

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

W.A.No.262 of 2014
and
M.P.Nos.1 and 2 of 2014

1. The Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai-600 009.
 2. The Director of Medical Education,
Kilpauk, Chennai-600 010. Appellants/Respondents
- Vs.
- Dr.R.Sundar Respondent/Petitioner

This writ appeal is preferred under Clause 15 of Letters Patent against the order dated 29.08.2012 passed in W.P.No.25553 of 2011.

W.P.No.25553 of 2011 : Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus to call for the records in pursuant to the Impugned Order passed by the 1st Respondent in G.O.(D).No.882, Health & Family Welfare Department dated 25.07.11 and Quash the same and consequently direct the Respondents to regulate the period from 23.11.06 to 17.01.08 as duty for all purposes and disburse the pay and allowances and the consequential terminal and pensionary benefits with interest.

For Appellants : Mrs.A.Srijayanthi, Spl.G.P.

For Respondent : Mr.S.M.Subramaniam

JUDGMENT

(The Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The writ petitioner / respondent herein, namely, Dr.R.Sundar, while working as Professor in Cardiology in the Madras Medical College, Chennai, allegedly remained unauthorisedly absent from 23rd November, 2006 to 17th January, 2008. A departmental enquiry was initiated. Eventually, the charges were dropped by G.O.(D) No.586, Health and Family Welfare Department dated 8th June, 2010, leading to issuance of the impugned G.O.(D)No.882, Health and Family Welfare Department dated 25th July, 2011, whereunder the period of unauthorised absence for the said period was regulated as "Non-duty". Feeling aggrieved, the writ petitioner preferred the instant writ petition.

2. The learned Single Judge, considering all aspects of the matter, came to the conclusion that once the period of alleged absent was regularised, the said period be treated as duty period. Consequently, the writ petitioner was held to be entitled to all remunerations in accordance with law. Thus, the instant appeal by the State Government.

3. Mrs.A.Srijayanthi, learned Special Government Pleader, appearing for the appellants submits that it was not a case of full exoneration from the charges. The charges were found proved in the enquiry conducted properly and in accordance with law. However, the State Government, exercising its discretionary power, did not press imposition of punishment and had dropped the charges. In such an event, treating the period as non-duty was just and proper in the facts of the case. It is also contended that the finding of the learned Single Judge in holding the said period be treated as duty period for all financial benefits, was improper and deserves to be set aside.

4. On the other hand, Thiru S.M.Subramaniam, learned counsel appearing for the respondent fairly submits that the writ petitioner is not claiming any salary for the period he was absent, however the entire period be treated as duty period for the purpose of seniority and other ancillary benefits flowing from regular continuous service during that period. It is also contended alternatively that once the charges alleged therein were dropped, the Government ought not to have treated the period as non-duty on the premise that dropping of charges amounts to non existence of charges.

5. We have heard the learned counsel for the parties, perused the pleadings and documents appended thereto.

6. We have examined the case from all angles. It is indisputable that absence of the writ petitioner for the aforestated period was held as unauthorised in the enquiry, however once the employer has decided to drop the charges, the writ petitioner is entitled to regularisation of absent period. Insofar as the grant of benefits is concerned, indisputably, the writ petitioner has chosen to remain absent without any sanction or authority and has not contributed his service in lieu of what he is entitled to as remuneration, pay and allowances and as such, the claim of pay and allowances by the writ petitioner during such period may not be justified. The learned counsel for the writ petitioner /respondent fairly conceded to this position.

7. As a sequel, we are of the considered view that the said period of absence shall be treated as on-duty for all benefits, i.e., continuity of service and other ancillary benefits, except pay and other allowances for such period. Accordingly, we hold that the writ petitioner / respondent herein is not entitled to pay and allowances for the period from 23rd November, 2006 to 17th January, 2008. The impugned order is upheld in respect of the other part, except pay and allowances for the said period.

8. Resultantly, the writ appeal is allowed partly. No order as to costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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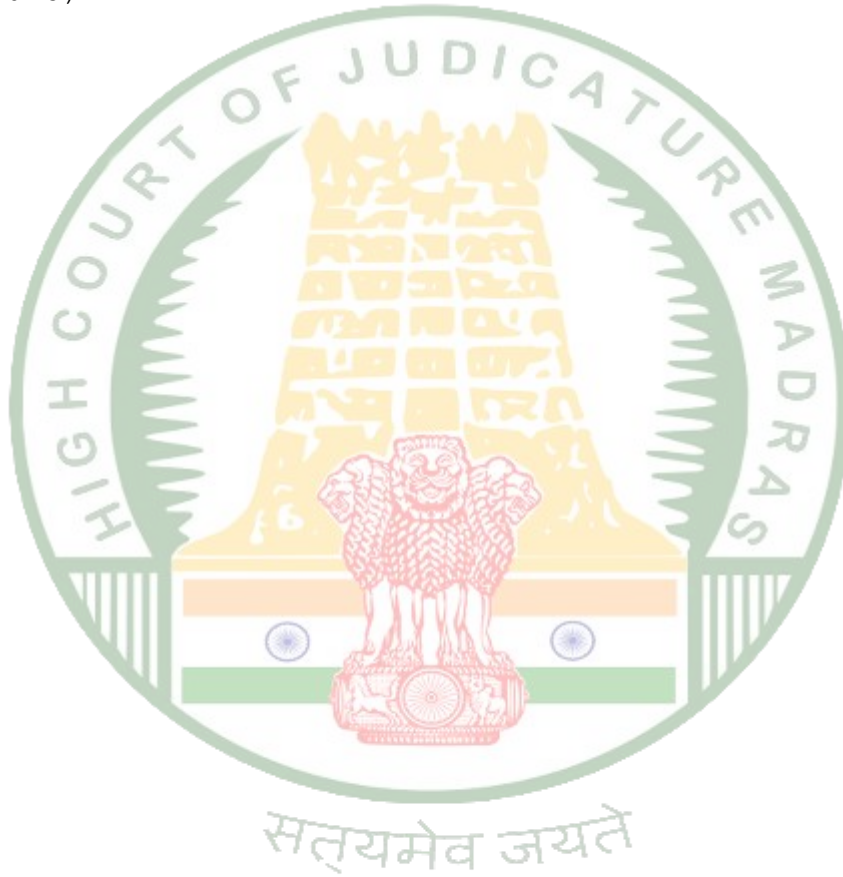
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2. The Director of Medical Education,
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+1cc to Mr.S.M.Subramanian, Advocate, S.R.No.51145
+1cc to the Government Pleader, S.R.No.51417

W.A.No.262 of 2014

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