



W.A.(MD).No.911 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

W.A.(MD).No.911 of 2023

K.Lenin

... Appellant

-VS-

The District Collector,
Collectorate,
Thoothukudi District,
Thoothukudi.

... Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, against the order passed by this Court in W.P.(MD)No.7572 of 2013, dated 15.10.2020.

For Appellant

: Mr.K.Gurunathan

For Respondent

: Mr.P.T.Thiraviyam

Government Advocate

JUDGMENT

[Judgment of the Court was made by R.SUBRAMANIAN, J.]

The appellant is aggrieved by the dismissal of his Writ Petition, challenge in which, was to the order of the District Collector, Thoothukudi, dated 12.12.2012, in and by which, the claim of the appellant to regularize



W.A.(MD).No.911 of 2023

his absence between 29.05.2009 to 23.04.2010 and also seeking salary and others benefits available to him upon his absence being regularized.

2.The brief facts that led to the filing of the Writ Petition are as follows:-

The appellant who was working as an Assistant was promoted as Deputy Tahsildar on 10.01.2008. While he was serving as the Deputy Tahsildar, he was reverted to the post of Assistant by the proceedings of Revenue Administration dated 27.04.2009. The consequential order reverting the appellant was passed by the District Collector, Thoothukudi, on 28.05.2009. Almost immediately, the appellant challenged the said order of reversion in W.P.(MD)No.4521 of 2009. This Court granted stay of operation of order of reversion on 10.06.2009. Despite the attempts made by the Government to have the stay order vacated, the stay order was extended till the disposal of the Writ Petition. Even after obtaining the order of stay, the appellant was not allowed to join duty as a Deputy Tahsildar. Therefore, the appellant filed a Contempt Petition in Cont.P. (MD)No.26 of 2010. When the above Contempt Petition came up for hearing on 10.04.2010, this Court directed that the appellant should be allowed to join as a Deputy Tahsildar forthwith. Consequent above such direction, the District Revenue Officer, Thoothukudi and District Collector (incharge), passed an order on 22.04.2010, permitting the appellant to join as a



W.A.(MD).No.911 of 2023

Deputy Tahsildar. Ultimately, the Writ Petition filed by the appellant in W.P.(MD)No.4521 of 2009 was allowed by this Court on 11.10.2011.

Though liberty was reserved to the respondents to take fresh action, no action was taken. Thereafter, the appellant applied to the District Collector for regularizing the services for the period during which, he was not allowed to join duty i.e., between 29.05.2009 and 23.04.2010. This request was rejected by the District Collector and the District Collector had observed that the period will be treated as an extraordinary leave without salary, if the appellant applies for it. It is this order that is subject matter of challenge in the Writ Petition. The Writ Court disposed of the Writ Petition solely on the ground that the appellant had stayed away from work without any intimation and applying the principle of no work and no pay, with a direction that the absence will be treated as qualifying service for all purpose except monetary benefits. It is this order that is subject matter of challenge in this Appeal.

3.We have heard Mr.K.Gurunathan, learned counsel for the appellant and Mr.P.T.Thiraviyam, learned Government Advocate appearing for the respondents.

4.The facts narrated above are not in dispute. The appellant who was working as an Assistant, was promoted as a Deputy Tahsildar. Almost after



W.A.(MD).No.911 of 2023

a year and three months, he was sought to be reverted as Assistant. This order of reversion was challenged and it was stayed as early as on 10.06.2009 i.e., within about 12 days from the date of passing the order of reversion. This stay order was, admittedly, not implemented by the authorities. After issuing a notice of Contempt, the appellant moved this Court by way of Contempt and upon directions of this Court, the appellant was allowed to join duty only on 23.04.2010. Once the appellant had been favoured with an order of stay of the order of reversion, then the order of reversion is kept under suspension. Therefore, the appellant should have been allowed to join duty as a Deputy Tahsildar. The appellant has specifically averred that he was not allowed to join duty and has also moved this Court by way of Contempt. Only after the initiation of Contempt proceedings and after this Court had directed compliance, the appellant was allowed the duty as a Deputy Tahsildar. Therefore, the appellant cannot be blamed for his absence during the relevant period. If the appellant is to be denied salary for that period, it amounts to putting a premium on the illegality committed by the respondents. They have not only disobeyed the orders of this Court but they have also not paid the salary which is due to him. If the appellant had voluntarily absented himself, the position will be entirely different. The principle of no work no pay can be applied only to a case of voluntary absence or unauthorized absence not in a case where a person is prevented from working by the



W.A.(MD).No.911 of 2023

authorities, despite an order of stay having been granted by this Court. We are therefore, unable to sustain the order of the Writ Court denying monetary benefits to the appellant.

5.This Writ Appeal is allowed and the orders of the Writ Court in so far as it is against the appellant and the order impugned in the Writ Petition dated 12.12.2012, will stand set aside. There will be a direction for payment of salary to the appellant for the relevant period i.e., between 29.05.2009 and 23.04.2010. The appellant will also be entitled to all monetary benefits arising out of the said employment and the monetary benefits shall be calculated and paid within a period of 12 weeks from the date of receipt of copy of the order. No Costs.

[R.S.M., J.] [L.V.G., J.]
19.09.2024

NCC :Yes/No
Index :Yes/No
Internet: Yes
Mrn

To
The District Collector,
Collectorate,
Thoothukudi District,
Thoothukudi.



WEB COPY



W.A.(MD).No.911 of 2023

R.SUBRAMANIAN, J.
and
L.VICTORIA GOWRI, J.

Mrn

W.A.(MD).No.911 of 2023

19.09.2024