

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-11-2016

(Orders reserved on 19.10.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.4295 of 2014
and M.P.No.2 of 2014

Prof.Dr.K.S.Ganesan ... Petitioner
Vs.

1. The Secretary to Government,
Health and Family Welfare (1-2) Department,
Fort St.George, Chennai-9.
2. The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 006.
3. Director of Medical Education,
Kilpauk,
Chennai-10. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in G.O.(D).No.1085, dated 04.10.2013 and subsequent letter written by the third respondent in Reference No.94576/E1/1/2013, dated 12.12.2013 and to quash the same and direct the first respondent to include the petitioner's name in the Dean Panel for the year 2013-2014.

For Petitioner : Mr.P.Ayyaswamy

For Respondents : Mr.S.N.Parthasarathi,
Govt. Advocate for RR-1 and 3

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in G.O.(D).No.1085, dated 04.10.2013 and subsequent letter written by the third respondent in Reference No.94576/E1/1/2013, dated 12.12.2013 and

to quash the same as illegal, arbitrary, unreasonable and direct the first respondent to include the petitioner's name in the Dean Panel for the year 2013-2014.

2. The petitioner had entered into Tamil Nadu Medical Service on 01.04.1989 with M.B.B.S. Degree and M.S. Degree (General Surgery). After entering into the above said service, he had completed the Super Speciality Degree in M.Ch. in Cardio-Thoracic Surgery. He was posted as Tutor in Cardio-Thoracic Surgery at Government Medical College, Coimbatore with effect from 23.03.2002 and continued in the same post till 08.05.2008. While he had worked in the Government Medical College, Coimbatore as Tutor in Cardio-Thoracic Surgery, certain adverse remarks had been made against him through the Media and hence, he was transferred to the Government Medical College, Tirunelveli and posted as Tutor in Anatomy, by the third respondent, vide transfer order, dated 08.05.2008 and he was relieved from his duties on 08.05.2008 AN. As the petitioner neither joined duty in the posted place, nor submitted any leave application, he was directed to join duty in the posted place by the Dean, Government Medical College, Coimbatore, repeatedly. Finally, he joined duty on 14.03.2009 FN. Thus, he had unauthorisedly absented from duty from 09.05.2008 to 13.03.2009.

3. It is further stated that the third respondent, while making surprise inspection in the Government Medical College, Tirunelveli on 03.10.2009, found that the petitioner signed in the Attendance Register in the Resident Medical Officer's Office for the period from 01.03.2009 to 13.03.2009, i.e. prior to his joining duty in the Government Medical College, Tirunelveli. Therefore, an explanation was called for from him by the Dean, Government Medical College, Tirunelveli, but he did not submit any explanation. He again unauthorisedly absented from duty from 30.05.2009 to 01.09.2009 and re-joined duty on 02.09.2009. After working for a short period, he again unauthorisedly absented himself from duty from 12.09.2009 to 20.04.2010. Subsequently, he was transferred to the Government Medical College, Coimbatore, where he re-joined duty on 22.04.2010.

4. For the above said acts of the petitioner, the third respondent initiated disciplinary action against him under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the following charges were framed against him:

Charge-1: That Dr.K.S.Ganesan, formerly Tutor in Cardio Thoracic Surgery, Coimbatore Medical College Hospital, Coimbatore and then Tutor in Anatomy, Tirunelveli Medical College, Tirunelveli, while working as Tutor in Cardio Thoracic Surgery, Coimbatore Medical College, Coimbatore had forced a patient Mrs.Mahalakshmi to take Echo-cardiogram in a particular private establishment. He had strongly and openly denounced the above said

patient for taking Echo-cardiogram from another firm, not in the particular establishment favoured by him. The news was published in "Dinamalar" a Tamil Newspaper dated 21.03.2008. His above act had tarnished the image of the Government and the Hospital and thereby unbecoming act of a responsible Government Servant.

Charge-2: That he had tampered the Attendance Register by marking the period of absence as Medical Leave, Casual Leave and COL and signed in the Attendance Register for the days he was absent.

Charge-3: That Dr.K.S.Ganesan, Tutor in Anatomy, Tirunelveli Medical College, Tirunelveli has absented from 25.09.2009 to till date causing inconvenience to the patients and public, thereby derelicted in his duties.

Charge-4: That by his above acts, he has violated Rule 20 of Tamil Nadu Government Servants' Conduct Rules, 1973" .

5. The petitioner submitted his statement of defence. He appeared for enquiry before the Enquiry Officer, who has held that Charge No.1 is not proved and the remaining charges were held as proved. In respect of the proved charges, the Government imposed punishment of stoppage of increment for one year without cumulative effect, vide G.O.(D).No.940, Health and Family Welfare Department, dated 08.08.2011. Thereafter, the petitioner preferred Review Petition to the Government. The second respondent opined that there was no sufficient proof in respect of the charges framed against the petitioner and suggested to set aside the punishment imposed on him, based upon which, the Government has issued order setting aside the punishment imposed on him, vide G.O.(D).No.862, Health and Family Welfare Department, dated 03.09.2012. The period of unauthorised absence of the petitioner, i.e., from 09.05.2008 to 13.03.2009, 30.05.2009 to 01.09.2009, 12.09.2009 to 24.09.2009 and 25.09.2009 to 20.04.2010, had been regulated as Extraordinary Leave Without Pay and Allowance, without Medical Certificate, vide G.O.(D).No.1085, Health and Family Welfare Department, dated 04.10.2013.

6. Thereafter, the third respondent issued a letter in Reference No.94576/E1/1/2013, dated 12.12.2013, stating that the petitioner has not completed the requisite teaching experience of 10 years as Professor/Associate Professor, out of which, 5 years must be Professor as on the crucial date, i.e. on 15.03.2013, either as per service particulars or as per

G.O.Ms.No.354, Health and Family Welfare Department, dated 23.10.2009. Hence, his request to include his name in the panel for the post of Dean could not be complied with. Hence, aggrieved by the order passed by the first respondent in G.O. (D).No.1085, dated 04.10.2013 and the letter issued by the third respondent in Reference No.94576/E1/1/2013, dated 12.12.2013, denying his valuable right to be appointed as Dean for the year 2013-2014, he has filed this Writ Petition, seeking for the prayer stated supra.

7. When the Writ Petition is taken up for hearing, learned counsel for the petitioner made his submissions adverting to the averments made in the affidavit and submitted that when the respondents have chosen to set aside the charges, there cannot be any impediment in regulating the period of unauthorised absence from duty as 'duty period' and for inclusion of his name in the said panel for the post of Dean for the year 2013-2014. Hence, he prayed for allowing the Writ Petition.

8. Learned Government Advocate appearing for the first and third respondents, by filing detailed counter affidavit, submitted that though the charges framed against the petitioner, have been set aside by the first respondent, based on the suggestion of the second respondent, since the petitioner has unauthorisedly absented himself from duty for the relevant periods stated above and as he did not work in those periods, the petitioner has no right to claim for regulating the above said periods as 'duty period'. Learned Government Advocate further submitted that during the course of enquiry, the petitioner availed various kinds of leave along with Medical Certificate, etc. However, the first respondent has decided to regulate the period of unauthorised absence from duty and passed order on 04.10.2013 in G.O.(D).No.1085, regulating the above said periods as extraordinary leave without pay and allowance without Medical Certificate.

9. With regard to the claim of the petitioner to include his name in the panel of promotion for the post of Dean for the year 2013-14, it is submitted by the learned Government Advocate that as per the Special Rules of the Tamil Nadu Medical Service, the qualification prescribed for appointment to the post of Dean is that one should possess the recognised P.G. Medical Qualification or any other qualification approved by the MCI which are on par with MD/MS awarded by the Indian Universities with a minimum of ten years teaching experience as Professor/Associate Professor/Reader in a Medical College/institution, out of which, at least five years must be as Professor in a Department and should also have minimum of one year left over service prior to retirement, provided that the other things being equal, preference shall be given to the Head of the Department. Learned Government Advocate further submitted

that the petitioner is not having requisite years of teaching experience, because, he had absented himself from duty for the relevant periods. Hence, for these reasons, learned Government Advocate prayed for dismissal of the Writ Petition.

10. Keeping in mind the above submissions made by learned counsel appearing for both parties, I have considered the same and perused the materials available on record.

11. The main submission of the learned counsel for the petitioner is that the unauthorised absence from duty for certain periods, may be treated as 'duty period' and prayed for inclusion of the petitioner's name in the panel for the post of Dean for 2013-2014. As contended by the learned Government Advocate, as the petitioner did not work during the above said relevant periods of unauthorised absence, he has no right to claim the same as 'duty period' so as to consider the same for the teaching experience.

12. In fact, the materials available on record shows that even during enquiry, he has availed various kinds of leave along with Medical Certificate, etc., which shows that the petitioner did not work during those periods. However, the first respondent has decided to regulate the period of unauthorised absence as extraordinary leave without pay and allowance without medical certificate, vide G.O.(D).No.1085, Health and Family Welfare Department, dated 04.10.2013.

13. In the above factual background of the case, as the first respondent has taken a liberal view in regulating the period of unauthorised absence as extraordinary leave without pay and allowance without medical certificate, I do not find any infirmity in the impugned G.O., dated 04.10.2013 and also the impugned letter dated 12.12.2013. The Writ Petition is devoid of merits and the same is accordingly dismissed. No costs. The Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

cs

Copy to

1. The Secretary to Government,
Health and Family Welfare (1-2) Department,
Fort St.George, Chennai-9.

2. The Secretary, Tamil Nadu Public Service Commission,
Chennai-600 006.

3. Director of Medical Education, Kilpauk, Chennai-10.

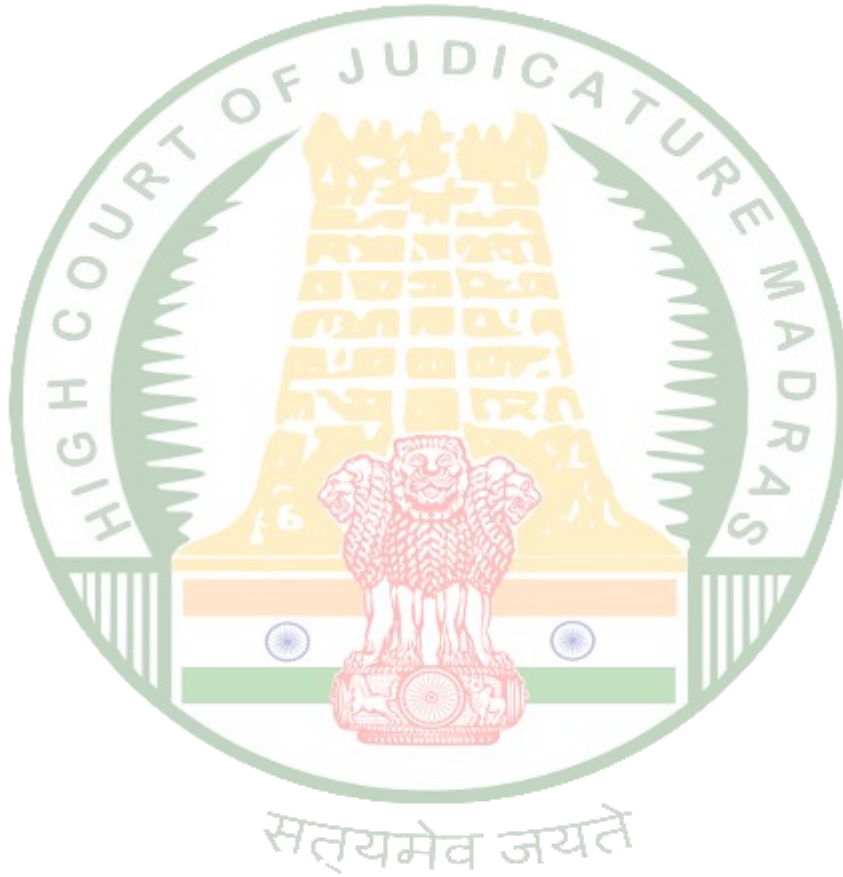
1 cc to Mr.P. Ayyaswamy, Advocate, Sr. 63410

1 cc to Government Pleader, Sr. 62822

W.P.No.4295 of 2014

KGK (CO)

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