

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

WA.No. 1438 of 2010

AGAINST THE JUDGMENT DATED 05-07-2010 IN WP(C) 17332/2004.
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APPELLANT/PETITIONER:

**DR.T.I.JAMES,
CIVIL SURGEON (RTD.), 11/407,
ANURASMI, DEVASWOM BOARD JUNCTION,
THIRUVANANTHAPURAM.**

**BY ADVS.SRI.M.V.BOSE
SRI.VINOD MADHAVAN**

RESPONDENT(S):

- 1. THE PRINCIPAL SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE (E) DEPARTMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.**
- 2. THE DIRECTOR OF HEALTH SERVICES,
THIRUVANANTHAPURAM.**

BY SENIOR GOVERNMENT PLEADER SRI.P.I.DAVIS

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 20-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

mbr/

APPENDIX

PETITIONERS' ANNEXURES:

- ANNEXURE I: TRUE COPY OF THE LETTER DATED 15.7.2004.
ANNEXURE II: TRUE COPY OF THE LETTER DATED 22.7.2004.
ANNEXURE III: TRUE COPY OF THE LETTER DATED 17.8.2004 OF THE A.G.
ANNEXURE IV: TRUE COPY OF THE LETTER DATED 7.9.2004.
ANNEXURE V: CERTIFIED COPY OF JUDGMENT IN WP(C)NO.17332 OF 2004(L)
DATED 5.7.2010.

RESPONDENTS' ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

ASHOK BHUSHAN, CJ

&

A.M.SHAFFIQUE, J.

W.A.No.1438 of 2010

Dated this the 20th day of November 2015

J U D G M E N T

Ashok Bhushan, CJ

This writ appeal has been filed against the judgment dated 05/07/2010 in W.P.C.No.17332/2004 by which the learned Single Judge had dismissed the writ petition filed by the appellants. The writ petition was filed by the appellant praying for the following reliefs:

“i) to issue a writ of certiorari or other appropriate writ, direction or order calling for records leading to Exhibit P4 order and quashing the same to the extent whereby it orders that the period of absence will not count for pension;

ii) to declare that petitioner is entitled to pension for the period he was on leave from 12/07/1999 to 30/04/2000 which has been regularised as per Exhibit P4 order;

iii) to issue a writ of mandamus or other appropriate writ direction or order directing the respondents to sanction to the petitioner his second higher grade of promotion;

- iv) to issue such other writ, direction or order as deemed fit in the circumstances of the case;*
- v) to award costs to the petitioner."*

2. Two issues were raised by the writ petitioner. Firstly, that denial of period from 12/07/1999 to 30/04/2000 for the benefit of pension and secondly denial of second higher grade after completion of 18 years.

3. The learned Single Judge had considered both the issues and had rejected both the claims holding that the petitioner was rightly denied the benefit of pension for the aforesaid period and he, having not discharged his duties for the prescribed period of 18 years, is not entitled for second higher grade.

4. Aggrieved by the said judgment, this writ appeal has been filed.

5. Detailed counter affidavit has been filed by the State in which it has been stated that after rejoining, the petitioner went on leave with effect from 12/07/1999 and has been submitting his leave application every month. Since the medical certificate for the aforesaid period was submitted along with the leave

application on 16/10/2001, no sanction for the aforesaid period was granted.

6. After having heard the learned counsel for the parties, we are of the view that no error was committed by the learned Single Judge in denying the relief to the appellant/writ petitioner. The leave, having not been sanctioned for the aforesaid period and the writ petitioner was absent without allowance, the said period was rightly denied for pensionary benefits.

7. As far as the second relief for higher grade is concerned, the appellant/writ petitioner, having not worked for the period from 12/07/1999 to 30/04/2000, for which leave was never sanctioned, that period could not have been added for the purpose of grant of second higher grade.

This writ appeal is hence dismissed.

(sd/-)
(ASHOK BHUSHAN, CHIEF JUSTICE)
(sd/-)
(A.M.SHAFFIQUE, JUDGE)

True Copy

PA to Judge

jsr/23/11/2015