



W.A(MD)No.881 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2024

CORAM

**JUSTICE N.SESHASAYEE
AND
JUSTICE P.VADAMALAI**

**W.A(MD)No.881 of 2020
and
C.M.P(MD)No.4836 of 2020**

1.The Chief Educational Officer,
Tirunelveli.

2.The Head Master,
Government Higher Secondary School,
Ayikudi,
Tirunelveli District.

... Appellants/Respondents

Vs.

A.Davidson Tharmaraj

... Respondent/Petitioner

Prayer:- Writ Appeal is filed under Clause 15 of Letter Patent, to set aside the common order, dated 11.04.2018 in W.P(MD)No.8077 of 2013.

For Appellants	: Mr.D.Sadiq Raja Additional Government Pleader
For Respondent	: Mr.M.Gnanagurunathan



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JUDGMENT

(Judgment of the Court was delivered by P.VADAMALAI, J.)

This Writ Appeal is directed against the order of the learned Single Judge of this Court in W.P(MD)No.8077 of 2013, dated 11.04.2018.

2. The facts in brief:-

(i) The respondent/A.Davidson Tharmaraj was working as a Secondary Grade Teacher at the Government Higher Secondary School, Ayikudi, Tirunelveli District. He was transferred to Paavoorchatram on administrative grounds and he was relieved on 18.01.2013. He filed a Writ Petition in W.P.No.1456 of 2013 and obtained a stay on 29.01.2013. Though the respondent approached the appellants, he was not permitted to join duty and hence, he filed a Contempt Petition in Cont. P(MD)No.227 of 2013 and it was continued months together. Since the petitioner was without salary for five months, he filed another Writ Petition in W.P.No.4657 of 2013, in which, the appellants were directed to consider the representation given by the respondent. He submitted his representation on 18.04.2013. The representation was negatived by the appellants on 29.04.2013 in the



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proceedings in Na.Ka.No.1119/A5/2013 by mentioning that unless the respondent joins duty, he would not be paid salary. Further, the respondent was not permitted to join duty and paid a salary. Therefore, the respondent moved with W.P(MD)No.8077 of 2013 under Article 226 of the Constitution of India seeking to quash the proceedings in Na.Ka.No.1119/A5/2013, dated 29.04.2013 and to direct the appellants to pay salary from January 2013.

(ii) The Writ Petition was resisted by the appellants stating that the respondent has not joined duty obeying the transfer order of the appellants from 19.01.2013 and wantonly remained idle without joining duty and hence, he was not paid salary under the principle 'no work no pay'.

(iii) The learned Single Judge observed that this Court passed a stay order against the transfer proceedings and it was granted upto October 2013 and however, the respondent was not permitted to join duty and lastly, he joined duty on 05.10.2013 as per proceedings of the appellants, dated 04.10.2013 and thereby, took a view that because of the inaction of the



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appellants, the respondent could not join duty and the said inaction was on the part of the appellants only and therefore, the Writ Petition was allowed directing the appellants to pay salary from 18.01.2013 to 04.10.2013.

3. The order of the learned Single Judge is now under challenge, at the instance of the respondents in the Writ Petition.

4. The learned Additional Government Pleader for the appellants/respondents submitted that the respondent/petitioner was relieved from duty on 18.01.2013, but he moved with the Writ Petition instead of joining duty. The respondent/petitioner's representation seeking salary was considered as directed by this Court, the same was negatived on 29.04.2013. The respondent disobeyed the order of transfer and he has willfully not attended the duty. The learned Single Judge ought to have seen that the respondent/petitioner was idle from 18.01.2013 to 04.10.2013 without doing any work, so he is not entitled to any salary upon the principle 'No work No pay'. If he is paid for the period of non-work, it would amount to encourage the other teachers, which would create a bad precedent.



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5. The learned counsel for the respondent contended that the order of transfer was stayed by this Court and even then, the respondent was not permitted to join duty at the previous station. He would further submit that only upon contempt petition, the appellants appeared and complied with the order of stay and the respondent was permitted to join duty on 05.10.2013 and hence, it is purely the responsibility of the appellants alone and therefore, the respondent is entitled to salary as ordered in the impugned order and the order of the learned Single Judge need not be set aside.

6. We have heard the learned counsel appearing for the respective parties.

7. It is admitted that the respondent was working as a Secondary Grade Teacher in the 2nd appellant's school in Ayikudi, while so he was transferred to Pavorchatram and relieved on 18.01.2013. The respondent challenged the transfer order and obtained stay and the same was in force till the respondent was permitted to rejoin duty. Admittedly, the respondent



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rejoined duty at the same station wherefrom he was transferred on 05.10.2013. But, he was not paid salary from 18.01.2013 to 04.10.2013 and so he again moved this Court by filing the Writ Petition in W.P(MD)No. 8077 of 2013 and the impugned order was passed by the learned Single Judge. On perusal of the impugned order of the learned Single Judge, who clearly observed in paragraph No.8 as follows:

“...the said order of transfer, which was the subject matter of the earlier round of litigation, was interfered by this Court and the stay was granted admittedly upto October 2013. However, the same was not complied with and as the petitioner was not permitted to join duty in the original place, only after, the petitioner filed Contempt Petition and the same was pending consideration before this Court, the Chief Educational Officer had come forward on 04.10.2013 permitting the petitioner to join in the school, pursuant to which, the petitioner joined in the original place. Therefore, it is clear that from 18.01.2013 till 04.10.2013, the petitioner was not functioning as a Teacher in the School, from where, he was transferred not because of his own voluntary action, but because of the inaction on the part of the respondents. Therefore, for the said inaction on the part of the respondents, the reason cannot be attributed on the side of the petitioner, instead only the respondents shall shoulder the responsibility or reason for non joining of duty at the original place by the petitioner.”



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Therefore, in all fairness, the petitioner shall be paid the salary for the said period ie., from 18.01.2013 till 04.10.2013.”

8. On perusal of the impugned order of the learned Single Judge, we have not seen any violation of the settled principle. In spite of the order of stay, the appellants have not permitted the respondent to join duty. It is not the case of the appellants that the respondent has not approached them for joining duty. It is pertinent to note here that only upon the Contempt Petition filed by the respondent, the appellants appeared before the Writ Court and complied with the direction and permitted the respondent to join duty on 05.10.2013. So, the non-work of the respondent for the period from 18.01.2013 to 04.10.2013 is not on the part of the respondent and it is purely inaction and irresponsible act only on the part of the appellants alone, as rightly held by the learned Single Judge. The aforesaid period would not be taken as “No work” period as contended by the appellants, it happened only because of inaction on the part of the appellants. Therefore, the order of the learned Single Judge would not be against the appellants. Therefore, this Court is not inclined to accept the submissions as canvassed



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by the learned Additional Government Pleader for the appellants.

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9. In conclusion, this Court agrees with the line of reasoning of the learned Single Judge and confirms his order.

10. Accordingly, this Writ Appeal fails and the same stands dismissed. The order of the learned Single Judge, dated 11.04.2018 passed in W.P(MD)No.8077 of 2013 is confirmed. The appellants are directed to disburse the salary to the respondent for the period from 18.01.2013 to 04.10.2013 within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

(N.S.S.,J.) (P.V.M.,J.)
26.07.2024

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