

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2019

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THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No. 25632 of 2014

K. Panchavarnam

..Petitioner

Vs

1.Government of Tamil Nadu
Represented by its Secretary,
Health and Family Welfare Department,
Fort St.George,
Chennai -600009.

2.The Director of Medical and Rural Health Services
Chennai - 600006.

3.The Deputy Director of Medical Services (Leprosy)
Villupuram District. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records culminated in issuing the order in G.O.(D) No.854 Health and Family Welfare (C2) Department dated 14.8.2013 on the file of the 1st respondent and quash the same in so far as it relates to refusal to regularize the period of service from 1.10.1994 to 15.10.2000 and consequently direct the respondents to treat the period from 1.10.1994 to 15.10.2000 as on duty with all consequential service and monetary benefits within a time to be stipulated by this court.

For Petitioner : M/s.T.Sellapandian

For Respondents : Mr.J.Ramesh,AGP -R1 to R3

O R D E R

The prayer sought for in the Writ Petition is to call for the records culminated in issuing the order in G.O.(D) No.854 Health and Family Welfare (C2) Department dated 14.8.2013 on the

file of the 1st respondent and quash the same in so far as it relates to refusal to regularize the period of service from 1.10.1994 to 15.10.2000 and consequently direct the respondents to treat the period from 1.10.1994 to 15.10.2000 as on duty with all consequential service and monetary benefits within a time to be stipulated by this Honourable court.

2. Brief facts of the case:

The writ petitioner joined as Lab Technician Grade-II in the year 1998 and posted in the office of the District Leprosy Office, Cuddalore. During his service, the petitioner contracted intercaste marriage with her colleague one Sheik Shafi Allah. In view of the intercaste marriage, she was abused by her relatives, friends and colleagues and due to the mental agony she could not attend and report for duty from 01.04.1992 to 16.10.1994. Thereafter she reported duty on 17.10.1994 along with the fitness certificate issued by the medical officer. She was permitted to appear and directed to appear before the Medical Board. She appeared before the Medical Board and subjected to various medical tests and the Medical Board issued a certificate dated 03.02.1995 stating that she is fit to report for duty. In spite of the said certificate issued by the medical board, she was made compulsory wait. Therefore, she made a representation on 07.03.1996 and she was permitted to join duty and she joined duty on 17.10.2000. Thereafter, she was issued with a charge memo dated 01.03.2002, enquiry officer conducted an enquiry and passed final order on 23.01.2004 imposing punishment of stoppage of increment for two years without cumulative effect. The first respondent passed order in G.O.(D) No. 854, Health and Family Welfare (C2) Department dated 14.08.2013 ordering that (i) the period from 01.04.1992 to 31.03.1994 be treated as 'Non-duty' (ii) the period from 01.04.1994 to 30.09.1994 be treated as 'Unearned leave on medical certificate and (iii) the period from 01.10.1994 to 15.10.2000 be treated as 'Non duty'. Challenging the same, the present writ petition is filed.

3. According to the learned counsel for the petitioner, the delay was on the part of the respondent, therefore the writ petitioner is entitled for the regularisation of period from 01.10.1994 to 15.10.2000 and as per Fundamental Rules 9(6)(3), the said period has to be treated as duty period.

4. On the other hand, the learned Additional Government Pleader has submitted before this Court that within a short period of service in Villupuram at Thirukoilur, the petitioner availed leave intermittently at various spells from 02.03.1989 to 31.10.1991 and then after unauthorised absence from duty from 01.01.1992 to 15.10.2000, which caused much hindrance to the

smooth functioning of administration. In spite of the same, the respondent took a lenient view by considering the representation of the petitioner and the medical board recommendation, has imposed minimum punishment of stoppage of increment for two years without cumulative effect. The petitioner also did not make any appeal to the appellate authority. The respondent after careful consideration, passed orders regularising the absence period. Therefore, the writ petitioner is not entitled for the relief as prayed for and the writ petition is liable to be dismissed.

5. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents and perused the documents available on record.

6. On a perusal of records, it is seen that as per the proceedings dated 22.12.1994 issued by the third respondent, the writ petitioner has appeared before the Medical Board and she was subjected to various medical tests from 27.01.1995 to 02.02.1995. After medical assessment, the medical board issued a medical certificate dated 03.02.1995 stating that she is fit to report for duty. Based on the said fitness certificate, the petitioner reported for duty before the 3rd respondent, however the third respondent not permitted the petitioner to join her duty, but issued proceedings dated 15.02.1995, sought for clarification from the second respondent. The petitioner was made compulsory wait for getting orders from the respondent. The petitioner made representations dated 07.03.1996 and 01.06.2000 to the then Deputy Director of Medical Services (Leprosy), Villupuram. The said representation was considered and the petitioner was permitted to join duty on 11.10.2000 and posted at Government Hospital, Valavanur. The petitioner joined duty at the said place on 17.10.2000.

7. Subsequent to joining, the petitioner was issued with a charge memo dated 01.03.2002 and the same was concluded by imposing punishment of stoppage of increment for two years without cumulative effect. The relevant portion of the report of the enquiry officer dated 17.09.2003 is extracted below;

"Thus that the charge that she was on Un-authorized absence from duty with effect from 01.04.1992 to 16.10.94 and violated Government Servant Conduct Rule 21 absence from work and neglect of duties is held as proved beyond any reasonable doubt and the period from 17.10.94 to 15.10.2000 may not be construed as unauthorised absence."

8. In view of the findings of the enquiry officer that the period from 17.10.1994 to 15.10.2000 cannot be construed as unauthorised leave, the Ruling 3 of the Fundamental Rules 9(6)

is applicable to the facts of this case. The relevant portion of the said Rule is extracted hereunder;

Compulsory Wait for orders of Posting.

"(3) When a Government servant has compulsorily to wait for orders of posting, such period of waiting shall be treated as duty. During such period, he shall be eligible to draw the pay plus special pay which he would have drawn had he continued in the post he held immediately before the period of compulsory wait or the pay plus special pay which he will draw on taking charge of the new post, whichever is less. For this purpose, no temporary post need be created.

The compensatory allowances shall be reckoned at the rates admissible at the station in which he was on compulsory wait. "

9. The learned counsel for the petitioner also relied upon the decision of the division Bench of this Court W.A. No. 972 of 2015 dated 24.07.2015. The relevant portion is extracted below;

"12.At the outset, it is to be pointed out that it is the plea of the Respondent/Petitioner that on 05.02.1986, he applied for medical leave on loss of pay and the same was extended time to time, viz., up to 28.03.1988 and thereafter on 28.03.1988, he had applied for posting and the same was given by the Appellant on 16.04.1993. In this regard, it is the categorical stand of the Respondent that in terms of F.R.9(6) Ruling(3) "if posting was given belatedly due to administrative reasons, then, that period must be treated as duty period".

13.In the instant case, the Medical Board was not constituted nor the Respondent was directed to appear before the Medical Board for the purpose of examination. As a matter of fact, he waited for longer duration only when he approached the District Educational Officer, again, the said Officer accepted his extension and issued posting orders. Further, he joined duty on the same day.

14. Suffice it for this Court to unerringly point out that the Respondent/Petitioner's case comes within the ambit of ruling (3) of FR 9(6). If that be the case, the compulsory wait period of the Respondent shall be treated as on duty with consequential monetary benefits to be paid by him.

15. As such, the Impugned Order dated 29.03.2004 in G.O.(1D)No.74 School Education (G-1) Department, Chennai -9 passed by the Secretary to Government is not legally tenable in the considered opinion of this Court. Therefore, on going through the Order dated 28.04.2014 passed by the Learned Single Judge in W.P.No.6959 of 2006 (filed by the Respondent/Petitioner), this Court is of the considered opinion that the same does not require any interference in the hands of this Court because of the reason that the said Order is a flawless one. Consequently the Writ Appeal fails."

The judgment cited supra is squarely applicable to the facts of the present case.

10. In the instant case the writ petitioner has appeared before the Medical Board as directed by the third respondent and as per the medical certificate issued by the Medical Board dated 03.02.1995, the writ petitioner has reported for duty on the same day before the third respondent, but the writ petitioner was not permitted to join duty and she was made to compulsory wait till 11.10.2000. Therefore, the writ petitioner is entitled to get benefits for the said period.

11. From the aforesaid facts as well as Ruling 3 of Fundamental Rules 9(6) and the decisions cited supra, this Court with no hesitation inclined to grant relief to the writ petitioner by treating compulsory wait period from 03.12.1995 to 11.10.2000 as duty period with all consequential monetary benefits.

12. In the result, para 2(clause 3) of the impugned order dated 14.08.2013 passed by the first respondent alone is quashed. The writ petition is allowed. No costs.

13. The first respondent is directed to regularise the period from 03.02.1995 to 11.10.2000 as duty period and grant all the consequential benefits as applicable to the writ petitioner, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

1.Government of Tamil Nadu
Represented by its Secretary,
Health and Family Welfare Department,
Fort St.George,
Chennai -600009.

2.The Director of Medical and Rural Health Services
Chennai - 600006.

3.The Deputy Director of Medical Services (Leprosy)
Villupuram District.

+1cc to Mr.T.Sellapandian, Advocate SR.No.105654

+1cc to Government Pleader SR.No.106705

W.P.No. 25632 of 2014

RR(CO)
GMY(19/02/2020)



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