

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 13.07.2018

Order Pronounced on : 11.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.11969 of 2009

Dr.T.V.Venkataraman

... Petitioner

vs.

1.Secretary to Government,
Government of Tamil Nadu,
Health and Family Welfare,
Fort St.George, Chennai - 9.

2.Director of Medical and
Rural Health Services,
Chennai - 6.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of certiorarified mandamus and to call for records, quash the impugned order in letter No.36562/B1/08-4 Health and Family Welfare (B1) Department dated 08.05.2009 passed by the first respondent and to direct the first respondent to treat the period from 03.05.1993 to 24.06.2004 as on duty.

For Petitioner : Mr.R.Vijayaraghavan

For Respondents: Mr.M.Sricharan Rangarajan
Additional Government Pleader

O R D E R

The petitioner has sought writ of Certiorarified Mandamus to call for records and to quash the impugned order in letter No.36562/B1/08-4 Health and Family Welfare (B1) Department, Chennai dated 08.05.2009 passed by the first respondent and to direct the first respondent to treat the period from 03.05.1993 to 24.06.2004 as on duty.

2. The petitioner joined as Joint Surgeon on 25.05.1981 at E.S.I. Dispensary, Kumbakonam and then he has posted as Assistant Surgeon, Government Hospital, Kumbakonam in the month

of December 1981 and worked there till November 1987. The petitioner was alleged as an accused for offence under section 302 r/w 120(b) IPC. The petitioner was therefore put under suspension with effect from 23.10.1987 and his suspension was revoked on 02.03.1993. It is the contention of the petitioner that he wanted to join duty but he was prevented from performing his duties. After withdrawal of prosecution the petitioner reported to Headquarters and requested for the posting and he was directed to report at Government Hospital, Mandapam Camp, Ramanathapuram District on 27.05.2004 and he joined duty on 25.06.2004.

3. The petitioner was served by a charge memo dated 14.01.2005 on the following charges:-

"Charge 1: That Dr.T.V.Vekataraman, while working as Assistant Surgeon, Government Headquarters Hospital, Kumbakonam, was placed under suspension as per Government order Ms.No.1987 Health and Family Welfare Department dated 19.01.1987 for his involvement in a Criminal case in Eral P.S.Cr.No.170/84 under section 302 IPC r/w 120(b) IPC and was taken up for investigation. He was relieved of his duties on the Forenoon of 23.10.1987. Consequent on the revocation of suspension order by the Government Dr.T.V.Venkataraman was given postings as per this office Ref.No.31361/E1/1/93 dated 12.04.1993 posting him to Government Hospital, Arni, Thiruvannamalai District. He received the posting order on 03.05.1993. But he did not join duty there.

Again an another posting was given to him in Ref.No.14552/PHC.I/93-A1/1 dated 01.06.1993 of the Director of Public Health and Preventive Medicine, Chennai posting him to Government Primary Health Centre, Poolathur. He did not join duty there also. Then after withdrawal of the prosecution by the Government and after withdrawal of the criminal case as per the orders of the Principal Sessions Judge, Tuticorin, in Cr.M.P.No.2107/02 in SC.No.194/2000 dated 04.12.2002, he applied for postings as per his representation dated 31.01.2003 and he has been given postings to Government Hospital, Mandapam Ramanathapuram District where he joined duty on the Fore noon of 25.06.2004. Thus, he was on unauthorized absence from 03.05.1993 to 24.06.2004.

Charge 2: That Dr.T.V.Venkataraman even after issue of posting order twice, consequent on his revocation of suspension, had failed to obey the orders of his superiors, in joining duty and thereby failed to

maintain devotion and integrity to duty, which is unbecoming of a responsible Government Servant and violated Rule 20(1) of Tamil Nadu Government Servant Conduct Rules.

Charge 3: That Dr.T.V.Venkataraman, by his above act of remaining on unauthorized absence as per his whims and fancies, by not joining duty in the places posted had made the public to suffer in getting treatment in the Government Hospital".

4. The petitioner submitted the statement in defense and for oral inquiry. The Director, Medical and Rural Health Services appointed Joint Director of Health Services, Villupuram as an Inquiry Officer and Inquiry Officer conducted an inquiry. The Inquiry Officer gave a following conclusions:-

"Therefore, the Government held charge I as proved but not pressed, the charge 2 as partly but not pressed and the charge 3 as not proved. They have, therefore, decided to drop further action in the disciplinary proceedings initiated against Dr.T.V.Venkataraman, formerly Assistant Surgeon, Government Hospital, Kumbakonam in the reference first read above as charges not pressed. They accordingly do and hereby direct that further action in the disciplinary proceedings initiated against Dr.T.V.Venkataraman, formerly Assistant Surgeon, Government Hospital, Kumbakonam by the Director of Medical and Rural Health Services in the reference first read above be dropped."

5. On receipt of the order dated 04.06.2007, the petitioner had requested for regularization of services. By the G.O.(D) No.273 dated 24.03.2007, held that the period from 23.10.1987 FN to 01.03.1993AN be regularized as duty and the period from 02.03.1993 FN to 03.05.1993 AN as compulsory wait for posting orders and it further held that the period of 03.05.1993AN to 24.06.2004 AN treated as extra-ordinary leave without pay and allowances, without medical certificate.

6. The petitioner sent a representation on 27.06.2008 requesting period from 03.05.1993 AN To 24.06.2004 AN to be considered as period on duty. The Government by the impugned order dated 25.05.2009 rejected the representation and affirm the decision that the period of 03.05.1993 AN To 24.06.2004 AN cannot be treated as duty. It is this order which sought to be challenged by the instant writ petitioner. It is the contention of the petitioner that the government did not pressed charge 1 and charge 2, they have to treat the period of 03.05.1993 AN To 24.06.2004 AN as period on duty. There is no justification not

considering the period as duty and to consider it as extraordinary leave without pay and allowances.

7. Heard the learned counsel for the parties. The learned counsel of the petitioner would submit that the decision of the government with the period from 03.05.1993 to 24.06.2004 cannot be treated as duty is unsustainable in law. According to him that the government did not press charge 1 and charge 2 then they could not impose any penalty on charge 1 and charge 2. According to the learned counsel and petitioner, once the criminal case against the petitioner ended in this period, the suspension period could not be treated as compulsory leave.

8. The learned counsel for the petitioner has placed a strong reliance of the judgment of the Honourable Supreme Court of India in the case of Union of India Vs K.V. Janakiraman, AIR 1991 SC 2010. He would rely on para 6 and 7 of the said judgment as follows:-

"(Para 6) Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits to resort to the sealed cover procedure. The authorities thus are not without a remedy.

The promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee.

(Para 7) When an employee is completely exonerated in criminal/disciplinary proceedings and is not visited with the penalty even of censure indicating thereby that he was not blame-worthy in the least, he should not be deprived of any benefits including the salary of the promotional post. The normal rule of "no work no pay" is not applicable to such cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R.17(1) will also inapplicable to such cases."

9. I am afraid that, the above paragraphs would not help the petitioner. Para 6 and 7 deals with the situation where the employee is completely exonerated from his service in the present case. The charges against the petitioner stands proved. In the G.O.No.712 dated 04.06.2007, by which it has been held that the charge 1 against the petitioner was proved and charge 2 which was partly proved is not under challenge. The order is in penalty, the proposal of the order shows that the petitioner has not been exonerated. The question is if he is not exonerated, then could the government while passing the order on 24.03.2008 was justified in exercise of powers conferred under Rule 5 A of Fundamental Rules passed the order so as to regulate the period of absence from 03.05.1993 to 24.06.2004 as the extra-ordinary leave without pay and allowances? The answer should be in affirmative. In any event the order dated 24.03.2008 is also under challenge. What is under challenge is the letter dated 08.05.2009 rejecting the representation. The rejection on the ground with the petitioner has not been complete exonerated of charges on merit and therefore, the unauthorized absence period from 03.05.1993 to 24.06.2004 has been considered as extra-ordinary leave without pay and allowances.

10. On the other hand, the learned counsel for the government would submit that the charges stand proved and the fact that charges are not pressed would only mean that no penalty is being imposed on it, but that does not mean that the period treated which the petitioner do not work cannot be treated as extra-ordinary leave without pay and allowances.

11. Rule 18 of Tamil Nadu Pension Rules 1978 reads as under:-

"Rule 18 - Counting of periods spent on leave
- All leave during service for which leave salary is payable and extraordinary leave granted on medical certificate shall count as qualifying service:

Provided that in the case of extraordinary leave other than extraordinary leave granted on medical certificate the appointing authority may, at the time of granting such leave, allow the period of that leave to count as qualifying service if such leave is granted to a governmental servant-

(i) due to his inability to join or rejoin duty on account of Civil Commotion: or

(ii) for prosecuting higher scientific and
(*)¹ [technical studies;or]

(**) ²[{iii} for taking up employment abroad,
if necessary pension contributions are paid by the
Government servant to the Accountant General, Tamil
Nadu from time to time with appropriate interest
for belated payments, if any.]"

12. The period for 03.05.1993 to 24.06.1994 which has been
treated as extraordinary leave without pay and allowances cannot
be counted towards qualifying service for the purpose of
computation of pension as because it does not come within the
four corners of the proviso to Rule 18. The writ petition is
dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

pkn
To

1.The Secretary,
Government of Tamil Nadu,
Health and Family Welfare,
Fort St.George, Chennai - 9.

2.The Director of Medical and
Rural Health Services,
Chennai - 6.

+1cc to Mr.R.Vijayaraghavan, Advocate Sr.55612
+1cc to the Government Pleader Sr.56410

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vsn II[co]
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1 (*)Proviso (ii) to Rule 18 for the expression "technical studies", the
expression "technical studies;or" substituted - G.O.Ms.No.556, Finance
(Pension) Department, dated 06.12.2000.

2 (**)Proviso (iii) to Rule 18 added - G.O.Ms.No.556, Finance (Pension)
Department, dated 06.12.2000.