



W.P.(MD) No.17396 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE J.SATHA NARAYANA PRASAD

W.P.(MD) No.17396 of 2016

Vijayaraj

...

Petitioner

-vs-

The Superintendent of Police,
Kanyakumari District
@ Nagercoil.

...

Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, to call for the records pertaining to the endorsement passed by the respondent in his proceedings in C.No.A2/36721/2016, dated 06.09.2016, and quash the same as illegal and consequently direct the respondent to issue order treating petitioner's out of employment period from 26.10.2010 to 13.07.2011 as duty for all purposes and to grant the benefit out of the same.

For Petitioner : Mr.T.A.Ebenezer

For Respondent : Mr.M.Senthil Ayyanar,
Govt. Advocate.



W.P.(MD) No.17396 of 2016

WEB COPY

ORDER

This Writ Petition has been filed praying for issuance of a writ of certiorarified mandamus, to call for the records pertaining to the endorsement made by the respondent in his proceedings in C.No.A2/36721/2016, dated 06.09.2016, and quash the same as illegal and consequently direct the respondent to issue order treating petitioner's out of employment period from 26.10.2010 to 13.07.2011 as duty for all purposes and to grant the benefit out of the same.

2. The case of the petitioner is that he was appointed as a Date Entry Operator on 01.03.2010 on compassionate basis and while he was working at Thiruvattar Police Station, on 26.11.2010, he was arrested on execution of a Non Bailable Warrant in C.C.No.224 of 2010 on the file of Judicial Magistrate No.III, Nagercoil, for the alleged offenses under Sections 6,7 of TNRS Rules 1959 read with Section 4 (1) (aaa) of TNP Act and Section 57 of the Tamil Nadu Excise Act and remanded to custody. After release on bail on 01.12.2010, he was not permitted to attend the duty and a report had been sent to the respondent as if the petitioner was absent from duty because of his involvement in the criminal case in Cr.No.255 of 2006 on the file of



W.P.(MD) No.17396 of 2016

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Ethamozhil Police Station. Since the petitioner was not named in the F.I.R., on the wilful confession of one of the accused, he was implicated and chargesheeted and an NBW was also issued against him. The petitioner moved this High Court in CrI.O.P.(MD) No.807 of 2011 for quashing the charge sheet in C.C.No.224 of 2010 on the file of Judicial Magistrate No.III, Nagercoil , and this Court was pleased to quash the charge sheet in respect of the petitioner, by an order, dated 14.02.2011. The petitioner also represented the full facts with the order of this Court before the respondent. However, without considering the same, the respondent dismissed the petitioner from service, by an order, dated 10.03.2011. Thereafter, the petitioner approached this Court in W.P.(MD) No.5019 of 2011 for a direction to the respondent to consider his representation and to reinstate him in service, wherein this Court, on 28.04.2011, was pleased to direct the respondent to consider the representation, pursuant to which the petitioner was reinstated in service by the order of the respondent, dated 13.07.2011. The further case of the petitioner is that his services have been regularised from 06.08.2010 by the proceedings of the respondent, dated 28.04.2016. The petitioner made a representation, dated 08.08.2016, to the respondent to treat the out of employment period from 26.10.2010 to 13.07.2011 as duty for all purposes and the respondent rejected the request of the petitioner, by his proceedings,



W.P.(MD) No.17396 of 2016

dated 06.09.2016. Aggrieved over the same, the petitioner has filed this Writ Petition.

3. The respondent has filed a counter affidavit, dated 07.12.2016, denying the averments made by the petitioner.

4. Learned counsel for the petitioner has submitted that the petitioner was arrested on execution of a Non Bailable Warrant in C.C.No.224 of 2010 on the file of Judicial Magistrate No.III, Nagercoil, for the alleged offences under Sections 6,7 of TNRS Rules 1959 read with Section 4 (1) (aaa) of TNP Act and Section 57 of the Tamil Nadu Excise Act and remanded into custody. After release on bail on 01.12.2010, the petitioner was not permitted to attend the duty and a report had been sent to the respondent as if the petitioner was absent from duty because of his involvement in the criminal case in Cr.No.255 of 2006 on the file of Ethamozhil Police Station. Since the petitioner was not named in the F.I.R., on the wilful confession of one of the accused, he was implicated and chargesheeted and an NBW was also issued against him. The petitioner moved this High Court in CrI.O.P.(MD) No.807 of 2011 for quashing the charge sheet in C.C.No.224 of 2010 on the file of Judicial Magistrate No.III, Nagercoil , and this Court was pleased to quash the charge sheet in respect of the petitioner, by an order, dated 14.02.2011. The petitioner also represented the full facts with the order of this



W.P.(MD) No.17396 of 2016

WEB COPY Court before the respondent. However, without considering the same, the respondent dismissed the petitioner from service, by an order, dated 10.03.2011. Thereafter, the petitioner approached this Court in W.P.No.5019 of 2011 for a direction to the respondent to consider his representation and to reinstate him in service, wherein this Court, on 28.04.2011, was pleased to direct the respondent to consider the representation, pursuant to which the petitioner was reinstated in service by the order of the respondent, dated 13.07.2011. The learned counsel would further submit that the petitioner's services have been regularised from 06.08.2010 by the proceedings of the respondent, dated 28.04.2016, and the petitioner made a representation, dated 08.08.2016, to the respondent to treat the out of employment period from 26.10.2010 to 13.07.2011 as duty for all purposes and the respondent rejected the request of the petitioner, by his proceedings, dated 06.09.2016. Accordingly, the learned counsel sought for quashing of the impugned proceedings.

5. The relevant paragraph of the counter affidavit filed by the respondent is extracted hereunder for better appreciation and understanding :

"12. With regard to the averments made in Para 6 of the affidavit, it is submitted that, his service in Data Entry Operator has been regularized as per G.O.Ms.No.220 Home (Pol XV) Department,



W.P.(MD) No.17396 of 2016

WEB COPY

dated : 18.02.2016 w.e.f. the date of appointment as Data Entry Operator. He was appointed as Data Entry Operator in police department on 06.08.2010. He submitted a petition dated : 08.08.2016 to settle the out of employment period from 26.11.2010 to 13.07.2011 as duty for all purposes. As per F.R.54 (5) (non permanent), the period of absence from duty including the period of suspension proceeding his dismissal, removal or compulsory retirement as the case may be, shall not be treated the period spent on duty, unless the competent authority, may be converted it into any leave and admissible to the Government servant. Accordingly, the out of employment period from 26.11.2010 to 13.07.2011 spent by him is treated as no work no pay, as the above said period falls on the probation period and he was a probationer. This was informed to the petitioner vide the endorsement of the Superintendent of Police, Kanyakumari District, in C.No.A2/36721/2016, dated 06.09.2016."

6. Learned Government Advocate, appearing for the respondent, has submitted that at the time of appointment on 06.08.2010, the petitioner did not disclose in the declaration form that he was involved in a criminal case and this is also one of the reasons, for which the period of absence cannot be treated as duty period.

7. I have heard both sides and also gone through the records.



W.P.(MD) No.17396 of 2016

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8. Admittedly, the charge, which was framed against the petitioner, was quashed by this Court, by an order, dated 14.02.2011, in CrI.O.P.(MD) No.807 of 2011. Since the charges are quashed by this Court, the period of suspension and dismissal between 26.10.2010 to 13.07.2011 has to be treated as duty period for all purposes and benefits, to which the petitioner is entitled as per rules as on that date. Further, the impugned order does not mention that the petitioner had not disclosed his involvement in the offences at the time of appointment. Hence, the contention of the respondent that the petitioner did not disclose in the declaration form that he was involved in the criminal case is unsustainable and untenable.

9. In view of the above factual matrix of the case, the impugned order passed by the respondent is liable to be quashed and it is, accordingly, quashed. The respondent is directed to settle all monetary benefits to the petitioner for the period between 26.10.2010 and 13.07.2011 within a period of eight weeks from the date of receipt or production of this order.



W.P.(MD) No.17396 of 2016

WEB COPY

10. Writ Petition stands allowed accordingly. No costs.

Consequently, the connected W.M.P.(MD) No.12619 of 2016 is closed.

09.08.2024

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

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W.P.(MD) No.17396 of 2016

J.SATHYA NARAYANA PRASAD, J.

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W.P.(MD) No.17396 of 2016

09.08.2024