



W.P.(MD)No.8874 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2024

CORAM

THE HONOURABLE MRS JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.8874 of 2021

and

W.M.P.(MD).No.6676 of 2021

S.Rajaram

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Additional Chief Secretary,
Tourism Culture and Religious Endowment
Department, Secretariat,
Chennai-600 009.

2.The Commissioner of Tourism,
Tamil Nadu Tourism Complex,
Wallajah Road,
Chennai-600 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the Impugned Order vide Letter No.648/HRD-1/2020-2 dated 18.09.2020 on the file of the second respondent and to quash the same and further directing the respondents to regularize the period from 12.04.2019 till 20.01.2020 as on duty as Tourism Officer and to pay the Salary and other allowances for the said period and to provide all other consequential benefits.



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For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.D.Gandhiraj,
Special Government Pleader

ORDER

The petitioner was initially appointed as ‘Junior Engineer’ in the respondent Department on 22.08.1994, following which, he was promoted as ‘Assistant’ in the year 1998 and thereafter, promoted as ‘Superintendent’ in the year 2011. On 08.09.2016, he was further promoted as ‘Tourism Officer’. While so, without putting the petitioner on notice, a Reversion Order, dated 12.04.2019, came to be issued by the second respondent under the Government Order in G.O.(Ms).No.42, Tourism, Culture and Religious Endowments Department, reverting the petitioner from the post of Tourism Officer to the post of Superintendent.

2. Challenging the same, the petitioner has filed a Writ Petition in W.P. (MD).No.11516 of 2019 before this Court. However, subsequently, the petitioner understood that the impugned Reversion Order, dated 12.04.2019, vide Government Order in G.O.(Ms).No.42, Tourism, Culture and Endowments



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Department, came to be issued pursuant to the order passed by this Court in yet another Writ Petition in W.P.(MD).No.19524 of 2014 challenging the Government Order in G.O.(Ms).No.78, Tourism, Culture and Religious (SU2) Department, dated 07.05.2008, which dealt with a proposal to amend the Service Rules fixing the ratio between three feeder categories for promotion to the post of the Tourism Officer in which a status quo order was passed by this Court. The said Writ Petition came to be filed by one N.Anbarasu suppressing the fact that as early as in the year 2010 itself, the proposal to amend the Service Rules vide Government Order in G.O.(Ms).No.78, Tourism, Culture and Religious Endowments (SU2) Department, dated 07.05.2008, was considered and the service Rules pertaining to the promotion of the Tourism Officers came to be amended as fixing the ratio between feeder categories for promotion to the post of the Tourism Officer, that too by a person, who was appointed after the date of amendment of the aforesaid Rules. Since the said amendment was given effect to as early as in the year 2010, the cause for which the Writ Petition came to be filed by the said Anbarasu had become infructuous at the time of filing itself. However, the Writ Petition in W.P.(MD).No.11516 of 2019 which was filed by the petitioner along with two others, who are similarly reverted to the post of Superintendent, came to be dismissed by the order of this Court, on 16.08.2019. Despite the petitioner was granted an order of interim stay in the



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aforesaid Writ Petition in W.P.(MD).No.11516 of 2019, the petitioner and two others were not provided with any post either as Superintendent or as Tourism Officer as early as from 12.04.2019 i.e., from the date of reversion.

2.1. The petitioner made several representations to the respondents and last of which were on 13.05.2019, 23.05.2019, 10.06.2019 and 01.07.2019 to post him as Tourism Officer and release his salary in the cadre of Tourism Officer, during the pendency of the Writ Petition in W.P.(MD).No.11516 of 2019, which later came to be dismissed on 16.08.2019. Assailing the order of this Court, the Writ Appeals in W.A.(MD).Nos.1008 to 1010 of 2019 came to be filed by the petitioner and two others. Even during the pendency of the Writ Appeals before the Division Bench of this Court, the petitioner continued to make representations to the respondents, particularly on 19.09.2019, to provide him with job either as ‘Tourism Officer’ or as ‘Superintendent’, which was not heeded to by the respondent.

3. While being so, the Writ Appeals in W.A.(MD).Nos.1008 to 1010 of 2019 came to be allowed, by setting aside the Reversion Order which was passed against the petitioner and two others. Even thereafter, the petitioner made a representation on 18.11.2019 to post him as “Tourism Officer” followed



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by two reminders, which were preferred by him on 26.11.2019 and 13.12.2019.

Pursuant to the same, vide Government Order in G.O.(Ms).No.12, Tourism, Culture and Religious Endowments (T2) Department, dated 09.01.2020, the respondents restored the petitioner's position as Tourism Officer with effect from 21.01.2020 and presently, the petitioner is serving as 'Tourism Officer'. However, the respondents have failed to regularize the period of service from 12.04.2019 to 20.01.2020 as duty period in the post of Tourism Officer and pay salary for such period. For which, the petitioner had made a representation on 01.02.2020 through the respondents to the Director of Tourism. The second respondent vide letter, dated 18.09.2020, stated that the said period could be considered as extraordinary leave without pay and allowance. Challenging the same, this Writ Petition came to be filed.

4. The learned counsel appearing for the petitioner Mr.Prabu Rajadurai, submitted that the impugned order is highly illegal and arbitrary for the reason that, the petitioner remained jobless during the period from 12.04.2019 to 20.01.2020 due the administrative anamoly which is attributable to the respondents, who failed to provide him with the post of either Superintendent or Tourism Officer, despite he was armed with an interim order of stay by this Court in W.P.(MD).No.11516 of 2019 which was extended till the Writ Petition



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came to be dismissed on 16.08.2019. Despite several representations made by the petitioner during the pendency of the said Writ Petition and even thereafter, during the pendency of the Writ Petition preferred by him assailing the order passed by this Court in W.P.(MD).No.11516 of 2019, the respondents alarmingly allowed the petitioner to suffer without job for the period from 12.04.2019 to 20.01.2020. The petitioner succeeded in the Writ Appeal in W.A. (MD).Nos.1008 to 1010 of 2019, wherein, the Division Bench of this Court had set aside the Reversion Order dated 12.04.2019. Hence, the impugned order is totally arbitrary and will not stand the scrutiny of law for not having considered the petitioner's service during the period from 12.04.2019 to 20.01.2020 without regularizing and considering the same as extraordinary leave without pay and allowance and without Medical Certificate and pressed for allowing this Writ Petition.

5. The learned Special Government Pleader Mr.T.Gandhiraj relying upon the counter affidavit on behalf of the respondents submitted that, by the final order passed by this Court in W.P.(MD).No.11516 of 2019, this Court had upheld the Reversion Order dated 12.04.2019. Only in the Writ Appeals, the said Reversion Order came to be set aside. However, the Division Bench of this Court did not give any specific direction to grant backwages to the petitioner



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and hence, the petitioner is not entitled for backwages for the said period on the principle 'no work, no pay'. Hence, the impugned order considering the leave period to be regulated as extraordinary leave without pay and allowance and without Medical Certificate, is as per Rule 16 of the Tamil Nadu Leave Rules and Fundamental Rule 85 (a) on the principle “no work, no Pay” and accordingly, pressed for dismissal of this Writ Petition.

6. Heard Mr.G.Prabhurajadurai, learned counsel appearing for the petitioner and Mr.D.Gandhiraj, learned Special Government Pleader appearing for the respondents and anxiously perused the materials available on record.

7. The Division Bench of this Court in W.A.(MD).Nos.1008 to 1010 of 2019 has made a significant observation that, the petitioner along with nineteen others were promoted at the first instance from the post of Superintendent to the post of Tourism Officer. However, except the petitioner and two others none have been reverted. Though the order of reversion has been passed, the posting orders were not issued by the respondents. As a result of which, the petitioner and two others were virtually set at naught defying their seniority and promotion in the Tourism Department in the level of the Assistant Tourism Officer, Superintendent and Tourism Officer.



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8. Taking the said observation of the Division Bench of this Court in the right sense, I am of the considered view that the respondents ought to have considered the representations made by the petitioner on 13.05.2019, 23.05.2019, 10.06.2019 and 01.07.2019 and should have posted him in the post of Superintendent or Tourism Officer during the pendency of the Writ Petition in W.P.(MD).No.11516 of 2019, considering the fact that the petitioner was aided with an interim order of stay passed by this Court in the aforesaid writ petition.

9. Be that as it may, the Hon'ble Supreme Court in the case of ***Srikantha.S.M. Vs. Bharath Earth Movers Limited vs. C.Deva Anbu*** reported in ***(2005) 8 SCC 314*** has dealt with a case of an employee seeking the salary during the period, he withdrew his resignation and was not allowed to work and the relevant portion of the same is extracted hereunder:

“28. The next question is, as to what benefits the appellant is entitled to. As he withdrew the resignation and yet he was not allowed to work, he is entitled to all consequential benefits. The learned counsel for the respondent-Company no doubt contended that after 15-01-1993, the appellant had not actually worked and therefore, even if this Court holds that the action of the respondent-Company was not in consonance with law, at the most, the appellant might be entitled to



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other benefits except the salary which should have been paid to him.

According to the counsel, the principle of “no work, no pay” would apply and when the appellant has admittedly not worked, he cannot claim salary for the said period.

29. We must frankly admit that we unable to uphold the contention of the respondent-Company. A similar situation had arisen in J.N. Srivastava and a similar argument was advanced by the employer. The Court, however, negatived the argument observing that when the workman was willing to work but the employer did not allow him to work, it would not be open to the employer to deny monetary benefits to the workman who was not permitted to discharge his duties. Accordingly, the benefits were granted to him. In Shambhu Murari Sinha II also, this Court held that since the relationship of employer and employee continued till the employee attained the age of superannuation he would be entitled to “full salary and allowances” of the entire period he was kept out of service.”

10. In yet another judgment in the case of the ***Special Officer, Nazarath, Urban Co-operative Bank Limited, Nazarath, Thoothukudi District Vs. C.Deva Anbu and another*** reported in ***2007 4 MLJ 1135***, the Hon’ble Division Bench of this Court had dealt with a case of an employee seeking payment of salary for the period of suspension, after the suspension order came to be quashed by this Court, which was dealt with by the principle of “no work no pay” and the relevant portion in the said Judgment is extracted hereunder:



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“18...The learned counsel in his reply submissions relied upon the case, Union of India Vs. Braj Nandan Singh (2005) 8 SCC 314 : 2006-I-LLJ-3, specifically paras 28 and 29 at page 324 in which the Honourable Supreme Court clearly ruled that the principles of “no work no pay” would not be accepted on the facts of the said case on the terms that when the workmen is willing to work but the employer did not allowing him to work, it would not be open to the employer to deny monetary benefits to the workman who was not permitted to discharge his duties and the learned counsel for the first respondent further contended that the order of suspension by the employer only prevented him from working and when the same was quashed, he was allowed to work on 20.12.2004 and thus it should be construed that the first respondent continued as a workmen and ought to have given the arrears of salary which is natural consequence. We find force in the submission...”

11. Fortified by the mandates of the Judgments extracted supra, I am of the considered view that the submission of the learned Special Government Pleader justifying the impugned order that, the petitioner is not entitled to seek regularization of his service for the period from 12.04.2019 to 20.10.2020 in terms of Rule 16 of the Tamil Nadu Leave Rules and FR 85(a) of the Government of Tamil Nadu is not sustainable.



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WEB COPY 12. It is seen that the petitioner was allowed to run between the pillar and post seeking for a post either the Superintendent or Tourism Officer from 2019 till he succeeded in W.A.(MD).Nos.1008 to 1010 of 2019 and even thereafter, till 20.01.2020, when he was posted as Tourism Officer, vide Government Order in G.O.(Ms).No.12, Tourism, Culture and Religious Endowments (T2) Department, dated 09.01.2020. The petitioner was made to suffer without any posting either as 'Superintendent' or as 'Tourism Officer' only due to the fault of the respondents and no *mala fide* or irregularity could be attributable to the petitioner in any way.

13. Accordingly, the impugned order passed by the second respondent vide Letter No.648/HRD-1/2020-2, dated 18.09.2020, is quashed and the second respondent is directed to regularize the petitioner's service period from 12.04.2019 to 20.01.2020 as duty period as 'Tourism Officer' and the respondents are further directed to pay the salary and other allowances for the said period and to provide all other consequential benefits to the petitioner within a period of four weeks from the date of receipt of a copy of this order.



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14. In the result, the Writ Petition is **allowed**. No costs. Consequently,
the connected miscellaneous petition is closed.

23.07.2024

NCC :Yes/no

Index:Yes/no

Internet:Yes/no

TSG

To

1.The Additional Chief Secretary,
Government of Tamil Nadu,
Tourism Culture and Religious Endowment
Department, Secretariat,
Chennai-600 009.

2.The Commissioner of Tourism,
Tamil Nadu Tourism Complex,
Wallajah Road,
Chennai-600 002.



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L.VICTORIA GOWRI, J.

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