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W.P.No.2505 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.12.2023

Pronounced on : 13.06.2024

C O R A M

The Hon'ble Dr.Justice D.NAGARJUN

W.P.No.2505 of 2015

B.M.Sibagathulla

...Petitioner

Vs

1. Additional Director General of Police,
and Inspector General of Prisons,
Department of Prison,
Chennai.

2. The Superintendent of Central Prison,
Salem.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus calling for the records of the impugned letter dated 28.11.2014 in proceedings No.33169/EW-1/2012 passed by the first respondent and quash the same as illegal and direct the respondents to treat the period from 01.03.1995 to 28.04.2006 by regularizing the period with pay fixations according to rules and pay the petitioner the monetary benefits.

For petitioner : Ms.A.Arulmozhi

For respondents : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader



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ORDER

This writ petition has been filed seeking to issue writ of certiorarified mandamus to call for the records dated 28.11.2014 in proceedings No.33169/EW-1/2012 passed by the first respondent and quash the same as illegal and direct the respondents to treat the period from 01.03.1995 to 28.04.2006 by regularizing the period with pay fixations according to rules and pay the petitioner the monetary benefits.

2. The petitioner was originally appointed as Grande II Warden on 11.05.1983. He has applied for medical leave from 01.02.1994 to 28.02.1994 and after expiry of the medical leave he has applied for long leave on loss of pay for the period from 01.03.1994 to 28.02.1995 but his request was rejected by the second respondent on 25.06.1994 and the petitioner was directed to join duty. However, he was not able to join duty at Bangalore due to his psychologically condition. He offered to join duty on 29.07.1997 and submitted representation to the second respondent to permit him to join duty. But the second respondent did not permit the petitioner to report duty and issued proceedings dated 18.08.1997 stating that he was deserted from duty and finally, he was terminated from service. Aggrieved by the same, the



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petitioner preferred an appeal before the first respondent on 16.09.1997 and the same was dismissed by way of a non speaking order. He filed W.P.No.25449 of 2005 and the same was allowed by this Court by an order dated 27.02.2006 directing the to set aside the order of the appellate authority and directed the first respondent to consider the appeal in accordance with Rule 23 of Tamil Nadu Civil Services (Discipline and Appeal) Rules within a period of six weeks. Accordingly, based on the order dated 27.02.2006, the appellate authorities passed order dated 02.04.2006 directing the respondent to re instated the petitioner and also directed for disciplinary proceedings for unauthorized absence. Accordingly, the second respondent has permitted the petitioner to join duty and he joined duty on 09.04.2006.

3. The second respondent has fixed the basic pay of the petitioner as Rs.3,050/- as per the 6th pay commission. The petitioner has submitted representation to the second respondent dated 23.08.2006 requested to discharge him from the charges framed against him. The second respondent *vide* proceedings dated 02.05.2005 passed an order of stoppage of increment without cumulative effect for a period of six months.

4. The petitioner submitted his representation dated



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04.07.2007 for re fixing his pay by regularizing the period of his absence. The second respondent issued show cause notice dated 17.07.2007 seeking an explanation as to why the period between 01.03.1995 to 28.04.2006 should not be considered as leave on loss of pay. The petitioner submitted his explanations stating that his health condition and treatment under went by him and submitted that if the said period from 01.03.1995 to 28.04.2006 was considered as leave period on loss of pay, he would be put to heavy financial loss and thereby, requested the respondent to regularize the said period with pay. The second respondent by letter dated 17.12.2007 has rejected the request of the petitioner.

5. The petitioner, due to his financial position could not approach an advocate and has made a detailed representation dated 14.09.2012 to the first respondent to consider and regularize the leave period. But no orders were passed.

6. The petitioner has made one more representation on 04.09.2013 and retired from services on 31.03.2014. His pension was fixed at Rs.3,075/- and if his long leave period between 01.03.1995 to 28.04.2006 is regularized he will get a pension of Rs.9,970/- per month. The representation



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submitted by the petitioner was rejected by the second respondent *vide* proceedings dated 28.11.2014.

7. The learned counsel for the petitioner has submitted that the impugned orders dated 28.11.2014 should not have been passed by the first respondent as it was passed without considering the representations of the petitioner that his absence was only due to his medical grounds. The representation filed by the petitioner on 14.09.2012 was kept pending for a period of two years and then impugned orders were passed.

8. The second respondent has filed counter affidavit mentioning that the Madurai Bench of this Court in order dated 16.12.2013 in W.A.(MD)No.1255 of 2013 and M.P.(MD)Nos.1 of 2013 against W.P.(MD) No.5841 of 2013 has held that wages cannot be paid for non working period on the ground that “No work No pay”.

9. The enquiry officer who was appointed to enquire the misconduct has filed report that the charges framed against the petitioner was proved. The punishment of postponement of his next increment for a period of six months without cumulative effect was awarded by the Superintendent of



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Prisons, Central Prison, Salem *vide* proceedings No.G1/5257/2006 dated

02.05.2007. Therefore, the period of absence from 01.03.1995 to 28.04.2006 was treated as leave on loss of pay by the second respondent.

10. Heard both sides and perused the materials available on record.

11. The petitioner who was working as Grade II Warden. He initially applied for medical leave from 01.02.1994 to 28.02.1994 and later took long leave on loss of pay from 01.03.1994 to 28.02.1995. His request for grant of long leave was rejected by the second respondent with a direction to report for duty. The petitioner stated to have taken medical treatment on account of his psychological condition and ultimately made an attempt to report duty on 29.07.1997. But he was declared as deserted and ultimately, terminated from service. As per the directions of this Court by order dated 27.02.2006, the appellate authorities directed the first respondent to re instate the petitioner on humanitarian basis and accordingly, the petitioner joined duty on 29.04.2006. However, a direction was given to initiate disciplinary proceedings and finally, he was found guilty for his unauthorized absence. He was imposed with a punishment of stoppage of increment without cumulative



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effect for a period fo six months.

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12. The second respondent authority issued show cause notice as to why the period from 01.03.1995 to 28.04.2006 shall not be considered as leave on loss of pay. The petitioner has requested to consider the said period as a long leave with wages citing his financial loss and submitted that his absence was on account of his health conditions. But the same was rejected and the first respondent has issued proceedings dated 28.11.2014 rejecting his requests. The petitioner aggrieved by the impugned orders dated 28.11.2014 for not considering the period of absence from 01.03.1995 to 28.04.2006 as long leave with wages. The respondent has considered the said period as leave in loss of pay.

13. The grounds on which the petitioner is seeking to get regularized for the period from 01.03.1995 to 28.04.2006, nearly more than 11 years is only on account of his health condition and financial losses. According to him, absence for the said period on account of his health condition as he was psychologically depressed during the said period and further, in case if the said period is not regularized he will be getting an amount of Rs.3,075/- instead of Rs.9,970/- as pension. Thereby, he will be put to to lot of financial constraints. Unfortunately, these two aspects cannot be the basis to



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regularize the services of the petitioner.

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14. When the request of the petitioner for grant of unauthorized leave was rejected on 25.05.1994 to join duty, the petitioner should have reported for duty. However, he went on to remain absent unauthorizedly and submitted later that he has psychological depression. It is clear that he has not filed any medical records to show that he has taken treatment for his health conditions at Bangalore. Further, more importantly, on respect of his absence period enquiry was conducted and after completion of enquiry, enquiry report was filed and the petitioner was found to be guilty of the charges leveled against him.

15. The petitioner was unauthorizedly absent for a period of 11 years. It appears that appellate authorities have taken a lenient view and imposed minor punishment without cumulative effect for a period of six months. Once the petitioner was found guilty for his unauthorized absence he did not contest the findings. Now, the petitioner cannot say that the said period of unauthorized absence to be converted as regular period of pay. Further, once punishment has been imposed, either minor or major for the findings that the petitioner was unauthorizedly absent, the petitioner cannot request to



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regularize unauthorized period pay. Therefore, the petitioner failed to place valid ground s under which the second respondent should have considered converting the unauthorized absence as leave with pay. In order to consider the absence period with leave as leave with pay, the petitioner must have submitted valid proof for the grounds stated.

16. It is a classic case where the petitioner's request can be classified on the ground of delay and latches for a period of 11 years. The petitioner retired form service in the year 2014 and he has approached this Court by way of this writ petition in the year 2015. Though, he has mentioned in the affidavit that on account of his financial problems he approached this Court belatedly, he has not explained. The petitioner who has filed this writ petition in the year 2015 was not diligent in approaching this Court in agitation, his rights seeking for the relief to direct the second respondent to regularize the leave cannot be granted on this ground also.

17. In view of the above, the petitioner failed to make any grounds under which direction can be given to the respondent to convert his unauthorized absence period of 11 years as leave with pay. Consequently, the



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request of the petitioner to quash the impugned order cannot be considered.

Accordingly, this writ petition is dismissed. No costs.

13.06.2024

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Index : Yes/No
Internet : Yes/No
Citation : Yes/No

To,

1. Additional Director General of Police,
and Inspector General of Prisons,
Department of Prison,
Chennai.
2. The Superintendent of Central Prison,
Salem.



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Dr.D.NAGARJUN,J

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Pre-delivery order made in
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