

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.12.2017

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.11730 of 2006

S.Loganathan

... Petitioner

Vs.

1.The Superintendent
Government Hospital for
Thoracic Medicine and
Chest Diseases, Tambaram
Sanatorium, Tambaram,
Chennai - 600 047.

2.The Director of Medical
Education, Poonamallee High Road,
Kilpauk, Chennai - 600 010.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records in Na.Ka.No.2234/N5/2001 dated 30.01.2002 on the file of the 1st respondent as modified in Na.Ka.No.22869/Ce.Ma.Pe.2/2/ 2002 dated 28.5.2003 on the file of the 2nd respondent and quash the same and direct the respondents to revise the petitioner pension as well as pay, all terminal benefits as the petitioner is entitled to in law.

For Petitioner : Mr.S.Kingston Jerold
for s.k.rakhunathan

For Respondents : Mr.S.Gunasekaran
Additional Government Pleader

ORDER

The petitioner has approached this Court for seeking the following reliefs:

"To issue a Writ of Certiorarified Mandamus calling for the records in Na.Ka.No.2234/N5/2001 dated 30.01.2002 on the file of the 1st respondent as modified in Na.Ka.No.22869/Ce.Ma.Pe.2/2/ 2002 dated 28.5.2003 on the file of the 2nd respondent

and quash the same and direct the respondents to revise the petitioner pension as well as pay, all terminal benefits as the petitioner is entitled to in law."

2.The petitioner was employed as a Stretcher Bearer in the Government Hospital for Thoracic Medicine, Tambaram. He attained the age of superannuation and retired from service on 31.12.2002. In 1994, the petitioner was transferred from Government Hospital, Tambaram Sanatorium to Government Arignar Anna Memorial Cancer Hospital, Karapettai vide order dated 19.04.1994. Subsequently posting order was issued on 29.04.1994, the petitioner has challenged the order of transfer before the then Tamil Nadu State Administrative Tribunal. Though initially a stay was obtained by the petitioner, subsequently, the learned Tribunal, by order dated 20.06.1994, dismissed the application by upholding the order of transfer.

3.According to the petitioner, after the decision of the learned Tribunal, he became sick and continued to be on medical leave for more than a year and he joined the transferred post on 14.08.1995 and thereafter retired from service on 31.12.2002.

4.In view of the continued absence for more than a year, a disciplinary action was initiated for unauthorised absence from duty from 30.04.1994 to 13.08.1995. In response to the disciplinary action, a detailed reply was filed by the petitioner stating that he was entitled for medical leave and the same was due to his ill-health. However, the punishing authority imposed a penalty of stoppage of increment for a period of one year with cumulative effect. Thereafter, the petitioner filed an appeal on 13.03.2002. The appellate authority considering the retirement of petitioner by then and took a lenient view and modified the penalty of stoppage of increment with cumulative effect into stoppage of one increment without cumulative effect vide proceedings dated 28.05.2003. The orders of the disciplinary authority dated 30.01.2002 and the appellate authority dated 28.05.2003 are put to challenge in this writ petition.

5.Upon notice, Mr.S.Gunasekaran, learned Additional Government Pleader has entered appearance for the respondents and made his submissions.

6.The learned counsel appearing for the petitioner would submit that although the petitioner had given proper explanation on the absence, the same was not considered by the authorities and imposed the impugned punishment. However, from the materials and the pleadings placed on record, it is to be seen that the authorities had taken a very lenient view in the matter and

imposed most minor punishment on the petitioner, considering the long absence for more than a year unauthorisedly. Although there was some kind of explanation forthcoming for the absence, nevertheless it cannot be said that the entire period of absence was bona fide as explained by the petitioner. Although initially the disciplinary authority had passed an order of one increment cut with cumulative effect, the appellate authority further taking a lenient view, modified the same without cumulative effect. This Court does not think that the petitioner can have any legitimate complaint against the order passed by the authorities concerned. On the other hand, he should be thankful to the authorities for having taken a lenient view in the matter.

7. In the above said situation, this Court finds the Writ Petition lacks merits and substance and therefore, the same is dismissed. No costs.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Sgl
To

1. The Superintendent
Government Hospital for
Thoracic Medicine and
Chest Diseases, Tambaram
Sanatorium, Tambaram,
Chennai - 600 047.

2. The Director of Medical
Education, Poonamallee High Road,
Kilpauk, Chennai - 600 010.

+1cc to Mr. S.K. RAKHUNATHAN, Advocate, S.R.No. 89502
+1cc to the Government Pleader, S.R.No. 90606

W.P.No.11730 of 2006

TR(18/01/2018)