

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No. 29806 of 2013

and

M.P.Nos.1/2013 & 1/2015

K.Ramizabi

.. Petitioner

- Vs -

1. The Secretary to Government,  
Health & Family Welfare Department  
Fort. St.George, Chennai-9.

2. The Director of Medical Education  
Kilpauk, Chennai 600 010.

3. The Director,  
I.O.G. & G.H.for Women and Children  
Egmore, Chennai 600 008.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified Mandamus, calling for the records relating to the first respondent herein G.O(D) No.695 Health and Family Welfare (C1) Department dated 21.6.2011 and the consequential entry in his SR book stating that the earned leave of 78 days was lapsed as per Tamil Nadu Leave Rule 23(a)(ii) and quash the same and consequently direct the first and second respondent herein to regularize his period of absence from 14.2.2002 to 16.1.2008 as eligible leave and the period from 17.1.2008 to 30.3.2008 as compulsory wait.

For Petitioner : M/S.R.S.Anandan

For Respondents : Mr.P.Chinna Durai, AGP

ORDER

This Writ Petition has been filed by the petitioner, to call for the records relating to the first respondent herein G.O (D) No.695 Health and Family Welfare (C1) Department dated 21.6.2011 and the consequential entry in his SR book stating that the earned leave of 78 days was lapsed as per Tamil Nadu

Leave Rule 23(a)(ii) and quash the same and consequently direct the first and second respondent herein to regularize his period of absence from 14.2.2002 to 16.1.2008 as eligible leave and the period from 17.1.2008 to 30.3.2008 as compulsory wait.

2.The case of the petitioner is that the petitioner is a staff nurse and she applied for permission to take employment abroad in Saudi Arabia for a period of one year and she was given one year leave by G.O.(D)No.104, dated 30.1.2002 and she was relieved on 14.2.2002 to take up the employment abroad. However due to unavoidable reasons the petitioner had extended her foreign service and thereafter returning from foreign service she reported for duty on 17.1.2008 and was given only posting on 27.3.2008. While she was working as Staff nurse, a charge memo was issued to her on 27.08.2008; the charge against her was that she overstayed abroad with effect from 14.2.2003 which is construed as unauthorised absence and failed to rejoin duty and disobeyed the orders of the superiors. She submitted a representation on 5.9.2008 and thereafter she submitted a reply on 5.3.2009 and thereafter an enquiry was ordered and she was awarded a punishment of withholding of one increment for one year with cumulative effect on 13.1.2010. Against the said order an appeal was filed by her and the same was rejected by the Government on 29.4.2011 and order was passed by the first respondent treating the period of absence from 14.2.2003 to 30.3.2008 as Non duty and the same was also entered in her SR book. In the above backdrop, the petitioner's Earn leave of 78 days was treated lapsed, without any show cause notice to her and the same was recorded in her service book. Challenging the said order as well as the entry in the SR Book the petitioner is before this Court.

3.Learned counsel appearing for the petitioner submitted that though the absence period from 14.2.2003 to 30.3.2008 is treated as Non duty for which she was inflicted with a punishment of withholding of one increment with cumulative effect. However as per Rule 23 (a) (ii) of the Tamil Nadu Leave Rules the absence without leave would constitute an interruption of service but the benefits accrued by the petitioner in her past service cannot be deprived to the petitioner, which has been accepted by the respondent in its counter, paragraph No.14 itself accepted. Hence this Court may issue a direction to the respondent to implement paragraph No.14 of the counter affidavit filed by them, within a reasonable time as fixed by this Court.

4.Learned Addl. Government Pleader appearing for the respondents, has no serious objection for implementing of Paragraph No.14 of the Counter, and this Court may issue such a direction to the 1<sup>st</sup> respondent.

5.This court heard both side arguments and perused the materials available on record.

6.In view of the counter filed on behalf of the respondents, without going into the merits of the issue, this Court directs the respondents to implement the paragraph No.14 of the counter and the error committed in the service record be rectified within a period of 3 months from the date of receipt of a copy of this order. Further, if the petitioner is entitled for any consequential benefits, the same may be settled in favour of the petitioner within a period of six months thereafter.

7.With the above direction, this Writ petition is disposed of. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,  
Health & Family Welfare Department  
Fort. St.George, Chennai-9.
2. The Director of Medical Education  
Kilpauk, Chennai 600 010.
3. The Director,  
I.O.G. & G.H.for Women and Children  
Egmore, Chennai 600 008.

+lcc to the Government Pleader, Sr.No.27501  
+lcc to R.S.Anandan, Advocate, Sr.No.27358

W.P. NO.29806 OF 2013

gmr (co)  
rr ii (18/11/2020)