

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION (TR) No. 258 of 2017

Date : 29.6.2017

Between :

Dr. Ramachandra Reddy S/o Thirupathi Reddy
Senior Medical Officer,
Govt Ayurvedic Dispensary, Nirmal
Adilabad district

Petitioner

And

State of A P
Rep by its Principal Secretary to Govt
Health, Medical and Family Welfare Department
Secretariat, Hyderabad and another

Respondents

The Court made the following:



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ORAL ORDER:

The substratum of the issue in the litigation relates to transfer of petitioner. When petitioner was working as Drug Inspector (Medical Officer-Ayurveda), Department of AYUSH, there were several rounds of litigation on his transfer and the matter was also considered by the Government. The issue in the present writ petition concerns prayer to treat the period from 29.5.2007 to 1.6.2010 as 'compulsory wait'. Petitioner sought to treat the said period as compulsory wait, which request is rejected by the Government vide memo dated 10.1.2013, impugned in the present writ petition.

2. While petitioner was working in Hyderabad, he was transferred to Government Ayurvedic Dispensary, Karimnagar district vide proceedings dated 26.5.2007 and in his place another person was posted. Petitioner challenged the same in O.A No. 2966 of 2007 before the A.P. Administrative Tribunal (for short Tribunal). While granting stay, liberty was granted to the petitioner to prefer appeal within two weeks. On appeal, the Minister concerned granted stay of the order.

3. The appeal was rejected and petitioner was directed to report to duty at the place of posting. This order was challenged by the petitioner in O A No. 4425 of 2007 before the Tribunal. Said O A was allowed directing the authority higher than the Ex-officio Secretary to Government who passed the order of rejection of the appeal and to consider the appeal on merits. The interim order granted earlier in the said O.A was made absolute. Government passed orders disposing of the appeal of the petitioner setting aside the transfer of petitioner and directed the Commissioner, Department of Ayush to post the party-respondent elsewhere. The other person filed O A No. 3577 of 2008 challenging the order passed by the Government on the appeal preferred by the petitioner. Tribunal did not grant interim relief in favour of that other person. While so,

Government passed further orders on 19.6.2008 rejecting the appeal filed by the petitioner. Further development in the issue is the Commissioner of Department of Ayush identified other person for repatriation from Zone V in purported compliance of G.O.Ms.No. 610. Same was challenged in O.A No. 6897 of 2007. Tribunal granted order of status quo. O.A. No. 7173 of 2008 is filed by the petitioner challenging the Government order dated 19.6.2008. The Tribunal was informed that Sri G.Ramchandra Reddy was selected to prosecute Post Graduation course and therefore a vacancy arose in Hyderabad. By order dated 17.8.2009, O.A was disposed of. Tribunal directed to accommodate petitioner in the said vacancy while setting aside the order impugned in the O.A. By proceedings dated 1.6.2010 petitioner was posted as Drug Inspector in Hyderabad and later by proceedings dated 16.9.2010 he was promoted as Senior Medical Officer.

4. At this stage, petitioner submitted representation to treat the period from 29.5.2007 to 1.6.2010 as 'Compulsory Wait'. Such request of the petitioner was rejected by order impugned, on the ground that ordinarily an employee is liable for transfer on completion of two years, whereas, petitioner completed 5 years, and therefore his transfer cannot be called as unjustified and it is further informed that delay caused in reporting to duty is due to litigation pursued by the petitioner and there is no administrative delay and therefore, period cannot be regularized as 'Compulsory wait'.

5. In the facts as noted above, the only issue for consideration is whether the decision of the respondent Government in rejecting the request of the petitioner to treat the period mentioned above as compulsory wait is justified.

6. It is not disputed by the learned Government Pleader that all along, there has been an order in favour of the petitioner either by the Tribunal or by the Government for his retention in Hyderabad. Thus, it is not a case where even

though there is no stay by the Tribunal the employee refused to go and join the place of posting and remained on leave or absented from duty.

7. Thus, it is not a case where the employee deliberately absented from duty. By virtue of orders of the Tribunal or the Government in his favour, it is deemed that the petitioner is in service/duty during that period. Thus rejection of the request of petitioner for treatment of relevant period as 'compulsory wait' by the Government is erroneous.

8. Learned Government Pleader submits that aggrieved by the orders passed by the Tribunal in O A No. 7173 of 2008, Government preferred W P No. 28827 of 2009 and said writ petition is pending. Learned Government Pleader fairly submits that no stay is granted by the Court on the decision of the Tribunal. Further more, as noticed from the events noted above, subsequent to the orders of the Tribunal in O A No. 7173 of 2008, petitioner was retained in Hyderabad and was granted promotion as Senior Medical Officer on 16.9.2010. Thus, in view of the directions issued by the Tribunal in several O.As earlier and final orders passed in O A No. 7173 of 2008, the rejection of the claim of the petitioner is not valid in law and the same is liable to be set aside and accordingly set aside.

9. The respondents are directed to treat the period from 29.5.2007 to 1.6.2010 as 'compulsory wait' and to grant all consequential benefits flowing from it. It is needless to observe that benefits granted as per the above directions shall ultimately abide the result of W P No. 27727 of 2009 and petitioner shall be bound by such directions that may be issued in said writ petition.

10. Subject to above, writ petition is allowed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE:29.6.2017

TVK

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