

THE HON'BLE SRI JUSTICE G.CHANDRAIAH
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

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W.P.NO.24169 OF 2004

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O R D E R (Per the Hon'ble Sri Justice G.Chandraiah)

Heard the counsel for the petitioner and the Government Pleader for Medical Health and Family Welfare (Andhra Pradesh), for the respondents.

2. Aggrieved by the order of the Andhra Pradesh Administrative Tribunal dated 4.10.2003 in O.A.No.1787/2003 in rejecting the claim of the petitioner to treat the period from 1.7.2000 to 8.1.2002 as compulsory wait period, the present writ petition is filed.

3. The petitioner was working as Male Nursing Orderly (M.N.O.), Koppaka, West Godavari District. By proceedings of the Director, Indian Medicines and Homeopathy (I.M. & H) Department, Secunderabad dated 16.6.1997, he was appointed as Typist by transfer and posted in the office of the 3rd respondent - Regional Deputy Director, I.M. & H, Department, Eluru at West Godavari and the petitioner joined duty and was working in the said capacity. While so, the 1st respondent - Government of Andhra Pradesh, represented by its Principal Secretary, issued G.O.Rt.No.779 dated 16.6.2000 transferring one B.Padmavathi, Typist of Dr.G.G. Medical College, Gudivada to the office of 3rd respondent. The Commissioner – 2nd respondent, by proceedings dated 17.6.2000 reverted the present petitioner to his previous position as MNO, for want of vacancy. Aggrieved by reversion, the petitioner preferred O.A.No.3431/2000 and the Tribunal by order dated 14.10.2003 disposed of the application with a direction to the Government to examine the claim of the petitioner. The Government by G.O.Rt.No.554 dated 22.5.2001 cancelled the transfer order of the said Smt. B.Padmavathi. Challenging the said cancellation, she filed O.A.No.3559/2001 and the Tribunal by order dated 31.12.2001 dismissed the said O.A. and the writ petition in W.P.No.592/2002 filed by her also ended in dismissal by order dated 21.1.2002. Subsequently, in pursuance of the orders of the Tribunal and the writ petition, the petitioner joined duty as Typist in the office of the 3rd respondent and filed a representation to the

Government to treat the period from 1.7.2000 to 9.1.2002 as compulsory wait period. By proceedings of the 2nd respondent dated 15.1.2003, the claim of the petitioner was rejected. Aggrieved by the same, the petitioner filed the present O.A.No.1787/2003 and by the impugned order, the O.A. was partly allowed directing the respondents to treat the petitioner's service from 1.7.2000 to 8.1.2002 as on duty except for payment of salary and that he is entitled to all other service benefits for the said period. Assailing the order of the Tribunal in denying the salary for the period in dispute and in not treating the period as compulsory wait period, the writ petition is filed.

4. The facts noted above, which are not in dispute, would disclose that the applicant failed to report to duty on his reversion and involved in agitating his rights. As noted by the Tribunal, in the earlier orders of the Tribunal and in the writ petition, there was no specific direction for treating the said period as compulsory wait period. Pursuant to the transfer of one B.Padmavathi as typist to the post where the petitioner was posted, if no posting orders were given while reverting, then there would have been justification on the part of the petitioner to seek for treating the period as compulsory wait period and for salary. In other words, there is no legal order restraining him from reporting to duty at the place he was posted. It is to be seen that when specific posting orders were given posting him to his previous post, it forms the bounden duty of the petitioner to join duty and work, but he failed to do so. Therefore, in our considered view, the Tribunal rightly rejected to treat the period as 'compulsory wait period' and considering the facts and circumstances, granted other service benefits, except the salary for the said period. We do not find any justifiable reason to interfere with the impugned order of the Tribunal. The judgment of the Apex Court reported in *SOMESHTIWARI v. UNION OF INDIA*^[1], relied on by the learned counsel for the petitioner to contend that the principle "no work no pay" may not be applicable to the case and that the absence period may be treated as leave by invoking leave rules, cannot be made applicable to the facts of the present case. The writ petition is devoid of any merit and the same is dismissed. No costs.

5. Miscellaneous petitions pending if any, shall stand closed.

G.CHANDRAIAH,J

U.DURGA PRASAD RAO,J

DATE: 02 --12—2015
AVS

[\[1\]](#) (2009)2 SCC 592