



W.P(MD).No.27515 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 29.04.2024

Pronounced on : 27.06.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P(MD).No.27515 of 2023
and WMP(MD)No.23630 of 2023

P.Thomas Arul Raj

... Petitioner

Vs.

1. The Chief Educational Officer,
Nagercoil, Kanyakumari District.

2.The District Educational Officer,
Kanyakumari District at Nagercoil.

3.The Correspondent,
V.K.P. Higher Secondary School,
Colachel, Kanyakumari District.

... Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd and 3rd respondents pertaining to the proceedings in Mu.Mu.No.6097/A2/2017 dated 20.11.2017 and to quash the same and



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consequently direct the respondents to regularize the period from 18.04.2012 to 27.11.2012 as duty period and to grant all monetary and service benefits consequent to the same by considering the request of the petitioner dated 04.09.2023.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.T.Amjadkhan
Government Advocate for R1 & R2

: Ms.A.Amala for R3

ORDER

This writ petition has been filed challenging the impugned proceedings of the 2nd and 3rd respondents in Mu.Mu.No.6097/A2/2017 dated 20.11.2017 and for a consequential direction to the respondents to regularize the period from 18.04.2012 to 27.11.2012 as duty period and to grant all monetary and service benefits consequent to the same by considering the request of the petitioner dated 04.09.2023.

2. Heard Mr.S.C.Herold Singh, learned counsel appearing for the petitioner, Mr.T.Amjadkhan, learned Government Advocate appearing for



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the respondents 1 &2 and Ms.A.Amala, learned counsel appearing for the
3rd respondent.

3. The petitioner was working as BT Assistant in the third respondent School and in view of the business rivalry between a third party and the petitioner's father, a false case was foisted against the petitioner in Crime No.448 of 2012 at Marthandam Police Station. The petitioner was arrested on 16.04.2012 in the said case and consequently he was suspended from service on 18.04.2012. As the petitioner was not reinstated after four months of suspension, he filed a writ petition in W.P(MD)No.11528 of 2012 seeking a direction for reinstatement. In the said writ petition, this Court vide order dated 20.09.2012 directed the respondents either to reinstate the petitioner or to pay total emoluments to the petitioner for the suspension period. The said order was challenged by the third respondent in W.A(MD)No.1081 of 2012 and the same was disposed on 07.12.2012. Consequently the petitioner's suspension was revoked and he was reinstated to service on 27.11.2012. Subsequently, the petitioner was promoted as Assistant Headmaster *w.e.f.* 01.08.2019.



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4. However, in view of the pending criminal case, a charge memo was issued to the petitioner on 18.09.2012 and the petitioner had given his explanation and no disciplinary proceedings have been taken against the petitioner. Thereafter, the petitioner has filed Crl.O.P(MD)No.9350 of 2016 to quash the charge sheet filed before the Judicial Magistrate No.I, Kuzhithalai in C.C.No.336 of 2015. The said quash petition was allowed and the charges against the petitioner was quashed by virtue of the order of the Court dated 12.04.2017. Consequently, the third respondent was pleased to drop the contemplated disciplinary proceedings. However, no communication was given to the petitioner. The period of suspension from 18.04.2012 to 27.11.2012, (224 days) was regularised as leave on loss of pay by the respondents. The petitioner was not given with any opportunity to make a submission before considering the said period as leave on loss of pay. As the charges against the petitioner was quashed, the period under suspension could be treated as duty period and hence the petitioner has filed this petition seeking to quash the impugned order and for a direction to the respondents to treat his suspension period as duty period and to grant all monetary and service benefits considering his



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representation dated 04.09.2023.

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5. Ms.A.Amala, learned counsel for the 3rd respondent submitted that the petitioner himself has consented to treat the period of suspension as leave on loss of pay and given a leave application. Hence, the period has been regularised as leave on loss of pay.

6. So it is submitted by Mr.T.Amjadkhan, learned Government Advocate for the respondents 1 & 2 that the petitioner cannot turn around now and claim that he should be given with the benefit of considering the suspension period as duty period. He further submitted that the petitioner was given with the memorandum for having not obtained prior permission for purchase of a car. However, the proceedings initiated in this regard did not result in any major punishment except the punishment of “Censure”.

7. Hence, the above issue cannot have any impact on the request now placed by the petitioner to regularise his period of suspension as



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duty. Admittedly no disciplinary action has been initiated against the petitioner even though he was given with the charge memo on the ground that he has involved in a criminal case. The criminal case was quashed by the order of this Court in Crl.O.P.(MD)No.9350 of 2016. These facts are not denied by the respondents. But the only point made is that the petitioner himself had given a request to treat the period under suspension as 'leave on loss of pay'. Just because the petitioner has given an application to consider the period of suspension as 'leave on loss of pay' without knowing the Rules governing the situation, that cannot be considered as a reason for denying the benefit of treating the said period as duty. It has to be seen only in accordance with the Rules governing the position when the criminal charges against the Government servant were dropped/quashed or the Government servant got acquitted at the end of the criminal trial. In the instant case, the petitioner has not even entered for trial and even prior to that, the charges against him got quashed. In fact, during the said period, the petitioner was prevented from discharging his duties in view of a third party's intervention by lodging the criminal case against him. The order of the Court quashing the



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charges would also confirm that the case lodged against the petitioner lacks even a *prima facie* base.

8. It has been hold repeatedly that if a Government servant is reinstated into service on the ground that the charges against him were not proved, the period during which he was kept under suspension shall be treated as duty for all purposes and the Government servant should be paid with full pay with allowance. But in the case on hand, the petitioner have got reinstated even before the charges were quashed in pursuant to the direction obtained from the Court. Subsequent the charges against the petitioner were quashed, and then the petitioner's position has become safer.

9. According to Rule 54-A(3) of the Fundamental Rule of Tamil Nadu Government even when the Government servant is dismissed, removed or given with an order of compulsory retirement, and the same is set aside by an order of the Court on merits of the case, the period intervening between the date of dismissal, removal or compulsory



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retirement including the period of suspension preceding, such removal or dismissal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid with the full pay and allowances for the said period.

10. But here is a case where the petitioner did not even face any charges and the criminal case initiated against him was also got discharged subsequently. Hence, in all fairness the petitioner deserves to be handled in a better manner by treating his period of suspension as duty by giving him all monetary and service benefits attached to the said period.

11. Since the 2nd respondent passed the impugned order without taking into consideration of the relevant Rules, position and merits of the claim of the petitioner, I feel that the impugned order is liable to be set aside.



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12. In the result, this writ petition is **allowed**. The impugned order in Mu.Mu.No.6097/A2/2017 dated 20.11.2017 is set aside. The respondents 1 & 2 are directed to consider the representation of the petitioner dated 04.09.2023 positively and pass orders afresh within a period of eight weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

27.06.2024

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

PJL

To

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Kanyakumari District.

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R.N.MANJULA ,J.

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