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W.P.No.25585 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2024

CORAM:

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.25585 of 2021

K.Gopinathan

...

Petitioner

/vs/

1. The Director of Medical & Rural Health Services,
DMS Campus,
Teynampet,
Chennai – 600 006.

2. The Dean,
Rajiv Gandhi Government General Hospital,
Poonamallee High Road,
Chennai – 600 009.

3. The Deputy Director of Health Services,
Saidapet at Chengalpet.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records in pursuant to the impugned order issued by the first respondent in proceeding No.3875/N1/3/2018 dated 25.09.2019 and quash the same and consequently direct the respondents to pay the salary of the petitioner during his period of unemployment from 29.05.2018 to 14.05.2019 with all consequential service and monetary benefits.



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For Petitioners ... Mr.R.Prem Narayan

For Respondents ... Mr.G.Ameedius
Government Advocate for R1 to R3

ORDER

The petitioner has filed this writ petition challenging the order issued by the first respondent in proceeding No.3875/N1/3/2018 dated 25.09.2019 and consequently direct the respondents to pay his salary during his period of unemployment from 29.05.2018 to 14.05.2019 with all consequential service and monetary benefits.

2. The petitioner was appointed as 'Staff Nurse' on contract basis at Pay Ward in Rajiv Gandhi Hospital, Chennai vide order dated 27.12.2016. The petitioner was the President of the Tamil Nadu MRB Nurses Empowerment Association during the year 2018-2019 and he espoused the causes of the Staff Nurses through the said association. Irritated with the activities of the petitioner as President of the Association, the first respondent transferred him to the Government Primary Health Centre, Uppatti, Nilgiris by order dated 28.05.2018.



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2.1 The petitioner filed a writ petition in W.P.No.13619/2018 before this Court challenging the said transfer and in which an interim stay has also been granted on 02.08.2019 by directing the respondents to engage the petitioner in the place where he was working. However the respondent did not obey the interim order. Since the respondents failed to implement the interim order, a contempt petition was filed by the petitioner in Cont.P.No.2751/2018. During the pendency of W.P.No.13619/2018, the respondents have cancelled the petitioner's transfer to Nilgiris and reposted him as Ward Boy at Rajiv Gandhi Hospital, Chennai. But the petitioner's back wages were not paid during the period when he was out of service and the interim order was pending. Hence the petitioner has given a representation to the respondents requesting back wages. Since there was no response for the same, the petitioner has filed this writ petition challenging the order of rejecting the back wages.

3. Mr.R.Prem Narayan, the learned counsel for the petitioner's primary argument revolves around the interim order of this Court passed in W.P.No.13619/2018 where the respondents were directed to engage the



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petitioner in the same place where he was working before the transfer order; despite the respondents knowing the interim order of the Court and the petitioner has also given a representation by citing the order, the respondents did not implement the same; when the final order was passed on 25.04.2019 in W.P.No.13619/2018, the Court has observed that the back wages can be considered to be paid for the period between 02.08.2018 to 16.04.2019; however in the impugned order, the back wages for the said period has been rejected on the ground of “no work no pay”.

4. The above order has been passed by the respondents by condoning their own failure to comply the order of the Court in time. The petitioner was not able to work from 02.08.2018 to 16.04.2019 due to the delay in implementation of the order of the Court and not due to any default on the part of the petitioner.

5. Since the impugned order has been passed by overlooking the essential obligation caused upon the respondent which he omitted to do so, immediately after the order dated 02.08.2018 was passed, is liable to be set



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aside.

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6. Accordingly, this Writ Petition is allowed and the impugned order issued by the first respondent in proceeding No.3875/N1/3/2018 dated 25.09.2019 is hereby quashed and the respondents are directed to pay the salary of the petitioner during his period of unemployment from 29.05.2018 to 14.05.2019 with all consequential service and monetary benefits, within a period of four weeks from the date of receipt of a copy of this order. No costs.

19.02.2024

Index: Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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To:

1. The Director of Medical & Rural Health Services,
DMS Campus,
Teynampet,
Chennai – 600 006.

2. The Dean,
Rajiv Gandhi Government General Hospital,
Poonamallee High Road,
Chennai – 600 009.



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R.N.MANJULA ,J.

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3. The Deputy Director of Health Services,
Saidapet, Chengalpet.

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