

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.17382 of 2007
(O.A.No.2110 of 2004)

Sonaimuthu
S/o Atharmalai

.. Petitioner

-vs-

1. Medical Officer
Government Primary Health Centre
Saligramam, Sivagangai District
 2. The Deputy Director of Health Services
Collectorate Complex
Sivagangai
 3. The Director of Public Health and
Preventive Medicine
Chennai-6
- ... Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents to treat the period from 21.3.98 to 18.8.1998 and from 28.8.98 to 9.1.2000 as compulsory wait and to pay the consequential benefits.

For Petitioner :: Mr.R.Muthukkannu

For Respondents :: Mr.R.Govindasamy
Additional Government Pleader

ORDER

The Original Application No.2110 of 2004 filed by Mr.A.Sonaimuthu before the Tamil Nadu Administrative Tribunal, Chennai seeking a direction to the respondents to treat the period from 21.3.98 to 18.8.98 and again for the further period from 28.8.98 to 9.1.2000 as compulsory wait, came on transfer and renumbered as the present writ petition.

2. Mr.R.Muthukkannu, learned counsel for the petitioner submitted that when the petitioner was serving as a Jeep Driver in the Primary Health Centre, Maruthangudi, he was transferred to

Devakottai Primary Health Centre by order dated 4.12.97 passed by the Deputy Director of Health Services. Accordingly, he joined duty in the said place. While he was working at Devakottai, one another order was passed on 20.3.98 directing him to report for duty at Maruthangudi in the place of Mr.M.Balasubramanian, another driver, who was also transferred. In deference to the said order, the petitioner reported for duty at Maruthangudi on 21.3.98. But in view of non issuance of the posting order at Maruthangudi, he waited compulsorily from 21.3.98. In the meanwhile, Mr.M.Balasubramanian, who was transferred, filed O.A.No.2265 of 1998 on the file of the Tamil Nadu Administrative Tribunal and obtained an order of interim stay against his transfer order. Thereafter, the Director of Public Health and Preventive Medicine, Chennai issued another order dated 13.8.98 modifying the earlier order transferring him from Maruthangudi Primary Health Centre to Mallakkottai Primary Health Centre in the place of Mr.S.Arulprakasam, who is also a Jeep Driver. On the basis of the order dated 13.8.98 transferring him from Maruthangudi Primary Health Centre, he joined duty at Mallakkottai Primary Health Centre on 19.8.98. However, Mr.S.Arulprakasam another Jeep Driver, who also faced transfer, filed O.A.No.6896 of 1998 challenging his transfer order dated 13.8.98 by impleading the petitioner as the fourth respondent. The Tribunal again granted an interim order of stay on 24.8.98. In view of the order granting stay, the petitioner was relieved from Mallakkottai Primary Health Centre, but no posting order was issued to him, resultantly, he had to wait compulsorily for suitable posting orders. Subsequently, the Director of Public Health and Preventive Medicine, Chennai issued instructions to the second respondent for issuing posting order to the petitioner vide letter No.96751AK-Nee7/99 dated 29.12.99. Pursuant thereto, the posting order was issued to the petitioner on 6.1.2000 directing him to join duty at Thayamangalam Primary Health Centre. Accordingly, the petitioner also joined duty at Thayamangalam Primary Health Centre on 10.1.2000. Therefore, the grievance of the petitioner is that from 21.3.98 till 18.8.98 for about 5 months & 3 days and again from 28.8.98 to 9.1.2000 for a period of 1 year, 4 months & 12 days, the respondents have not issued any posting order, as a result, he was compulsorily waiting. Therefore, the aforementioned period, namely, 1 year, 9 months and 15 days had to be treated as compulsory wait as per the ruling under F.R.9(6)(3). In support of his submissions, he has also referred to a communication dated 6.1.2000 issued by the Deputy Director of Health Services in-charge and Joint Director of Health Services, Sivagangai, wherein the respondents also appear to have admitted that the petitioner was not issued with any posting order and he was kept under compulsory wait for the aforementioned period. On this basis, he prayed for allowing the writ petition.

3. Mr.R.Govindasamy, learned Additional Government Pleader for the respondents was also heard.

4. The petitioner, while serving as a Jeep Driver in Primary Health Centre, Maruthangudi, was transferred to Devakottai Primary Health Centre by an order dated 4.12.97 passed by the Deputy Director of Health Services. After joining at the Primary Health Centre, Devakottai, within four months, the said order was cancelled with a direction to report for duty at Maruthangudi, again in the place of Mr.M.Balasubramanian. When the petitioner reported for duty at Maruthangudi, no posting order was issued. Therefore, he was in compulsory wait from 21.3.98. In the meanwhile, Mr.M.Balasubramanian, another Driver who was also facing transfer, filed O.A.No.2265 of 1998 on the file of the Tamil Nadu Administrative Tribunal and obtained an order of interim stay on 31.3.98. In the meanwhile, the Director of Public Health and Preventive Medicine, Chennai also passed an order dated 13.8.98 modifying the earlier order and transferring the petitioner from Maruthangudi Primary Health Centre to Mallakkottai Primary Health Centre in the place of Mr.S.Arulprakasam, another Jeep Driver, who also filed O.A.No.6896 of 1998 challenging his transfer order dated 13.8.98 by impleading the petitioner as the fourth respondent. In the said original application, the Tribunal granted an order of stay on 24.8.98, as a result, he was unable to join duty. In view of the interim order of stay, the petitioner was relieved from Mallakkottai Primary Health Centre, but no posting order was issued to him. Therefore, he was compulsorily waiting. Finally, the Director of Public Health and Preventive Medicine, Chennai issued instructions to the second respondent in letter No.96751AK-Nee7/99 dated 29.12.99 and thereupon the posting order was issued to the petitioner on 6.1.2000 directing him to join duty at Thayamangalam Primary Health Centre and he also joined duty at the said place on 10.1.2000. A reading of the letter dated 6.1.2000 issued by the second respondent clearly shows that the compulsory wait faced by the petitioner from 21.3.98 till 18.8.98 and for the further period from 28.8.98 till 9.1.2000 were directed to be regularised. In the light of the order recommending the regularisation of his waiting period, keeping in view of the ruling under F.R.9(6)(3), which is given as under,

''(3) When a Government servant has compulsorily to wait for orders of posting, such period of waiting shall be treated as duty. During such period, he shall be eligible to draw the pay plus special pay which he would have drawn had he continued in the post he held immediately before the period of compulsory wait or the pay plus special pay which he will draw on taking charge of the new post, whichever is less. For this purpose, no temporary post need be created. The compensatory allowances shall be reckoned at the rates admissible at the station in which he was on compulsory wait.''

the period of compulsory wait, namely, from 21.3.98 till 18.8.98 and from 28.8.98 till 9.1.2000 is to be treated as duty. In view of the above, the respondents are directed to settle the statutory terminal benefits including the compensatory allowances at the rates admissible at the station in which he was on compulsory wait for the aforementioned period, within a period of four weeks from the date of receipt of a copy of this order, since the petitioner had retired from service on 31.5.2011 on reaching the age of superannuation. The writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Medical Officer
Government Primary Health Centre
Saligramam, Sivagangai District
 2. The Deputy Director of Health Services
Collectorate Complex
Sivagangai.
 3. The Director of Public Health and
Preventive Medicine
Chennai 600 006
- + 1 cc to Mr.R. Muthukkannu, Advocate SR.14458
- + 1 cc Government Pleader Sr.14207

CTK(CO)

EU 31.03.2015

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