

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.2465 of 2009

R.Govindaraj

.. Petitioner

Vs

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

2.The Dean,
Madras Medical College,
Chennai - 1.

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

4.The Accountant General,
Anna Salai, Chennai - 18.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records relating to the proceedings in D.O.No.AG(A&E)/legal Cell/WP.13526/2008/929, dated 30.09.2008 on the file of the fourth respondent herein and to quash the same and direct the respondents to pay the petitioner the pension and all the other statutory benefits payable to him with effect from 01.08.1997 by passing appropriate orders for such payment together with such rate of interest.

For petitioner : Mr.R.Elango
For R1 to R3 : Mr.K.Ravikumar, AGP
For R4 :Mr.V.Vijayashankar,
standing counsel

ORDER

By way of filing this writ petition, the petitioner seeks to quash the impugned proceedings dated 30.09.2008 passed by the fourth respondent / the Accountant General, Chennai, rejecting his claim to pay the pensionary benefits.

2. Learned counsel for the petitioner submitted that the petitioner was appointed as Assistant Surgeon in Employees State Insurance Dispensary, Trichy, on 22.05.1965. Subsequently, after 20 years of his services, while he was working as Assistant Professor of Medicine, Madras Medical College and Assistant Surgeon, Government General Hospital, Madras, applications were called for by the Overseas Man Power Corporation Limited, a Government of Tamil Nadu undertaking. Thereafter, the petitioner had also applied for the said post through proper channel and finally, he was selected and appointed as Cardiologies by the Saudi Health Team-II, for which, relieving order was also issued by the second respondent on 03.07.1986 with a condition to work in the said place for a period two years. Subsequently, in view of the request made by the Government of Saudi Arabia to extend his services for a further period, he gave a representation dated 20.04.1988 to the Overseas Manpower Corporation Limited and the same was also forwarded to the first respondent seeking appropriate order for extension of the deputation. But, the petitioner had not received any communication either from the said Corporation or from the first respondent in this regard and as such, it was deemed that the deputation to foreign service had been approved by the first respondent.

3. Continuing further, learned counsel for the petitioner submitted that since the period of deputation was not specified by the concerned authorities, the petitioner continued his employment on deputation to the Government of Saudi Arabia till 2001 and thereafter, he returned to Homeland on 10.01.2002. In the meanwhile, he reached the age of superannuation on 31.07.1997. Ironically, neither disciplinary proceedings were issued nor any order was passed revoking the deputation. Therefore, he gave a representation dated 16.08.2005 requesting second respondent to settle his pensionary benefits, but, he did not receive any reply from them, hence, when a writ petition No.13526 of 2008 was filed, this Court, vide order dated 08.07.2008, directed the respondents to pass orders on the pending representation of the petitioner in accordance with law. Pursuant to the direction of this Court, the present impugned proceeding has been passed by the fourth respondent rejecting the claim of the petitioner to settle his pensionary benefits holding that he had neither joined for duty nor communicated with his parent department till his date of superannuation i.e. 31.07.1997.

4. Assailing the impugned order, learned counsel for the petitioner contended that when it is an admitted case of the petitioner and the respondents that the petitioner was sent on foreign assignment for a period of two years to serve in Saudi Arabia, before completion of the period of two years, in view of the request made by the Government of Saudi Arabi, the petitioner also sent a representation dated 20.04.1988 requesting the concerned authorities to permit him to serve on deputation for a further period of one year, but, neither the State Government nor the Overseas Manpower Corporation Limited had communicated to him refusing such request, that shows that the petitioner was deemed to have been permitted to continue his further services on deputation. Therefore, it is pleaded, a direction may be issued to the fourth respondent to sanction the pensionary benefits for the period he served in the respondent department i.e. from 22.05.1965 to 03.07.1986, by quashing the impugned proceedings refusing such request.

5. Learned Additional Government Pleader appearing for the respondents 1 to 3, by filing a detailed counter affidavit, submitted that after the petitioner's appointment in Tamil Nadu Medical Services as Assistant Surgeon on 22.05.1965, he was relieved on 03.07.1986 from Madras Medical College, Chennai, to take up foreign assignment in the Ministry of Health of Saudi Arabia for a period of two years. Although he had to rejoin duty after a period of two years, he did not join for the duty and he had not even submitted any representation to the Dean of the Madras Medical College, Chennai, requesting extension of his deputation for a further period and that there was no communication received from him from 03.07.1986 to 23.03.2006 by the respondents. In the meanwhile, he retired from the services on 31.07.1997 on reaching the age of superannuation. Only after his retirement, he returned to India on 10.01.2002 at the age of 62 years, therefore, having stayed abroad for more than 16 years, that too, without prior permission, he pleaded, he is not entitled to get any pensionary benefits. Even the provisions of the Tamil Nadu Pension Rules dealing with the pensionary benefits do not support the case of the petitioner as he did not fall in any one of the following categories;

- i. On attaining the age of superannuation
- ii. Voluntary retirement
- iii. Compulsory retirement
- iv. Retirement on invalidation
- v. A Government servant who has been permitted to be absorbed in a service of post
- vi. If a Government Servant is selected for

discharge owing to the abolition of post compensation pension.

Vii. A Government Servant is dismissed or removed from service - compassionate allowances. because, he had neither joined for duty nor communicated his extension of deputation period to his parent department till the date of his superannuation i.e. 31.07.1997. Therefore, in view of the aforesaid circumstances, the petitioner is not entitled to get any pensionary benefits as envisaged in the Tamil Nadu Pension Rules.

6. Supporting the above said argument of the learned Additional Government Pleader appearing for the respondents 1 to 3, learned counsel standing counsel for the fourth respondent submitted that only if the State Government considers the claim of the petitioner and if there is any specific order rectifying the provision of the Tamil Nadu Pension Rules sanctioning the pensionary benefits, only then there is a scope for entertaining the claim of the petitioner. However, in the present case, till date, no application has been moved nor any order has been passed by the Government relaxing the provision of the Tamil Nadu Pension Rules, hence, on this score, the writ petition filed by the petitioner is liable to be dismissed.

7. I fully agree with the above said submissions of the learned Additional Government Pleader for the respondents 1 to 3 and the learned standing counsel for the fourth respondent, for the reason that when petitioner was sent on foreign service on 03.07.1986 only for a period of two years, forgetting such a condition stated therein, he stayed in Saudi Arabia for more than 16 years and returned to India only in the year 2002. Besides, when the petitioner was staying in Saudi Arabia, he reached the age of superannuation on 31.07.1997 itself.

8. Apart from the above, it is also seen that even after reaching India in the year 2002, the petitioner did not even bother to write any letter through Overseas Manpower Corporation Limited, a Government of Tamil Nadu Undertaking, requesting the concerned authorities to settle his pensionary benefits for the period he served in the Tamil Nadu Medical Services from 22.05.1965 to 03.07.1986. However, on the contrary, after keeping quite for a three years, he made a representation only on 16.08.2005 to the second respondent requesting to sanction his pensionary benefits. Subsequently, again with a delay of 3 years, he approached this Court by filing a writ petition No.13526 of 2008, whereby, this Court, vide order dated 08.07.2008, without going into the merits of the matter, directed only

the Accountant General, Chennai/fourth respondent to consider the claim of the petitioner on merits. In my considered view, the petitioner ought to have obtained an order against the first respondent / the Secretary, Health and Family Welfare Department, Chennai, to consider his request for relaxing the provisions in the Tamil Nadu Pension Rules to enable him to get the pensionary benefits, but, on the contrary, he sought for a direction against the fourth respondent / the Accountant General, Chennai, who, vide impugned proceedings dated 30.09.2008, held that only if the Government issues specific G.O. relaxing the provisions of the Tamil Nadu Pension Rules sanctioning the pensionary benefits, the fourth respondent would be able to entertain his claim seeking pensionary benefits.

9. Therefore, in view of the above, since the petitioner did not get any order from the State Government relaxing the provisions of Tamil Nadu Pension Rules, his request for pension cannot be considered, hence, in view of such barring, the fourth respondent had also rightly rejected the claim of the petitioner. Thus, I do not find any error or infirmity in the order of the passed by the fourth respondent. Accordingly, the writ petition fails and the same is dismissed. No Costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rkm

To

1.Secretary to the Department of
Health and Family Welfare,
Government of Tamil Nadu,
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2.The Dean,
Madras Medical College, Chennai - 1.

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

4.The Accountant General,
Anna Salai, Chennai - 18.

+2ccs to Mr. R.Elango, Advocate SR.No. 19028,19056

+1cc to Mr.V.Vijayashankar,, Advocate SR.No. 19771

+1 cc to Government Pleader SR.NO. 19982

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A.SK(04/04/2019)