

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.07.2016

CORAM:

THE HON'BLE MR.JUSTICE B.RAJENDRAN

Writ Petition No.4139 of 2016

Dr.S.Kalaimathi

... Petitioner

Vs.

1. The Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai-9.
2. The Director of Medical and Rural
Health Services (ESI), Chennai-6.
3. The Director of Medical Education,
Kilpauk, Chennai-10.
4. The Accountant General (A & E),
Tamil Nadu, Chennai-18. ... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Mandamus directing the respondents herein to settle the petitioner's increments due till 31.10.2009 and retirement benefits such as DCRG and Pensionary benefits with effect from 01.11.2009 with interest at 10% per annum for the belated payment of retirement benefits from 01.11.2009 till the actual date of payment.

For Petitioner ..Mr.Ravi Shanmugam

For Respondents ..Mr.Rajendra Prasad G.P.

O R D E R

The petitioner joined the services as Assistant Surgeon on 9.4.1979 and she was promoted as Senior Civil Surgeon for the year 2001-2002, consequence of the decision of the Tamil Nadu Administrative Tribunal. She was permitted to go abroad from 25.09.1995 to 24.03.1996.

2. As she had overstayed, for the unauthorized absence period from 25.03.1996 to 30.11.1998 a charge was framed under Rule 17(b) of Tamil Nadu Civil Services (D & A) Rules for disobeying the orders of the superiors in not reporting for

duty. However, in G.O.(D) No.1152, Health and Family Welfare 1 (1) Department, dated 26.10.2009, orders were issued permitting him to retire from service on attaining the age of superannuation on the afternoon of 31.10.2009 without prejudice to the disciplinary proceedings pending against him.

3. The enquiry officer by her report dated 10.06.2010 had held the charge as proved. On 20.01.2011 the first respondent had communicated the copy of the enquiry report and had called for the petitioner to make her further representation on the enquiry report. The petitioner had submitted her further representation on 17.02.2011 on the enquiry report requesting to settle her retirement benefits. On 05.07.2011 the first respondent had communicated a show cause notice under the Tamil Nadu Pension Rules as to why a punishment of pension cut of Rs.2,000/- per month for a period of two years should not be imposed. The petitioner by a representation dated 18.07.2011 had accepted the proposed pension cut and requested for early sanction of retirement benefits.

4. The first respondent in her letter dated 14.05.2012 directed the second respondent to send necessary proposal for regulating the unauthorized absence period from 25.03.1996 to 09.05.1999. On 31.05.2012, the fourth respondent had communicated a proceeding pointing out that the increments after promotion as Senior Civil Surgeon from 05.07.2002 has not been regulated.

5. The petitioner made a representation to the first respondent to regulate her leave period. In G.O.(D) No.923 dated 03.08.2011 the first respondent herein has also imposed a punishment of cut in pension of Rs.2,000/- per month for a period of two years for her unauthorized absence from 25.03.1996 to 08.11.1998. In G.O.(D) No.983, Health and Family Welfare (1-2) Department dated 12.09.2013 the Government had passed orders based on the proposal of the Director of Medical Education, Chennai regulating the unauthorized absence period from 25.03.1996 to 08.11.1998 as non-duty period.

6. On 21.03.2014 the second respondent had also passed orders regulating the period of 84 days from 06.02.1992 to 29.04.1992 as extra-ordinary leave without pay without Medical Certificate. The second respondent by an order dated 9.4.2014 has granted Extra Ordinary Leave Without Pay and Allowances without Medical Certificate for 24 days from 16.04.1999 to 09.05.1999. On 03.04.2014 and 3.3.2015 the petitioner has made representation to settle her retirement benefits. On 22.06.2015 the Director of Medical and Rural Health Services, Chennai had also communicated a proceedings to the Regional Administrative Medical Officer (ESIS), Coimbatore to take personal attention regarding her request for settlement of retirement benefits.

Since the petitioner has not been paid her increments which are due till date, he has come up with the present writ petition.

7. The learned Government Pleader appearing for the respondents would contend that the respondents have already taken steps to settle the retirement benefits of the petitioner.

8. From the above facts it is very clear that the petitioner was imposed punishment of pension cut of Rs.2,000/- per month for a period of two years. The petitioner has retired from service long back, on 31.10.2009. Thereafter, on 21.03.2014 the second respondent had also passed orders regulating the period of 84 days from 06.02.1992 to 29.04.1992 as Extra-Ordinary leave without Pay and Allowances without Medical Certificate and by an order dated 9.4.2014 the second respondent has granted Extra Ordinary Leave Without Pay and Allowances without Medical Certificate for 24 days from 16.04.1999 to 09.05.1999.

9. Considering the above facts and circumstances, the second respondent is directed to consider the representation of the petitioner dated 3.3.2015, dispose of the same and pass appropriate orders in accordance with law, granting retirement benefits, within a period of three months from the date of receipt of copy of this order.

10. The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

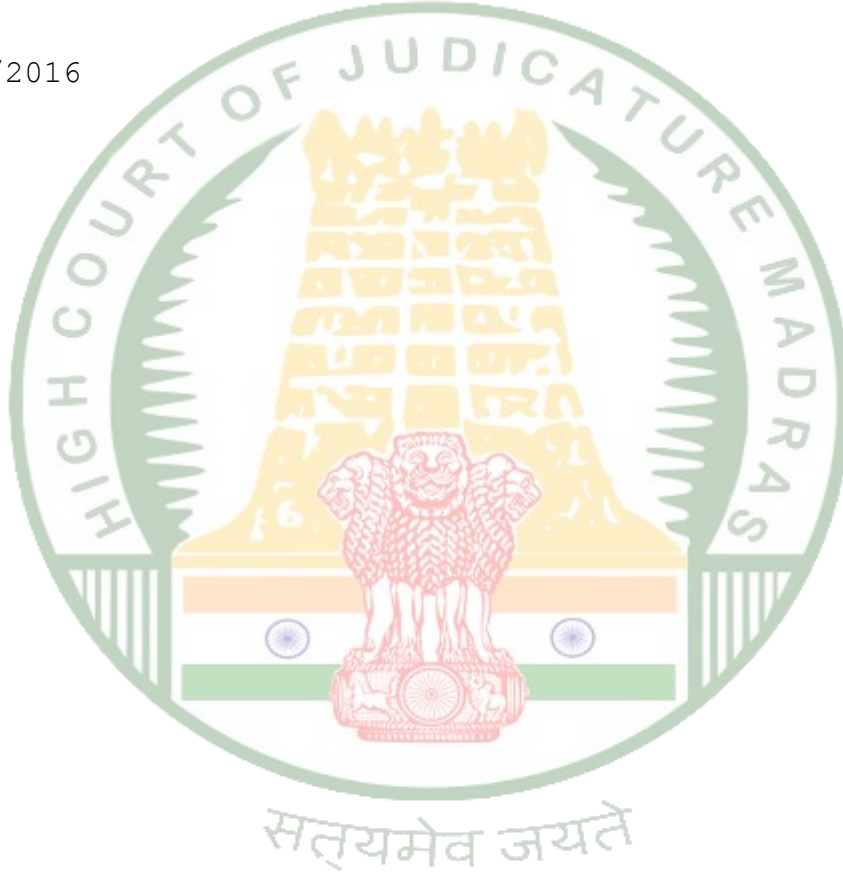
1. The Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai-9.
2. The Director of Medical and Rural Health Services (ESI),
Chennai-6.
3. The Director of Medical Education,
Kilpauk, Chennai-10.

4. The Accountant General (A & E),
Tamil Nadu,
Chennai-18.

+1cc to Mr.Ravi Shanmugam, Advocate Sr.38515
+1cc to the Government Pleader Sr.38969

W.P.No.4139 of 2016

sv[co]
srg 01/08/2016



WEB COPY