

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2020

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.P.No.8973 of 2006
and W.P.M.P.No.9931 of 2006

D.Leelavathy
Staff Nurse,
Government Institute of Mental Health,
Kilpauk,
Chennai - 600010. ... Petitioner

Vs.

- 1.The Director of Medical Education,
Kilpauk,
Chennai - 600010.
- 2.The Director,
Govt. Institute of Rehabilitation Medicine,
K.K.Nagar,
Chennai - 600083.
- 3.The Director,
Institute of Mental Health,
Kilpauk,
Chennai - 600010.
- 4.The Superintendent,
Govt. Kasturba Gandhi Hospital for Women,
Chennai - 600005. ... Respondents

PRAYER : Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent in his Proceedings Na.Ka.No.81582/Se4/2004 dated 12.09.2005 and quash the same and consequently direct the respondents to grant the leave salary in full for the period from 26.02.1987 to 09.03.1987 and from 29.06.1997 to 31.07.1997 and to treat the above said period as duty period.

For Petitioner : Mr.R.Karthikeyan

For Respondents : Mr.Akhil Akbar Ali
Government Advocate

ORDER

This Writ Petition has been filed challenging the proceedings of the first respondent dated 12.09.2005, quash

the same and consequently direct the respondents to grant leave salary in full for the period from 26.02.1987 to 09.03.1987 and from 29.06.1997 to 31.07.1997 and to treat the above said period as duty period.

2. The petitioner was appointed as a Staff Nurse by the Director of Medical Service and Family Welfare (Nursing), Chennai, and was working as a Staff Nurse in Government Institute of Mental Health, Kilpauk, Chennai. The said post was non-transferable. A Staff Nurse can be transferred from one place to another only when there is some specific allegation is pending. The petitioner availed leave on medical grounds from 08.02.1987 to 09.03.1987, from which the period from 08.02.1987 to 25.02.1987 was treated as E.L with pay and the remaining period viz., 26.02.1987 to 09.03.1987 (12 days) was treated as E.O.L. (without pay). Therefore, the petitioner gave representation dated 16.04.1987 and thereafter, several representations were made but the same were neither considered nor rejected.

In the meanwhile, she was transferred to Government Institute of Rehabilitation Medicine, Chennai in the year 1997. Due to the frequent transfers, she was not in a position to join duty, thereby, she availed earned leave from 06.06.1997 to 31.07.1997 and thereafter, she returned back to the duty and started discharging her duty at the News Station. Subsequently, she was served with a charge memo dated 11.09.1997, alleged to have disobeyed the orders of the superiors in not reporting at News Station. A detailed explanation was submitted by her but without considering her explanation, the Disciplinary Authority passed an order on merits of stoppage of increment for the period of 6 months, without cumulative effect.

Aggrieved over the said order, she preferred an appeal and the same was modified as Censure by the Appellate Authority. Thereafter, she made a representation requesting to pay the salary for the leave period and the same was denied. Aggrieved over the said act, she filed an Original Application in O.A.No.294 of 1999, praying for a direction to the respondents to dispose of her representation relating to the payment of arrears of leave salary. The Administrative Tribunal passed an order, directing the respondents to dispose of the representation on merits but the said application was not disposed.

Further, she filed a contempt application in C.A.No.70 of 1991. Subsequently, she was informed by a letter dated 11.04.2000 that the period from 06.06.1997 to 28.06.1997 were treated as Earned Leave and remaining period from 29.06.1997 to 31.07.1997 were treated as E.O.L. with half salary. Immediately, she made another representation narrating the fact that the punishment of stoppage of increment was modified and was reduced to Censure, based on the charge leveled

against her that she disobeyed the superiors and failed to join the News Station. While so, the entire period is deemed to be treated as Earned Leave.

Aggrieved by the said order, she filed a writ petition in W.P.No.25976 of 2004 and vide order dated 13.09.2004, this Court, directed the respondents to dispose of the representations dated 30.07.2004 and 02.08.2004 on merits and in accordance with law within the stipulated period. Subsequently, the respondent passed an order dated 21.10.2004 that the E.O.L. on Medical Certificate period from 26.02.1987 to 09.03.1987 had been treated as UEL on Private Affairs with half pay and allowances; the leave already sanctioned for the period from 29.06.1997 to 31.07.1997 as UEL on Private Affairs in correct since she was having only 23 days of E.L. at her credit as on 06.06.1997 and the recovery of Rs.540/- was effected to prevent the loss to Government since she was solely responsible for the loss and the same could not be considered.

Aggrieved over the said order, the petitioner made a representation to the respondent to reconsider the same but there was no reply. Further, she filed another writ petition in W.P.No.477 of 2005 and the same is pending. After sending several reminders and also served notice through an Advocate, the respondent had passed an order dated 12.09.2005, rejecting the plea of the petitioner.

She further stated in her affidavit that though she was having sufficient medical leave and earned leave, the respondents have treated 12 days as E.O.L. with half salary in the year 1987 and 33 days as E.O.L. with half salary in the year 1997. Several oral and written representations were made by the petitioner but she was not allowed the subsistence allowance. Though she was eligible for 19 months leave under the caption of medical grounds, she availed only 30 days for which, she had also submitted medical certificate but the same were treated as E.O.L with half pay. Aggrieved over the above said orders, the present writ petition has been filed before this Court.

3. The learned counsel appearing for the petitioner would submit that the petitioner had given several representations to the respondents but the same were not considered. She had also filed several writ petitions but the respondents had not followed the orders passed by this Court to consider her representation. The petitioner was having sufficient medical leaves but the same were treated as E.O.L, which is unreasonable and unjustifiable. Therefore, this writ petition shall be allowed.

4. The learned Government Advocate appearing for the respondents would submit that due to exigency of service as she was a Staff Nurse, she was directed to appear before the

Medical Board but as she did not appear, the leave period were not treated as medical leave and the same were treated as E.O.L. She purposefully disobeyed the order of the superiors and the Medical Board. Therefore, the writ petition is liable to be dismissed.

5. Heard both sides and perused the materials placed on record.

6. On a perusal of the records, it is clear that on seeing the service register of the petitioner, it is clear that she availed the leave sometimes beyond the entitlement and sometimes advance even after serving in the essential services in the Government Institute of Mental Health. The Department have also modified the sentence imposed on her earlier and had considered her representation generously. Therefore, this Court finds that petitioner does not deserve the relief sought for as there is no merit in the writ petition and the same is liable to be dismissed.

7. Accordingly, this Writ Petition stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-
Asst. Registrar

//True Copy//

Sub Asst. Registrar

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To

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+1 C.C.to Government Pleader SR.NO.39070

W.P.No.8973 of 2006