

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No.7823 of 2013

K.Savithiri

.. Petitioner

- Vs -

1. State of Tamil Nadu, rep. By its
Secretary to Government,
Health & Family Welfare Department,
Secretariat, Chennai 600 009.

2. The Director,
Public Health and Preventive Medicine,
Chennai -6.

3. Deputy Director of Health and
Family Welfare, Perambalur,
Perambalur district.

.. Respondents

Writ petitions filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus,.calling for the records pertaining to the order passed by the 2nd respondent in his Proceedings R.No.87066/ MP3/ S1/ 2009 dated 22.1.2013 and quash the same and direct the 1st respondent to consider and pass order on the proposal submitted by the 2nd respondent in his proceedings Na. Ka. NO.51950/ Pano. 3/ Iru3/2008 dated 21.11.2009 recommending the period of training as duty for pension purpose and sanction the revised pension to the petitioner.

For Petitioner : Mr.Sivalingam Veerappan for
M/S.C.S. Associates

For Respondents: Mr.A.N.Thambidurai, Spl.G.P

ORDER

The writ petition has been filed by the petitioner to call for the records pertaining to the order passed by the 2nd respondent in his Proceedings R.No.87066/ MP3/ S1/ 2009 dated

22.1.2013 and quash the same and direct the 1st respondent to consider and pass order on the proposal submitted by the 2nd respondent in his proceedings Na.Ka.NO.51950/Pano.3/Iru3/2008 dated 21.11.2009 recommending the period of training as duty for pension purpose and sanction the revised pension to the petitioner.

2. It is the case of the petitioner that she joined as Auxiliary Nurse Midwife in the year 1977 and posted at Primary Health Centre, Kadayampatti. While she was in service, she was transferred to Government Primary Health Centre, Gangavalli, Salem District on 28.02.1978. In the meanwhile, she was directed to undergo training for Health Visitor by the 2nd respondent for a period of 1 ½ years from 20.08.1979 to 21.12.1981. The training was at Government Kasturibai Gandhi Hospital for Women and Children, Chennai-5. After undergoing the training, the petitioner came and joined duty on 22.02.1981 at Government Primary Health Center, Namagiripettai, Rasipuram Taluk, Salem District. Thereafter, she was promoted as Health Visitor and posted at Government Primary Health Centre, Vikkiravandi, Villupuram District on 14.08.1981. Further she was promoted as Community Health Nurse on 06.09.2006 and posted at Government Primary Health Centre, Andimadam, Perambalur District and she retired from service after attaining superannuation on 31.07.2007. The grievance of the petitioner is that the respondents did not pay the salary to her for the period of 14 months ie., 20.12.1979 to 21.02.1981. However while she was in service, she repeatedly made representations to the respondents claiming salary, and a consolidated proposal for salary for the above period was forwarded by the Medical Officer, Government Primary Health Centre, Andimadam where she worked at the time of retirement, however, the Deputy Director of Health Services, Salem passed order on 11.04.2007 treating the above period as leave on loss of pay. As against the impugned order and in order to avail the benefits, she made representation to the 2nd respondent herein in detail on 17.09.2007. Since no order were passed she made a reminder on 16.10.2007, however the 2nd respondent did not pass any orders even thereafter. Therefore the petitioner was constrained to approach to this Court by filing writ petition in W.P.No.13450 of 2009 and this Court by its order dated 17.07.2009, directed the respondents to dispose of the petitioner's representation. However, till date no action taken by the respondents. Hence the present writ petition.

3. Learned counsel appearing for the petitioner while reiterated the submissions as raised in the grounds, stressed that though the petitioner went for training for a period of 1 ½ years, that period has to be considered as duty as per Rule 9(6) (b) and Rule 20 sub clause (5) of the Fundamental Rules. The competent authority regularised the training period as duty

period, but without considering the said Rule, the respondents mechanically rejected the petitioner's representation, which is wholly unsustainable. The petitioner is eligible to receive pensionary benefits by calculating the training period as duty period. Accordingly he prays this Court for allowing this writ petition.

4. On the above contentions, this Court heard the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

5. The facts in the case are not disputed. On perusal of the affidavit as well the typed set of papers, it reveals that the petitioner went for training for a period of one and half years, for the purpose of obtaining promotion and thereafter, the petitioner was permitted to join duty on 22.02.1981 at Government Primary Health Center, Namagiripettai, Rasipuram Taluk, Salem District. Thereafter, she was promoted as Health Visitor and posted at Government Primary Health Centre, Vikkiravandi, Villupuram District on 14.08.1981. Further she was promoted as Community Health Nurse on 06.09.2006 and posted at Government Primary Health Centre, Andimadam, Perambalur District and also retired from service after attaining superannuation in the year 2007. After retirement, she made representation for claiming pensionary benefits, that representation was rejected.

6. The only question that arises for consideration is whether the petitioner is entitled to have the period of training to be considered as period on duty. A perusal of Rule 20(5) and 9(6) (b) of the Fundamental Rules, on which stress has been laid by the petitioner reveals that it is only the Government which can pass appropriate orders and no other authority is empowered to pass orders. In the present case, the petitioner has filed this petition against the order of rejection of her representation passed by the 3rd respondent. It is borne out by record that the representation has been submitted to the 3rd respondent and not to the 1st respondent, which is competent to consider the representation and pass orders. The representation having not been preferred before the 1st respondent, the relief sought for by the petitioner in the present writ petition cannot be granted. Further, it is to be pointed out that much time has passed since the superannuation of the petitioner and at this distant point of time, it would be a futile exercise to relegate the petitioner to the 1st respondent to pass orders. The petitioner has not submitted her representation as per the Rules to the 1st respondent and seeking to enforce the same against the 2nd and 3rd respondent is impermissible and cannot be sustained. Therefore, this Court is not inclined to accede to the request of the petitioner.

7.For the reasons aforesaid, this Writ Petition stands dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. State of Tamil Nadu, rep. By its
Secretary to Government,
Health & Family Welfare Department,
Secretariat, Chennai 600 009.
2. The Director,
Public Health and Preventive Medicine,
Chennai -6.
3. Deputy Director of Health and
Family Welfare, Perambalur,
Perambalur district.

+1cc to M/s.C.S.Associates, Advocate, Sr.No.29071
+1cc to the Government Pleader, Sr.No.28976

W.P. NO.7823/2013

Gp(co)
rr ii (19/10/2020)