



W.P.(MD)No.17863 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : **26.03.2025**

Pronounced on : **09.04.2025**

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.17863 of 2023
and WMP(MD)No.14948 of 2023

C.Markandan

... Petitioner

Vs.

1.The District Collector,
District Collector Office,
Madurai – 625 020

2.The District Revenue Officer,
District Collector Office Campus,
Madurai - 625 020

3.The Revenue Divisional Officer,
Usilampatti Division,
Usilampatti,
Madurai District.

4.The Tahsildar,
Peraiyur Taluk Office,
Peraiyur,
Madurai District.

... Respondents

PRAYER in 24106 of 2024: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order of the 4th respondent vide his



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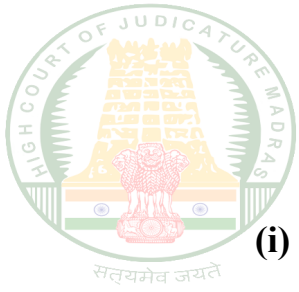
letter in Na.Ka. No.2069/2019/A1 dated 09.02.2023 and quash the same as illegal and in so far as not regularizing the petitioners service for the period from 01.02.2018 to 18.03.2019 in the light of judgment passed by this High Court in WA (MD) No.147 of 2019 dated 05.03.2019 and consequently directing the respondents to grant retirement benefits along with interest within a stipulated time fixed by this Court.

For Petitioner : Mr.R.Karunanidhi
For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader

ORDER

This writ petition has been filed to quash the proceedings issued by the fourth respondent vide his letter in Na.Ka. No.2069/2019/A1 dated 09.02.2023 in so far as not regularizing his service for the period from 01.02.2018 to 18.03.2019 in the light of judgment passed by this Honble High Court in WA (MD) No.147 of 2019 dated 05.03.2019 and for a consequential direction to the respondents to grant retirement benefits along with interest within a stipulated time fixed by this Court.

2. The brief facts that are necessary for the disposal of this writ petition are as follows:



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(i) The petitioner was appointed as Village Thalaiyari as per the order of

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the fourth respondent dated 17.03.1983 and he joined as Village Thalaiyari of Muthu Nagaiahapuram on 20.03.1983. The petitioner produced the school Transfer Certificate to the concerned authorities to show that his date of birth as 23.03.1961. But in his Service Register, his date of birth has been recorded as 28.01.1958 instead of 23.03.1961. It is the contention of the petitioner that this error or mistake came to his knowledge only in the year 2015. Immediately thereafter, the petitioner submitted a representation for change of his date of birth in the Service Register to the fourth respondent. The fourth respondent rejected his request stating that the request for change of date of birth ought to have been submitted within five years from joining service. The petitioner submitted the representation after 32 years and therefore, the same cannot be entertained.

(ii) Thereafter, the petitioner submitted a representation to the first respondent on 25.01.2016. Meanwhile, he was promoted as the Village Administrative Officer on 13.10.2016. He continued in the service as the Village Administrative Officer till 30.04.2018. To the shock and surprise of the petitioner, the third respondent by order in Na.Ka.No.2696/2018/A1 dated 30.04.2018 rejected the appointment of the petitioner in the post of Village



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Administrative Officer. Immediately, he filed a writ petition against the order of the third respondent dated 30.04.2018 before this Court in WP(MD)No.14497 of 2018 and the same was dismissed by this Court on 26.11.2018. Aggrieved by the same, the petitioner preferred a Writ Appeal in WA.(MD). No. 147 of 2019. A Division Bench of this Court allowed the writ appeal by its judgment dated 05.03.2019, holding that the appellant therein/petitioner is entitled to get his date of birth changed as per the original date of birth as 23.03.1961 and accordingly, he is entitled to continue in service till his retirement. The respondents therein are directed to reinstate the petitioner within a week from the date of receipt of a copy of the judgment. In compliance of the judgment of the Division Bench of this Court, the petitioner was re-instated into service and he continued his service as Village Administration Officer and retired from the service on 31.03.2019.

(iii)Therafter, the petitioner submitted a detailed representations to the respondents on 16.07.2019, 16.08.2019 and 04.07.2022 to disburse his retirement benefits and other benefits expeditiously. But, there is no response. After receipt of his representation on 19.07.2022, the third respondent sent communication vide Na.Ka.No. 3032/2022/AI to the fourth respondent to take necessary action to disburse his retirement benefits and other benefits to the



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petitioner.

WEB COPY (iv) Under these circumstances, the fourth Respondent without considering the judgment of the Division Bench of this Court passed an order in Na.Ka.No. 2069/2019/AI dated 09.02.2023 and rejected the retirement benefits and other benefits for the period from 01.02.2018 to 18.03.2019. Aggrieved by the said order, the present writ petition is filed.

3. The learned counsel for the petitioner submits that the impugned order passed by the fourth respondent is unjust, unreasonable and arbitrary. The learned counsel submits that a Division Bench of this Court, while allowing the appeal filed by the petitioner by its judgment dated 05.03.2019, specifically held that the petitioner is entitled to continue in service till his retirement. As such, the impugned order issued by the fourth respondent denying the benefits from the period 01.02.2018 to 18.03.2019 is contrary to the judgment of the Division Bench. The learned counsel further contends that the impugned order is passed without providing an opportunity of hearing or to submit an explanation by the petitioner, which is violation of principles of natural justice. Accordingly, the petitioner sought to quash the impugned order by allowing the writ petition.



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4(i)A Counter affidavit has been filed by the fourth respondent. It is averred in the counter affidavit that as per the records, the service register was opened for the petitioner only in the year 1997, even though the petitioner joined the service as Village Thalaiyari in the year 1983. In the Service Register, his date of birth is entered as 28.01.1958 but no details about the basis of the same are indicated in the Service Register. The petitioner, who was serving as Village Assistant can serve upto the age of 60 years. As such, the petitioner's presumptive date of retirement as per the entry in the Service Register is 31.01.2018. Meanwhile, the petitioner sought to correct his date of birth in the service records as 23.03.1961 in the year 2015 and his representation was rejected by the fourth respondent vide order dated 22.09.2015 on the ground that the request for change of date of birth can be made only within five years from the date of joining in service. The petitioner filed a suit and the learned District Munsif cum Judicial Magistrate, Peraiyur ordered the fourth respondent to register the birth of the petitioner as 23.03.1961 in the birth register and to issue birth certificate as per the order dated dated 26.05.2015 in Cr.M.P. 817 of 2015. In compliance of the order of the learned District Munsif cum Judicial Magistrate, Peraiyur, birth certificate

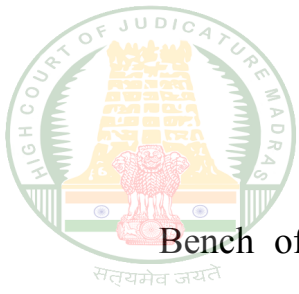


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was issued to the Writ Petitioner in L.Dis.8674/2015 C1 dated 06.07.2015.

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4(ii) It is further stated in the counter that in the meanwhile, the petitioner was given promotion as Village Administrative Officer vide Roc. 30754/2016/G1 dated 19.06.2016 of the District Revenue Officer, Madurai. It is not known as to how the petitioner herein could be given promotion as Village Administrative Officer on 19.06.2016 when his presumptive date of birth on attaining the age of 58 years was already crossed on the afternoon of 31.01.2016. In fact, as per the order of the Revenue Divisional Officer, Usilampatti, dated 13.10.2016, the petitioner was posted as the Village Administrative Officer and deputed for training vide proceedings dated 11.04.2017 of the Revenue Divisional officer. It is averred in the counter that on the premise of setting right the wrong, the petitioner was permitted to retire in the cadre of Village Assistant on attaining the age of superannuation on 60 years vide proceedings in ROC.No.2696/2018/A1 dated 30.04.2018 and the excess amount paid to him in the post of Village Administrative Officer was ordered to be recovered from him. Against the said order, the petitioner filed WP(MD)No.14497 of 2018 to quash the said order and to permit him to continue as the Village Administrative Officer and the same was dismissed by this Court on 26.11.2018. In the writ appeal filed by the petitioner, a Division



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WEB BENCH of this Court by its judgment dated 05.03.2019 directed to provide posting by changing his date of birth as 23.03.1961. As per the direction of the Division Bench of this Court, the petitioner was permitted to re-join duty and posted as the Village Administrative Officer, Kadaneri Group Village with effect from 19.03.2019 and he was permitted to retire from service on attaining the age of superannuation with effect from afternoon of 31.03.2019. Since he did not serve during the period from 01.02.2018 to 18.03.2019 on the percept of 'no work no pay' his pay was fixed notionally to enable him to get the pensionary benefits in the cadre of Village Assistant where his entire service period including the periods under suspension were regularized.

5. Basing on the averments made in the counter affidavit, the learned Additional Government Pleader would submit that during the period of absence from 31.01.2018 to 18.03.2019, the petitioner's pay was notionally fixed on the basis of 'no work no pay' and his pensionary benefits would not be affected. He would further submit that in fact, on the proposal submitted to the Accountant General, to sanction final settlement of General Provident Fund payable to the petitioner, the Accountant General raised several queries vide letter dated 12.04.2022. Only with great difficulty, the details were obtained from the

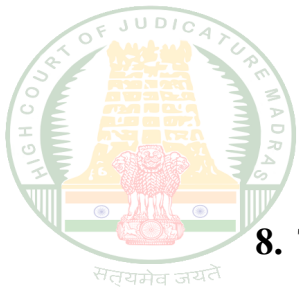


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petitioner and revised proposals was submitted to the Accountant General and on getting the final closure of the General Provident Fund account, a sum of Rs.3,93,881/- was sanctioned and sent to the account of the petitioner on 27.05.2022.

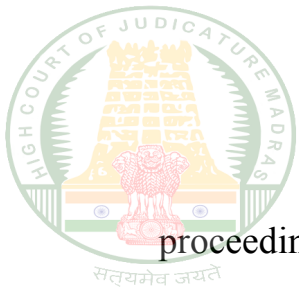
6. With respect to the pension proposals, the learned Additional Government Pleader submits that the petitioner is not co-operating with the fourth respondent for sending pensionary proposals and he is refused to provide details and photographs of himself with his wife and even refused to sign in the pension proposals and as a result of which sending pension proposals are being unduly delayed. The petitioner was reminded by a letter in ROC.No. 2069/2019/A1 dated 03.09.2022 and by a letter dated 09.02.2013. But the petitioner was insisting that he should be paid salary for the period of absence only then he would submit pension proposals.

7. This Court gave its anxious consideration to the submissions made by the respective counsels and carefully examined the materials available on record.



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8. The petitioner was appointed as the Village Assistant (Thalaiyari) in the year 1983. He was promoted as the Village Administrative Officer in the year 2016. He continued his service as the Village Administrative Officer till 30.04.2019. The contention of the petitioner is that as per his School Transfer Certificate his date of birth is 23.03.1961. But the concerned officers wrongly entered his date of birth as 28.01.1958 in the service register. It is true that he has to make application to rectify the mistake for changing the date of birth within five years from joining the service as per Rule 49(c) of General Serviced for Tamil Nadu State and Subordinate Services Rules. But the petitioner made representation seeking to alter his date of birth in the year 2015 and the same was rejected on the ground that the request is not made within five years from the date of joining into service. Thereafter, the petitioner obtained orders from the competent civil court i.e the District Munsif cum Judicial Magistrate, Peraiyur in Cr.M.P.No.817 of 2015 dated 26.05.2015. Thereafter, the fourth respondent issued birth certificate to the petitioner on 03.07.2015. Meanwhile, the petitioner was promoted as the Village Administrative Officer and he joined duty as the Village Administrative Officer on 13.10.2016. Thereafter, he was permitted to retire from afternoon of 30.04.2018. However, he was permitted to re-join duties in the light of the judgment of the Division Bench and as per the



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proceedings of the Revenue Divisional Officer dated 19.03.2019 and he joined duty on 19.03.2019 and he was permitted to retire from service with effect from 31.03.2019 AN . The contention of the respondents is that since the petitioner did not serve during the period from 31.01.2018 to 18.03.2019 on the percept of 'no work no pay' his pay was fixed notionally to enable him to get pensionary benefits in the cadre of Village Assistant.

9. As seen from the materials available on record and as per the contention of both parties, it is an admitted fact that till 30.04.2018, the petitioner is in service. He was permitted to retire from the afternoon of 30.04.2018. Thereafter, in compliance of the judgment dated 05.03.2019 of the Division Bench of this Court in WA(MD)No.147 of 2019, the Revenue Divisional Officer, Usilampatti issued proceedings on 19.03.2019 to re-instate the petitioner as the Village Administrative Officer and posted him as the Village Administrative Officer at Kadaneri Group Village and the petitioner joined duty on 19.03.2019. Thereafter, he was permitted to retire from service on attaining the age of superannuation with effect from afternoon of 31.03.2019. As seen from the above, it is clear that from 01.02.2018 to 18.03.2019, the petitioner was not allowed to continue in service by the



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respondents taking into consideration of his date of birth as 28.01.1958. In compliance of the judgment dated 05.03.2019 in WA(MD)No.147 of 2019 of a Division Bench of this Court wherein it was declared that the petitioner is entitled to get his date of birth changed as 23.03.1961 and in compliance of the direction of this Court to continue the petitioner till his retirement by by re-instating him, the petitioner was re-instated with effect from 19.03.2019 as per the order of the Revenue Divisional Officer, Usilampatti. In the considered opinion of this Court, the petitioner is not at fault to continue in service as Village Administrative Officer from 01.02.2018 to 18.03.2019. As such, the respondents cannot take a stand that since the petitioner did not serve during the period from 01.02.2018 to 18.03.2019 on the percept of 'no work no pay' his pay was fixed notionally to enable him to get pensionary benefits. The said contention of the respondents is untenable and unsustainable in the eye of law.

10. The learned counsel for the petitioner has drawn attention of this Court to the judgment of the Apex Court in the **Commissioner of Karnataka Housing Board Vs. C.Muddaiah** reported in (2007) 7 SCC 689 disputing the contention of the respondents 'no work no pay'. The relevant portion of the said judgment is extracted herein under:



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"34. We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate cases, however, a Court of Law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The Court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The Court may in the circumstances, direct the Authority to grant him all benefits considering 'as if he had worked'. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a Court of Law and if such directions are issued by a Court, the Authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant-Board, therefore, has no substance and must be rejected".

11. The learned counsel for the petitioner also placed reliance on the order dated 29.10.2024 in WP.No.9660 of 2019 of this Court. The relevant portion of the said order is extracted herein under:

"**13.**On a comprehensive examination of the entire facts and circumstances of the case, it has to be accepted that the petitioner is not at fault in joining the duty as the respondents did not allow him. Though the WEBCO petitioner has claimed salary for the period from 28.12.2015 to 30.01.2017, in the considered opinion of this Court, he is not fully entitled to the same. Against



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the order of transfer dated 18.02.2016 without reporting to duty, he approached this Court by filing a Writ Petition only on 19.04.2016. The said legal proceedings are concluded only on 09.01.2017 when the Contempt Petition No.2716 of 2016 was closed. Thereafter, he joined duty at Hyderabad Unit on 31.01.2017. As such, in our considered view, the petitioner is entitled for the salary from 19.04.2016 to 30.01.2017 only.

14.A Division Bench of High Court of Calcutta in the case of "Hari Narayan Kirtania" (cited supra), has observed in paragraphs 30 and 31 which are extracted as under:

"30. It is not expected that the petitioner will proceed to Jaipur to join in the transferred post there since the said transfer followed by release of the petitioner from Calcutta Office was stayed for the interim period by the order of the Court together with the direction to allow the petitioner to continue in his pre-transfer posting. The absence of the petitioner from duty was not intentional on the part of the petitioner since he was prevented by the respondents, time and again, on the plea of instruction from the Ministry concerned. Respondents never informed the petitioner specifically about any such instruction of the Ministry.

31. It is our view that when the petitioner, time and again, made representations to the respondents to permit him to join at Calcutta Office after the stay order was passed by this Court in the writ application filed by him, and since his repeated representations were denied by the respondents by not allowing



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him to join his pre-transfer post at Calcutta he should not be penalised without any payment of salary on the plea of "No Work No Pay" basis, during his absence from the office. It can never be stated that the petitioner was at fault during that period by not doing any office work.

15. In Partha Sarathi Dash case (cited supra), the High Court Orisa at Cuttack held in paragraph 11 as under:

"11. This by itself shows that the petitioner was never terminated from service nor was allowed to work. The plea of abolition of the post or of treating the Petitioner as a surplus staff has not found favour with this Court in the earlier Writ Petition. Law is well settled that where an employee is willing to work but is prevented by the employer to do so unlawfully, he cannot be blamed much less denied his legitimate benefits such as salary etc. by invoking the principle of no work no pay. Law is well settled that the principle of 'no work no pay' is not absolute as was held by the Apex Court in the case of Commissioner. Karnataka Housing Board vrs. C. Muddaiah; reported in (2007) 7 SCC 689 and also in Union Territory of Dadra & Nagar Haveli V. Gulabhia M. Lad, reported in (2010) 5 SCC 775. Thus, there is no way by which the Petitioner can be deprived of his legitimate dues for the period during which he was wrongfully refused employment.

16. For the aforesaid reasons and by following the judgments stated supra, this Court is of the considered view that



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the petitioner should not be penalized without any payment of salary on the plea of 'no work no pay'. However, taking into consideration that the petitioner was not at fault in not joining duty during the period from 19.04.2016 to 30.01.2017, he is entitled to the salary. Accordingly, the Writ Petition is allowed in part with the following directions:

1. The impugned proceedings issued by the 1st respondent in Ref:IM/HR/40640 dated 07.02.2018 is hereby quashed.

2. The first respondent is directed to pay salary to the petitioner for the 3rd COPY period from 19.04.2016 to 30.01.2017 within a period of eight weeks from the date of receipt of a copy of this order”.

12. On a comprehensive examination of the entire facts and circumstances of the case, it came to understand that the petitioner is not at fault for not continuing in service as the Village Administrative Officer from 01.02.2018 to 18.03.2019. As such, in the considered opinion of this Court, the petitioner is entitled for all service benefits continuously till his retirement i.e on 31.03.2019 FN. Accordingly, this Court holds that the order issued by the fourth respondent dated 09.02.2023 impugned in this writ petition is illegal, unjust and against the judgment dated 05.03.2019 in WA(MD)No.147 of 2019 and it is liable to be quashed.



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13. Accordingly, this writ petition is allowed with the following directions:

i) The impugned proceedings issued by the fourth respondent in Na.Ka. No.2069/2019/A1 dated 09.02.2023 is hereby quashed.

ii) The respondents are directed to grant retirement benefits to the petitioner within a period of four weeks from today.

There shall be no order as to costs.

Consequently, connected miscellaneous petition is closed.

09.04.2025

NCC : yes/no
Index : yes/no
Internet: yes/no
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To:

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District Collector Office,
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District Collector Office Campus,
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BATTU DEVANAND, J.

CM

**Pre-delivery order made in
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and WMP(MD)No.14948 of 2023**

09.04.2025