

WEB COPY



WP.No.27018 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.02.2025

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.27018 of 2018

and

WMP.No.31415 of 2018

G.Raja Raja Cholan
Physical Education Teacher,
Government Boys Higher Secondary School,
Virudhachalam,
Cuddalore District.

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Petitioner

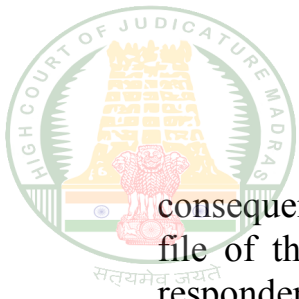
Vs

- 1 The Government Of Tamilnadu
Rep By Its Secretary Education Department,
Fort St.geroge Chennai-600009.
- 2 The Director Of School Educaton,
College Road Chennai -600006.
- 3 The Chief Educational Officer,
Cuddalore District.

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Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of certiorarified Mandamus calling for the entire records which culminated in the order passed by the first respondent in G.O.(2D) No.48, School Education (Pa.Ka.3(1) Department dated 05.12.2013 in so far as it denied salary to the petitioner from 18.06.2004 to 05.02.2007 and the



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consequential order bearing Na.Ka.No.5687/A3/2018 dated 31.07.2018 on the file of the 3rd respondent, quash both the orders and consequently direct the respondents to treat the period from 18.06.2004 to 05.02.2007 as duty with all consequential service and monetary benefits and to pass appropriate orders thereof within a time limit that maybe fixed by this Court.

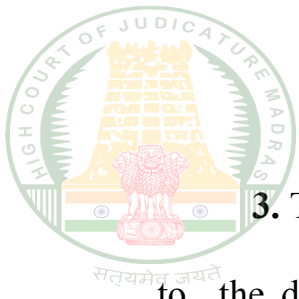
For Petitioner : Mr.S.Mani

For Respondents : Mrs.P.Rajarajeswari
Government Advocate.

ORDER

The petitioner has filed this Writ Petition to call for the records relating to G.O.(2D) No.48, School Education (Pa.Ka.3(1) Department dated 05.12.2013 in so far as it denied salary to the petitioner from 18.06.2004 to 05.02.2007 and with all consequential order bearing Na. .Ka.No.5687/A3/2018 dated 31.07.2018 on the file of the 3rd respondent.

2. Heard Mr. S.Mani, learned counsel for the petitioner and Mrs.P.Rajarajeswari, learned government advocate for the respondents 1 to 3 and perused the materials available on record.

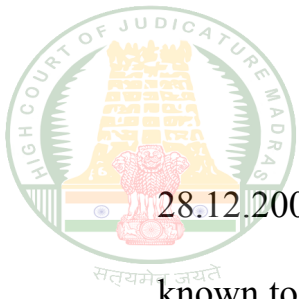


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3. The petitioner has been appointed on compassionate grounds consequent to the death of his father while in harness on 29.12.2001. Subsequently, the appointment of the petitioner was cancelled on 14.04.2004 on the ground that his appointment has been made when the government appointments have been banned in view of G.O. 212 (P & AR) Department dated 29.11.2001. The petitioner challenged the said order by stating that the ban for appointment will not be applicable to the appointments made on compassionate appointments and he filed a Writ petition in W.P. No.16966/2004. The said writ petition was allowed by quashing the order of cancelling his appointment and thereafter, the petitioner was reinstated into service on 04.12.2006. The government issued an order for the reinstatement of the petitioner pursuant to the orders passed by this Court in W.P.No.69164/2004 on 04.12.2006. The petitioner has now filed this writ petition, stating that he has not been paid his salary for the interregnum period, i.e., from 14.04.2004 to 05.02.2007, during which he was placed under compulsory wait.

4. The petitioner received the order of termination on 14.04.2004, not due to any of his default and in fact his termination was subsequently found to be illegal. Despite an order has been passed in the writ petition as early as on



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28.12.2004, with a direction to reinstate the petitioner, for the best reasons known to the petitioner, he was reinstated after a delay of two years. Although his services have been regularised for the period during which he was out of employment, that period has only been treated as eligible earned leave and leave on loss of pay. The petitioner has challenged the above order, stating that, as per Fundamental Rule 54-A(3), if the dismissal, removal, or compulsory retirement of a government servant is set aside by the court on merits, the intervening period between the date on which the employee was kept out of employment and the date of reinstatement shall be treated as duty for all purposes, and he shall be paid with full pay and allowances for the said period.

5. However, Mrs. P. Rajarajeswari, learned Government Advocate appearing for the respondents, drew the attention of this Court to Rule 54 of the Fundamental Rules of the Tamil Nadu Government, which pertains to the regularisation of the period of suspension and reinstatement on appeal. Since the petitioner's case does not involve suspension or any consequent disciplinary proceedings for lapses on his part, it is improper for the respondent to invoke the above rule, as it is not applicable to his case. The petitioner's case ought to have



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been considered under Rule 54-A(3). For the sake of convenience, the above provision is extracted hereunder:

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"Rule 54-A (3) If the dismissal, removal or compulsory retirement of a Government Servant is set aside by the court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal 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 the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement as the case may be. "

6. As the impugned order has been passed without due regard to the above rule, the impugned order issued by the 3rd respondent in Na.Ka.No.5687/A3/2018, dated 31.07.2018, is liable to be set aside. The petitioner's earned leave credit ought not to have been deducted for a fault attributable to the respondent. The period ought to have been treated as duty period, for which the petitioner is eligible to receive leave and other allowances. Since the 3rd respondent has passed the order without following the appropriate rules, the impugned order is illegal, and hence the petitioner is entitled to the relief as prayed for.



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R.N.MANJULA, J.

jrs

7. In the result, this Writ Petition is **allowed**. The impugned order passed by the 3rd respondent in Na.Ka.No.5687/A3/2018, dated 31.07.2018, is set aside. The respondents 1 to 3 are directed to treat the period from 18.06.2004 to 05.02.2007 as duty period and to grant all consequential service and monetary benefits for the said period to the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected civil miscellaneous petition is also closed.

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Index : Yes

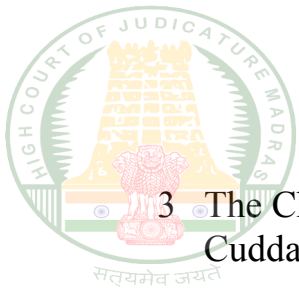
Internet : Yes/No

jrs

To

- 1 The Government Of Tamilnadu
Rep By Its Secretary Education Department,
Fort St. George Chennai-600009.
- 2 The Director Of School Education,
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3 The Chief Educational Officer,
Cuddalore District.

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