 31.01.2001, as duty period and also seeking further consequential direction to the respondents to disburse the arrears of salary.

2. Heard Mr.H.Arumugam, learned counsel appearing for the petitioner and Mr.R.Suresh Kumar, learned Additional Government Pleader appearing for the respondent. Perused the material documents available on record.

3. The petitioner was appointed as Office Assistant in the year 1969. On 31.03.1999, a common transfer order was passed by the respondents, whereby, the petitioner who was in Serial no.2 was transferred from Adavinainar Kovil Sub-Division-II to Circle Office, Palayamkottai, which is around 87 Kms away.



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4. In the meanwhile, the petitioner has applied medical leave for a period from 05.04.1999 to 31.05.1999, thereafter, based on the recommendation of the Medical Board he has extended his medical leave for a period from 15.05.1999 to 31.05.1999. During this period, the respondents have issued the transfer order. However, the order was also passed by the Superintending Engineer, Tirunelveli on 16.07.1999, keeping above the said earlier transfer order in abeyance. Therefore, the petitioner could not join the post in Chithar Sub Division. Subsequently, the Chief Engineer, vide proceedings, dated 16.09.1999 has canceled the order issued to the petitioner from Palayamkottai Circle to Chithar Sub Division, without assigning any reasons.

5. The cancellation order was passed without any notice to the petitioner. Therefore, the petitioner has filed O.A.No.6122 of 1999 on the file of the Tribunal. The contention of the petitioner is, though the transfer order was canceled no consequential notice was issued to the petitioner. Since no posting order was passed, the Tribunal has passed an interim order directing the respondents to submit a report.



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6. In the meantime, the respondents have issued a charge memo and the same was challenged by the petitioner in O.A.No.317 of 2001 and obtained stay order on 07.01.2001. Thereafter, the petitioner has joined Chithar Division and continuing in the post. Thereafter, the respondents have initiated disciplinary proceedings and imposed punishment of 'Censure' vide order, dated 10.05.2002. The respondents however, regularized the period of absence as Unearned leave without salary. The petitioner was aggrieved by the regularization order and hence, the petitioner is before this Court.

7. Today, the respondents have sought time for filing counter. Since this writ petition is filed in the year 2002 before the Principal Seat at Madras and thereafter, transferred to Madurai Bench and all these years the respondents have not filed any counter. Therefore, time sought for filing counter was rejected and directed the learned Additional Government Pleader to make his objections based on the materials available on record.



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8. The learned Additional Government Pleader has relied on the Judgment rendered in W.P(MD)No5575 of 2017, where it has been stated that transfer is an incidental to service and the same ought to be obeyed. The petitioner ought to have join in the transferred post, thereafter at liberty to sought retransfer to any nearby post. Without joining to the transferred post by absenting himself, the petitioner has caused unrest among the employees community. If the concession is shown to one employee, all other persons will come with the same plea. There is no rule to regularize the said absence period to treat as a duty period. In support of his contention, he has relied on the Judgment rendered by this Court in ***W.P(MD) No.35648 of 2004, dated 29.08.2017***. He also relied on the Judgment rendered by this Court in ***W.A.(MD)No.1339 of 2021, dated 03.08.2021***. Since the petitioner has not worked during the said period he is not entitled to any salary under the principles of '*No work No pay*'.

9. The learned counsel appearing for the petitioner submitted that the petitioner was on medical leave for a period from 05.04.1999 to 31.05.1999. The transfer order was passed on 31.03.1999. Subsequently, for a period of one year the petitioner was under medical leave. Thereafter, the petitioner has submitted a



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request to re-transfer him in any place near Tenkasi, vide letter, dated 21.04.1999.

The respondents have not considered the same. Again, the petitioner has submitted another request, dated 26.07.1999 by narrating his difficulties to transfer post. The respondents have considered both the representations and directed the petitioner to join in the transferred post. Subsequently, the respondents, vide order, dated 16.07.1999, had kept the transfer order in abeyance, then on 16.09.1999 the transfer order was cancelled. Thereafter until 31.01.2001, the respondents have failed to pass any reposting order, which made the petitioner as a compulsory waiting period. The petitioner was granted reposting order, subsequent to the interim direction passed by the Administrative Tribunal in O.A.No.6122 of 1999 and O.A.No.317 of 2001. When the earlier transfer order was canceled, consequential order ought to have been passed, the respondents ought to have issued any reposting order immediately on 16.09.1999 itself. Therefore, this Court is of the considered opinion that the petitioner's claim to regularize the said period from 01.06.1999 to 31.01.2001 as a duty period is valid.



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10. The further contention of the respondents is that the petitioner has not submitted any medical certificate and he has not approached the respondents for issuing reposting order. It is seen that the petitioner had submitted a representation, even thereafter the respondents have not considered the same. The respondents finally, issued the cancellation of the transfer order, vide order, dated 16.09.1999. As stated supra, the respondents have made the petitioner under compulsory waiting period and has passed an order reposting the petitioner after an interim order is passed in Tribunal. Therefore, the period from 16.07.1999 until 31.01.2001, the petitioner is entitled to regularize the said period as a duty period.

11. The Learned AGP submitted that if salary is paid for the aforesaid period, it would amount to payment of salary without doing any work. Under the principles of “No work No pay”, the petitioner is not entitled to salary. This Court is of the considered opinion that admittedly the petitioner has not served during the said period. Therefore, this Court is of the considered opinion that the petitioner is entitled to continuity of service for the entire disputed period i.e. from 16.07.1999 to 31.01.2001. But the petitioner is entitled to 50% of salary for



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the period from 16.07.1999 to 31.01.2001. Hence, the respondents are directed to pay 50% of salary for the said period. The said exercise shall be completed, within a period of eight weeks from the date of receipt of a copy of the order. This effect shall be made entry in the Service Register of the writ petitioner also.

12. With these observations and directions, this writ petition is allowed in aforesaid terms. No costs.

Index : Yes / No
Internet : Yes
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To

The Executive Engineer,
Public Works Department,
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S.SRIMATHY, J

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**Order made in
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