

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.1292 of 2014

1. Saradha (Deceased)
2. S. Rangamani
3. Vijayalakshmi
4. R. Sundarajan
5. R.Sekaran
6. Malathi

... Petitioners

Cause title amended as per Order of this Court, dated 20.03.2018

versus

1. The State of Tamil Nadu
Health and Family Welfare Department,
Fort St. George Secretariat,
Chennai - 600 009.
2. The Director of Medical education,
Kilpauk,
Chennai - 600 010.
3. The Superintendent
Government Thiruvoteeswarar Tuberculosis Hospital,
Otteri, Chennai - 600 012.
4. The Principal Accountant General,
(Accounts and Entitlements) Tamil Nadu
No.361, Anna Salai,
Chennai - 600 018.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue order direction or writ order in particular a Writ of Certiorarified Mandamus* calling for the entire records connected with the impugned Order passed by the 2nd respondent vide Na.Ka.No.10491 / Se4/2007-2, dated 07.02.2008 and subsequent order passed by the 1st respondent vide G.O. Ms. No. (D) 487, Public Health (M) and family welfare (C1) Department, dated 28.04.2008 and quash the same and direct the respondents to treat the period from 01.02.1974 to 12.07.1999 as duty period without backwages for the purpose of pension and terminal benefits and consequentially direct the respondents to disburse the same.

For Petitioners : Ms. R. Nirmala Devi

For Respondents : Mr.B. Anand
Government Advocate for RR1 to 3
Mrs. Hema Muralikrishnan for R4

ORDER

This writ petition has been filed to quash the impugned Order passed by the 2nd respondent vide Na.Ka.No.10491/Se4/2007-2, dated 07.02.2008 as well as the subsequent Government order in G.O. Ms.No. (D) 487, Public Health (M) and family welfare (C1) Department dated 28.04.2008 passed by the 1st respondent and consequently direct the respondents to treat the period from 01.02.1974 to 12.07.1999 as duty period without backwages for the purpose of pension and terminal benefits and for consequential direction to the respondents for disbursement of the same.

2. Originally the 1st petitioner Saradha had filed the writ petition challenging the impugned orders. Pending the abovesaid writ petition, she died and petitioners 2 to 6 were impleaded as legal heirs.

3. The 1st petitioner joined as Nurse on 07.07.1969 in the 3rd respondent hospital. Her probation was declared on 22.10.1971. She was also admitted as a member of General Provident Fund and contributions Provident Fund (Madras) and allotted GPF No.23248. Due to her illness, the 1st petitioner applied for earned leave from 06.01.1973 for various spells. The third respondent directed the 1st petitioner to appear for medical examination on 22.2.1974 and accordingly she appeared for such examination on 09.02.1977 and on 16.02.1977. Thereafter, the 1st petitioner was not permitted to join duty. In the meantime, she attained the age of superannuation, but was not relieved from duty. After repeated representations, the 1st petitioner filed a Writ Petition in W.P.No.19525 of 2007 seeking to issue direction to the respondents to settle her terminal benefits. This Court, by an order dated 07.06.2007 directed the respondents to pass orders on her representation dated 10.02.2007. As the respondents did not pass any orders, as directed by this Court, the 1st petitioner filed Contempt Petition No.1822 of 2007 before this Court. During the pendency of the writ petition, the 1st petitioner received a letter dated 13.02.2008 enclosing the letter dated 07.02.2008 of the second respondent informing her that she was medically invalidated and relieved from service retrospectively w.e.f. 02.03.1981. Even thereafter, the 1st petitioner sent various representations to the respondents, stating that as per Rule 36 of the Tamil Nadu

Pension Rules, she is entitled for pension, but the same has not been considered by the respondents. According to the petitioner, she joined on 07.07.1999 and her period of absence from 01.12.1974 to 01.03.1981 was regularised by the Government, while so, her net qualifying service was more than 11 years and therefore also, she is entitled for pension. Hence, the 1st petitioner has filed this writ petition.

4. The respondents have filed the counter affidavit stating that the net qualifying service put in by the 1st petitioner was only 4 years, 6 months and 15 days from 07.07.1969 to 02.03.1981. Even though the period of service from 01.12.1974 to 01.03.1981 was treated as Extra-Ordinary leave without Medical Certificate and without pay, the said period cannot be taken into consideration for the purpose of determining the net qualifying service of the 1st petitioner. It is also stated that since the 1st petitioner did not put in minimum of 10 years of qualifying service, she is not entitled for pension. Above all, Rule 36 of the Tamil Nadu Pension Rules, cannot apply to the facts of this case. Therefore, the respondent prayed for the dismissal of the writ petition.

5. Heard the learned counsel on both sides and perused materials available on record.

6. Admittedly, the 1st petitioner was on medical leave from 02.03.1981. The 1st petitioner thereafter, did not join duty. It is also an admitted fact that the period of service rendered by her from 01.02.1974 to 01.03.1981 was treated as Extra Ordinary leave without Medical Certificate and without pay, by passing an order G.O. (D) No.487, dated 28.04.2008. The 1st petitioner appears to have taken leave due to her illness which was diagnosed as "Retinitis Pigmentosa with Consequetive Optic Atrophy". Even in the affidavit filed in support of the writ petition, the petitioner has stated that due to such illness, she lost her vision and that is the reason why she could not attend her duties. It is also an admitted fact that the 1st petitioner reached the age of superannuation, even on 31.07.1999. However, she was neither permitted to retire from service, nor her service was extended until further orders. It is also seen from the records, that the 1st petitioner was not proceeded by any disciplinary proceedings. This is explicit from para 9 of the counter filed on behalf of the respondents 1 to 3 during March 2015, wherein it is stated that ".... Thereafter due to oversight and workload no further action was taken against the 1st petitioner by way of disciplinary proceedings nor issued termination order to the petitioner. Further, when the petitioner reached the age of superannuation on 31.07.1999, she neither approached the 2nd respondent nor the 3rd respondent to get relieving order as she was on unauthorised

absence...".

7. Having regard to the above facts, without going to the correctness of the impugned orders, this Court directs the petitioners 2 to 6 to submit a fresh representation to the respondents within a period of twelve weeks from the date of receipt of a copy of this order seeking to disburse the pensionary benefits payable to the 1st petitioner, by treating her net qualifying service in the light of the above statement in this order. On receipt of such representation, the respondents are directed to pass appropriate orders on merits and in accordance with law, within a period of eight weeks, thereafter.

8. With the above directions, the writ petition stands disposed of. No costs.

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

vsi2

To

1. The State of Tamil Nadu
Health and Family Welfare Department,
Fort St. George Secretariat,
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2. The Director of Medical education,
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(Accounts and Entitlements) Tamil Nadu
No.361, Anna Salai,
Chennai - 600 018.

+1 CC to Mr.R. Nirmala Devi, Advocate sr 33243.
+1 CC to M/s. Hema Muralikrishnan, Advocate sr 33517.
+1 CC to The Govt. Pleader sr 34348

W.P.No.1292 of 2014

BS(CO)
SP(26/08/2019)