



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD).No.11646 of 2013

S.Clara

.. Petitioner

Vs.

1.The Secretary,
Ministry of Health
Government of Tamilnadu
Fort St. George,
Chennai.

2.The Director,
Directorate of Medical Education,
Chennai - 10.

3.The Dean,
Tirunelveli Medical College Hospital,
Tirunelveli - 11.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, directing the respondents 1 and 2 to compute the petitioner's 5 years of foreign service with her service period for calculating the full pension period by endorsing the same in service register consequently sanction the full pension along with the arrears from the date of retirement from 31.05.2002 as per the Government order in G.O.Ms.No.386, dated 07.06.1995 and Government Letter No.60558/C1/97-10 dated 21.01.1999 within a period stipulated by this Court.

For Petitioner : Mr.A.Haja Mohideen

For Respondents : Mr.D.Muruganandam
Additional Government Pleader

ORDER

This petition has been filed for issuance of Writ of Mandamus directing the respondents 1 and 2 to compute the petitioner's 5 years of foreign service with her service period for calculating the full pension period by endorsing the same in service register and consequently to sanction the full pension along with the arrears from the date of retirement from 31.05.2002 as per the Government order in G.O.Ms.No.386, dated 07.06.1995 and Government Letter



No.60558/C1/97-10 dated 21.01.1999 within a period stipulated by this Court.

2.The petitioner started her carrier as staff nurse and appointed as Health Visitor, Family Planning on 14.09.1970. The petitioner was transferred to the Government Royapetta Hospital, Chennai as para medical nurse on 01.06.1979. While, the petitioner was in service, she was selected by the Overseas Manpower Corporation, which was a Government undertaking empowered to deploy the manpower resources from Government department to the friendly relation nations. The petitioner was selected to deploy to the Government of Saudi Arabia along with 41 persons and her deputation was allowed for one year from 22.04.1985. The petitioner was appointed as a staff nurse at King Khalid Hospital, Najran, Saudi Arabia. After, one year of deputation, the petitioner's deputation was extended further and it is stated that the petitioner was staying more than 5 years due to compelling reasons.

3.It is stated that on 24.01.1991, the petitioner reported for duty and joined in the Government post on 31.05.1991 under the third respondent. Though there are some discrepancies in the dates, the fact that the petitioner was given extension only upto 22.04.1988 and that she overstayed abroad for 9 months beyond 5 years.

4.Thereafter, the petitioner approached respondents 1 and 2 for regularization of the period of petitioner's overstay at abroad. Other persons, who went to foreign country as para medical nurses also approached respondents 1 and 2. It is stated that the Government finally considered the petitioner's request and passed an order regularising 5 years service period by G.O.Ms.No.386, dated 07.06.1995.

5.The Government accepted that the period of overstay in abroad should be treated as extension of deputation, regularizing the period of absence as Extra-ordinary leave without allowances. The petitioner, beyond the eligible period of 5 years, overstayed in abroad for 9 months. It is admitted that the first respondent initiated departmental proceedings for overstaying at abroad for more than 9 months. The explanation was that due to ill health of the writ petitioner and Saudi-Iran war, the petitioner was forced to sign the contract with the Ministry of Saudi Arabia for further period of nine months. Accepting the explanation offered by the petitioner, the first respondent imposed a punishment of 'Censure' vide G.O.Ms.No.1274, dated 18.09.1998.

6.It is submitted that the first respondent amended the earlier order vide G.O.Ms.No.386 to the effect that persons, who are in foreign service upto 20.05.1991 are eligible to claim the period of service to be reckoned for the purpose of increment and pension services upto 20.05.1991. It is in the said context, the petitioner



contended that her whole period of stay at abroad should be counted for pension. It is stated that, the Government vide G.O.Ms.No.80, dated 28.01.2002 regularized the petitioner's service from 23.04.1985 to 30.05.1991 and failed to consider their own communication. However, the Government by subsequent order vide G.O.(D).No.1256 dated 08.10.2003, regularised the period from 23.04.1985 to 21.04.1990 and held that the period thereafter is not countable for pension.

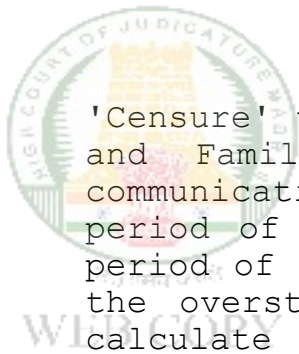
7.The fact that the petitioner was permitted to retire from Government service on attaining the age of superannuation on 31.05.2002, and that the Government passed an order vide G.O.No.1256 dated 08.10.2003 is not disputed.

8.The short question that arises for consideration before this Court is whether the accountant General can be directed to pay the pension and benefits calculating the petitioner's entire period of deputation at abroad.

9.In the counter affidavit filed by the respondent, it is admitted that the Government have passed G.O.Ms.No.386, indicating that the period of overstay of Para Medical personnel would be treated as extension of deputation up to 20.05.1991. But the period thereafter shall be treated as Extraordinary Leave without pay and allowance. From the records, it is seen that the Government vide G.O.Ms.386, Health and Family Welfare Department, dated 07.06.1995, has decided as follows:

3.The Government have examined the request of the Para Medical staff. They observe that the entire period of their employment abroad does not exceed five years in all the cases. They have therefore decided to treat the period of overstay of these Para Medical personnel as extension of deputation and to reckon the period of overstay for purpose of increment, pension but not leave provided, pension contribution is remitted by them. The government accordingly direct that the period of overstay of the Para Medical staff in foreign countries, who were earlier sanctioned deputation to leave out of India on employment purpose may be treated as extension of deputation, regularizing the period of absence as extraordinary leave without allowances subject to the usual terms and conditions of deputation shall be reckoned for the purpose of increment, pension but not leave. However they should remit the pension contribution for the period of their overstay abroad."

10.Thereafter, in the case of petitioner, for the period of overstay for about nine months at abroad, the Director of Medical Education initiated disciplinary action against the petitioner. Government is not giving any explanation offered by the petitioner, punishment of



'Censure' was imposed on the petitioner vide G.O.Ms.No.1274, Health and Family Welfare Department, dated 18.09.1998. From the communication, the petitioner though applied for extension of the period of deputation earlier, she was denied extension beyond the period of five years. In general though the Government regularized the overstayal for the period up to 20.05.1991 and permitted to calculate the period up to 20.05.1991 for the purpose of increment and pension, the period of five years alone was to be calculated for the purpose of pension. It is in the said circumstances, though generally all the Para Medical staffs are entitled to get regularization of the period of deputation up to 20.05.1991, they have not committed to regularize the period beyond five years for the purpose of pension. This was clarified by the Government by a subsequent Government Order in G.O.Ms.1256, Health and Family Welfare Department, dated 08.10.2003. In the said order, it was specifically mentioned that the petitioner is not entitled to calculate the period from 22.04.1990 to 24.01.1991 for pension purpose. Hence, in the case of petitioner, the following passage in the Government order vide G.O.Ms.No.1256, Health and Family Welfare Department, dated 08.10.2003 is relevant.

"3.The representation of Tmt.S.Clara has been examined and the Government in supersession of the orders issued in the Government order and Government letter first and second read above, direct that the period of the overstayal of Tmt.S.Clara be regulated as indicated below, subject ot the condition that the individual should remit pension contribution calculated by Accountant General:-

- i) From 23.04.1985 F.N to Extra Ordinary Leave for
21.04.1986 A.N employment abroad without
pay and allowances
- ii) From 22.04.1986 F.N. Extension of Extraordinary
To 21.04.1988 A.N leave for employment
abroad without pay and
allowances.
- iii) From 22.04.1988 F.N. Extension of Extraordinary
) To 21.04.1990 A.N leave for employment
abroad without pay and
allowances.
- iv) From 22.04.1990 F.N. Period not countable for
To 24.01.1991 A.N. pension purpose
- v) From 25.01.1991 F.N. Leave to which she is
To 31.05.1991 A.N. eligible other than
Unearned Leave on Medical
Certificate.

11.Despite the factual position was made clear to the petitioner by this Government order, the petitioner after making pension contribution, started requesting the



respondent to regularize the petitioner's service up to 30.05.1991 for the purpose of pension.

12.The present writ petition is also for the issuance of writ of mandamus directing the respondents 1 and 2 to compute five years of foreign service with the petitioner's service period for calculating the full pension period. In such circumstances, the petitioner herself has understood that she is only eligible for including employment abroad without pay and allowances for a permissible period of five years. This has already been granted to the petitioner as per Government order G.O.Ms.No.1256, Health and Family Welfare (C.1), Department, dated 18.10.2003. The petitioner has not challenged the order, wherein it has been categorically held that the petitioner is not eligible for the period between 22.04.1990 to 24.01.1991 and it cannot be counted for pension purpose. The order has become final and the petitioner has not challenged the same. Having regard to the facts and circumstances, this Court is unable to find any irregularity in refusing to calculate period beyond five years for the purpose of pension.

13.As a result, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Secretary, Ministry of Health Government of Tamilnadu
Fort St. George, Chennai.

2.The Director, Directorate of Medical Education, Chennai - 10.

3.The Dean, Tirunelveli Medical College Hospital, Tirunelveli - 11.

+1 CC to M/s.A.HAJA MOHIDEEN, Advocate (SR-85579[F] dated 06/09/2019)

+1 CC to M/s.GP (SR-85892[F] dated 09/09/2019)

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