



Writ Petition No.9660 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>09.09.2024</i>
<i>Pronounced on</i>	<i>29.10.2024</i>

CORAM

THE HONOURABLE MR. JUSTICE BATTU DEVANAND

Writ Petition No.9660 of 2018

G.Chandrasegar

..Petitioner

vs.

1.The Deputy General Manager, HR(NS&M),
N.S.Unit, NSU Building,
ITI Ltd.,
Doorvani Nagar,
Bangalore-560 016

2.The Chief Manager, HR(NS&M),
N.S.Unit, NSU Building,
ITI Ltd.,
Doorvani Nagar,
Bangalore-560 016

3.The Chief Manager-HR(II),
ITI Ltd., Registered and Corporate Office,
ITI Bhavan,
Doorvani Nagar,
Bangalore-560 016

4.The Chief Regional Manager,
ITI Ltd., Regional Office,
Panagal Building 3rd Floor,
No.1, Jeenis Road, Saidapet,



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... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of Ref:IM/HR/40640 dated 07.02.2018 issued by the first respondent and quash the same and direct the first respondent to pay salary for the period from 28.12.2015 to 31.01.2017.

For Petitioner : Ms.L.Sweety for Mr.M.Nallathambi

For Respondents : Mrs.Rita Chandrasekar for
M/s.Iyer & Dolia

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records of Ref:IM/HR/40640 dated 07.02.2018 issued by the first respondent and quash the same and direct the first respondent to pay salary for the period from 28.12.2015 to 30.01.2017.

2.The brief facts, which led to the filing of the present Writ Petition, can be stated hereunder:

The petitioner, while working as Manager at Regional Office, Chennai, he came to be suspended from services on 28.12.2015 and was



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also proceeded with disciplinary proceedings on the allegation that he abused female staff member namely one R.Nirmala by using un-parliamentary language and criticized her character. Later, he was imposed with the punishment of 'censure' and suspension was also revoked on 17.02.2016, but he was not allowed to join duty and immediately on the same day i.e., on 17.02.2016, he was transferred to Naini Unit in Utter Pradesh by order dated 18.02.2016 and directed him to join duty with immediate effect on the administrative reasons. The grievance of the petitioner was that the fourth respondent with a malafide intention, has transferred the petitioner to a far away place that too on the verge of his retirement as he was having only one year of service then. He made a representation to reconsider the decision and to transfer him in other office nearby Chennai, which was not considered, which prompted the petitioner to file a Writ Petition in WP No.15425 of 2015. This Court, vide order dated 23.08.2016, directed the respondents to consider the representation of the petitioner and pass orders. However, the respondents have not considered the representation and insisted the petitioner to report duty at Naini Unit and only on his reporting to duty at Naini Unit, the respondents will consider the representation of the petitioner. Hence, the petitioner had



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moved a contempt petition in Cont.P.No.2716 of 2016. Later, pursuant to the directions of this Court in contempt petition, the petitioner was relieved from Naini Unit and later transferred to Hyderabad unit. The petitioner joined duty at Hyderabad unit on 31.01.2017 and later he retired from service on 30.04.2017 on attaining the age of superannuation.

3.The grievance of the petitioner is that the period of absence from 28.12.2015 to 30.01.2017 was not treated as duty or suspension and as there was no specific order in this regard, he was not paid salary for the said period. Therefore, the petitioner made a representation to the respondents on 30.01.2018 to treat the absence period from 28.12.2015 to 30.01.2017 as duty period and to pay the salary. However, the first respondent vide order dated 07.02.2018 rejected the claim of the petitioner. Aggrieved by the same, the petitioner has constrained to file the present Writ Petition.

4.Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the entire material available on record.

5. The learned counsel for the petitioner would submit that the



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petitioner was not reinstated on revocation of suspension and he was not allowed to join duty at Chennai on 17.02.2016 and without ordering reinstatement and without joining duty at Chennai Office and without any order but by information through e-mail, he was transferred to Naini Unit i.e one year and 3 months before his superannuation. He further submits that the petitioner was always ready and willing to join duty but he was not allowed to join duty due to non-consideration of his representation and the pendency of the Writ Petition and also non-compliance of the orders passed by this Court. Only after passing the orders in Contempt Petition, he was allowed to join duty.

6.The learned counsel for the petitioner further submits that there was no fault on the part of the petitioner in not joining duty in Naini Unit, but due to *mala fide* action of the 4th respondent, the period of absence from 28.12.2015 to 30.01.2017 was not treated as duty or suspension and there was no specific order in this regard. As such, the learned counsel for the petitioner would submit that the petitioner is entitled for the salary for the period from 28.12.2015 to 30.01.2017



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7. On behalf of the respondents, no counter affidavit has been filed.

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8. The learned counsel for the respondents would submit that the petitioner was subjected to disciplinary proceedings based on mis-conduct committed by him and to safeguard the interest of his colleagues at Regional Office, he was transferred to Naini Unit. But the petitioner did not report for duty at Naini Unit. The respondents, in compliance of the direction of this Court to explore the possibility of posting the petitioner at any nearby Office in South India, the petitioner was posted at N.S. Unit, Hyderabad. The petitioner retired from service of the respondent Company on 30.04.2017. The learned counsel further contends that the Management had paid the petitioner subsistence allowance as applicable under CDA Rules of the Company for the period of suspension pending enquiry. If the petitioner had reported for duty at Naini Unit immediately on receipt of the transfer order, the petitioner could have avoided such lapses.

9. The learned counsel further contends that though the petitioner was effected with transfer on account of mis-conduct, however, the Company on considering his knowledge and experience, provided him suitable



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assignment as required by the Company, but the petitioner, instead of appreciating the stand taken by the Company, is taking different stand and delayed to report duty at Naini Unit. Therefore, the learned counsel submits that the claim of the petitioner for payment of salary for the period from 28.12.2015 to 30.01.2017 is not at all justified and he is not entitled for the same and sought to dismiss the Writ Petition.

10.To substantiate her contentions, the learned counsel for the petitioner relied upon a judgment of a Division Bench of High Court of Calcutta in the case of ***“Hari Narayan Kirtania versus Union of India and others”*** reported in 2000 SCC OnLine Cal 867; and also a judgment of the High Court of Orissa at Cuttack in ***“Parthasarathy Dash versus State of Orissa and others”*** in W.P.(C) No.8092 of 2016, dated 21.03.2023.

11.In the present case, the facts are not disputed. On 18.02.2016, the petitioner was transferred from Chennai to Naini Unit. The order of suspension dated 28.12.2015 was revoked on 17.02.2016. The petitioner has made a representation on 01.03.2016 to the respondents, seeking to consider his transfer order. As there was no response despite representation, on



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19.04.2016, the petitioner filed a Writ Petition wherein, on 26.04.2016, an interim stay of transfer order was passed by this Court. On 23.08.2016, the Writ Petition was disposed of by this Court, directing the respondents to consider the representation of the petitioner to transfer him to a nearby place. Since this order was not complied with, the petitioner moved a Contempt Petition No.2716 of 2016. During the pendency of the Contempt Petition, the petitioner was transferred to Hyderabad Unit. On 20.01.2017, he was relieved from Naini Unit and on 09.01.2017, Contempt Petition was closed, with a direction to the respondents to send a relieving order through either by e-mail or through in any other mode to the petitioner so as to enable him to join duty at Hyderabad. The relieving order was issued on 20.01.2017 relieving the petitioner from Naini Unit. The petitioner joined duty at Hyderabad on 30.01.2017 and later, he was retired on 30.04.2017.

12. On a careful examination of the materials available on record and considering the facts and circumstances of the case as well as the submissions made on either side, it is clear that from the date of order of transfer of the petitioner, i.e. 18.02.2016 to till the date of joining at Hyderabad Unit on 31.01.2017, the petitioner did not work anywhere. The



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case of the petitioner is that subsequent to the revocation of the suspension order, dated 17.02.2016, he was not allowed to join duty at Chennai Office.

Immediately on the next day, i.e. 18.02.2016, he was transferred to Naini Unit and the respondents themselves relieved the petitioner. In the Writ Petition filed against the transfer order, this Court ordered interim stay on 26.04.2016. The said order of interim stay has been continued till the disposal of the Writ Petition. It appears that only during Contempt proceedings, the respondents proceeded further to implement the order dated 23.08.2016 passed in W.P.No.15424 of 2015. The order of relieving the petitioner from Naini Unit was also issued on 20.01.2017. As per the order dated 09.01.2017 in the Contempt Petition No.2716 of 2016, though admittedly, the petitioner was not working at Naini Unit, pursuant to the order dated 18.02.2016 till 20.01.2017, the petitioner was issued orders relieving him from Nani Unit as if he was on duty at Naini Unit. It is contrary to the factual position. In view of these facts, it came to understand that the petitioner was not allowed to join duty at Chennai Office immediately after revocation of the suspension order, dated 17.02.2016 and immediately, on the next day, i.e. 18.02.2016, he was transferred to Naini Unit. Now in the impugned proceedings, it is stated that to safeguard the



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interests of his colleagues at Regional Office, Chennai, the petitioner was transferred to Naini Unit. If the petitioner had committed any misconduct and there was no safety to staff at Regional Office, Chennai because of the petitioner, the respondents ought to have conducted the enquiry and imposed appropriate punishment against the petitioner, if the charges are found proved. Instead of doing so, they imposed punishment of Censure to the petitioner and revoked the suspension order on 17.02.2016 and transferred him on 18.02.2016 to Naini Unit at Uttar Pradesh. All these happenings would show that there is considerable force in the contention of the learned counsel for the petitioner that the 4th respondent is responsible for such *mala fide* action. Further, this Court by its order dated 23.08.2016 in W.P.No.15424 of 2016, directed the respondents to consider the representation of the petitioner to transfer him to a nearby place, which was not complied with by the respondents till filing of the Contempt Petition by the petitioner and only during the pendency of the contempt proceedings, they passed order of transfer, transferring the petitioner to Hyderabad Unit.

13.On a comprehensive examination of the entire facts and circumstances of the case, it has to be accepted that the petitioner is not at



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fault in joining the duty as the respondents did not allow him. Though the petitioner has claimed salary for the period from 28.12.2015 to 30.01.2017, in the considered opinion of this Court, he is not fully entitled to the same. Against the order of transfer dated 18.02.2016 without reporting to duty, he approached this Court by filing a Writ Petition only on 19.04.2016. The said legal proceedings are concluded only on 09.01.2017 when the Contempt Petition No.2716 of 2016 was closed. Thereafter, he joined duty at Hyderabad Unit on 31.01.2017. As such, in our considered view, the petitioner is entitled for the salary from 19.04.2016 to 30.01.2017 only.

14.A Division Bench of High Court of Calcutta in the case of “**Hari Narayan Kirtania**” (cited supra), has observed in paragraphs 30 and 31, which are extracted as under:

“30. It is not expected that the petitioner will proceed to Jaipur to join in the transferred post there since the said transfer followed by release of the petitioner from Calcutta Office was stayed for the interim period by the order of the Court together with the direction to allow the petitioner to continue in his pre-transfer posting. The absence of the petitioner from duty was not intentional on the part of the petitioner



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since he was prevented by the respondents, time and again, on the plea of instruction from the Ministry concerned. Respondents never informed the petitioner specifically about any such instruction of the Ministry.

31. It is our view that when the petitioner, time and again, made representations to the respondents to permit him to join at Calcutta Office after the stay order was passed by this Court in the writ application filed by him, and since his repeated representations were denied by the respondents by not allowing him to join his pre-transfer post at Calcutta he should not be penalised without any payment of salary on the plea of “No Work No Pay” basis, during his absence from the office. It can never be stated that the petitioner was at fault during that period by not doing any office work.

15. In ***Partha Sarathi Dash*** case (cited supra), the High Court of Orisa at Cuttack held in paragraph 11 as under:

“11. This by itself shows that the Petitioner was never terminated from service nor was allowed to work. The plea of abolition of the post or of treating the Petitioner as a surplus staff has not found favour with this Court in the earlier Writ Petition. Law is well settled that where an employee is willing to work but is prevented by the em-



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ployer to do so unlawfully, he cannot be blamed much less denied his legitimate benefits such as salary etc. by invoking the principle of no work no pay. Law is well settled that the principle of 'no work no pay' is not absolute as was held by the Apex Court in the case of **Commissioner, Karnataka Housing Board vrs. C. Muddaiah**; reported in (2007) 7 SCC 689 and also in **Union Territory of Dadra & Nagar Haveli V. Gulabhia M. Lad**, reported in (2010) 5 SCC 775. Thus, there is no way by which the Petitioner can be deprived of his legitimate dues for the period during which he was wrongfully refused employment.

16. For the aforesaid reasons and by following the judgments stated supra, this Court is of the considered view that the petitioner should not be penalized without any payment of salary on the plea of 'no work no pay'. However, taking into consideration that the petitioner was not at fault in not joining duty during the period from 19.04.2016 to 30.01.2017, he is entitled to the salary. Accordingly, the Writ Petition is allowed in part with the following directions;

1. The impugned proceedings issued by the 1st respondent in Ref:IM/HR/40640 dated 07.02.2018 is hereby quashed.



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2. The first respondent is directed to pay salary to the petitioner for the period from 19.04.2016 to 30.01.2017 within a period of eight weeks from the date of receipt of a copy of this order.

No costs.

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Index : Yes/No
Speaking order: Yes/No
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To

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BATTU DEVANAND, J

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Pre-Delivery order in
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