

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION (TR) No.5740 of 2017

ORDER:

This writ petition is filed seeking the following relief :-

“.....to declare memo No.1282/OP & IMS/A2 /2014, dated 09.10.2015 issued by the 1st respondent as arbitrary, illegal and contrary to G.O.Ms.No.719 and FR 9 (6)(b)(i) consequently direct the respondents to sanction of pay and allowances to the applicant for the deputation period from 11.06.2008 to 11.06.2011 to prosecute her PG Degree Course in MD Psychiatry as in service benefit as per G.O.Ms.No.260 dated 10.07.1997 and G.O.Ms.No.279 dated 09.07.2001 and G.O.Ms.No.719 and FR 9(6)(b)(i) and grant other relief s per rules and to pass such other.....”

Heard Sri K.Jayakumar, learned counsel for the petitioner and the learned Government Pleader for Services-I.

It has been contended by the petitioner that she was initially appointed as a Civil Assistant Surgeon in the office of Insurance Medical Services during 1998 and while she was discharging her duties, she was selected for admission into the Post Graduate Diploma in Dermatology at Osmania Medical College and the petitioner has completed the said course during the year 1998-2000. While so, disciplinary authorities have initiated action against the petitioner alleging that she has pursued her Post Graduate Diploma Dermatology, without obtaining prior permission and after conducting a regular enquiry, imposed the punishment of stoppage of one Annual Grade Increment with cumulative effect for her unauthorised absence from duty besides

treating the period of absence from 01.08.1998 to 02.07.2000 as Dies-Non vide proceedings dated 29.09.2000. Subsequently, petitioner secured admission in the Post Graduate Degree Course in MD(Psychiatry) vide proceedings dated 23.04.2014 as an in-service candidate through proper channel under service quota and the Principal, Osmania Medical College intimated the date of commencement of course as 02.05.2008 and accordingly, the Director, Insurance Medical Services, had permitted the petitioner to join the of Post Graduate Degree Course in MD(Psychiatry) vide proceedings dated 10.06.2008. But the grievance of the petitioner is that the respondents have issued proceedings dated 09.10.2015 rejecting her request for sanction of pay and allowances for the deputation period from 11.06.2008 to 11.06.2011 by treating the said study leave period as 'spent on duty' in terms of G.O.Ms.No.260, dated 10.07.1997, and G.O.Ms.No.279, dated 09.07.2001, and G.O.Ms.No.719, dated 16.12.20013 and Rule 9(6)(b)(i) of the Fundamental Rules. Challenging the same, the present writ petition is filed.

Learned counsel for the petitioner contends that when a similar issue fell for consideration before the Tribunal in O.A.No.3292 of 2009, the Tribunal vide order dated 23.12.2009 allowed the said O.A. by setting aside the rejection orders with the following observations:

“In these circumstances, the G.O.Rt.No.1649 dt.12.11.2009 is liable to be set aside. Accordingly it

is set aside and the respondents are directed to pay salary and other allowances to the applicants for the prosecution period i.e., 36 months from the date of joining into PG Diploma i.e., 18.06.2008 to 17.06.2011 within a period of four weeks from the date of receipt of a copy of this order”.

Learned counsel for the petitioner further contends that aggrieved by the order dated 23.12.2009 in O.A.No.3292 of 2009 passed by the Tribunal, the State has carried the matter to this Court by way of filing W.P.No.5349 of 2010 and a Division Bench of this Court dismissed the said writ petition vide order dated 28.09.2010 confirming the orders of the Tribunal. Thereafter, the State has further carried the matter to the Hon’ble Supreme Court vide SLP.No.15097 of 2011 and the Hon’ble Supreme Court also dismissed the said SLP vide order dated 02.01.2014. Therefore, learned counsel for the petitioner contends that appropriate orders be passed in the present writ petition by setting aside the rejection memorandum dated 09.10.2015 and further direct the respondents to consider the study leave period of the petitioner as ‘spent on duty’ and pay salary and allowances to the petitioner in accordance with the Rules.

Learned Government Pleader had not disputed the fact that in similar circumstances, the Tribunal had allowed O.A.No.3292 of 2009, which was confirmed by this Court as well as Hon’ble Supreme Court and sought to pass appropriate orders in accordance with law.

This Court, having considered the rival submissions of learned counsel for the respective parties, is of the considered view that as similar issue was adjudicated and allowed by the Tribunal vide order dated 23.12.2009 in O.A.No.3292 of 2009, which was confirmed by this Court in W.P.No.5349 of 2010 dated 28.09.2010 and also by the Supreme Court in SLP.No.15097 of 2011 dated 02.01.2014, the impugned rejection order dated 09.10.2015 is liable to be set aside and it is accordingly set aside and the respondents are directed to treat the study leave period of the petitioner as 'spent on duty' and pass appropriate orders in accordance with G.O.Ms.No.260, dated 10.07.1997, and G.O.Ms.No.279, dated 09.07.2001, and G.O.Ms.No.719, dated 16.12.2003 and Rule 9(6)(b)(i) of the Fundamental Rules with all consequential benefits.

With the above observations, the writ petition is allowed.
No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 30-07-2019
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