



WP.No.12267 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

ORDER RESERVED ON : 13.09.2022

ORDER PRONOUNCED ON : 08.11.2022

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

WP.No.12267 of 2010

G.Ravi M.S

... Petitioner

Vs.

The Secretary
Department of Health & Family Welfare,
The State of Tamil Nadu,
Chennai-9.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the respondents order made in G.O.Ms.No.205 by the Health and Family Welfare (I-2) Department dated 20.02.2009 and to quash the same in so far as Para 3 is concerned to the extent of the said order denying eligible pension and omitting to include the services between 16.04.1982 till the date of superannuation and to consequently direct the Respondent to regularize the period from 16.04.1982 till the date of reinstatement as duty for all purposes and thereby to extend all attendant benefits both service and monetary and further fix pension calculating the petitioners service in

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Tamil Nadu Government Medical Service commencing from 1976 till 31.12.2005 as qualifying services for pension with all consequential retirement benefits. (PRAYER AMENDED VIDE ORDER DT. 13.09.2022 MADE IN WMP.33036/2019 IN WP.12267/2010)

For Petitioner : Mr.L.Chandrakumar
For Respondents : Mr.M.Bindran
Additional Government Pleader

ORDER

The Writ petition is filed for a Writ of Certiorarified Mandamus to call for the records relating to the respondents order made in G.O.Ms.No.205 by the Health and Family Welfare (I-2) Department dated 20.02.2009 and to quash the same in so far as Para 3 is concerned to the extent of the said order denying eligible pension and omitting to include the services between 16.04.1982 till the date of superannuation and to consequently direct the Respondent to regularize the period from 16.04.1982 till the date of reinstatement as duty for all purposes and thereby to extend all attendant benefits both service and monetary and further fix pension calculating the petitioners service in Tamil Nadu Government



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Medical Service commencing from 1976 till 31.12.2005 as qualifying services for pension with all consequential retirement benefits.

2.The facts leading to the filing of the writ petition are briefly narrated.

3.The petitioner was recruited by the Tamil Nadu Public Service Commission as an Assistant Surgeon in the year 1972. The petitioner obtained his Post-Graduation Degree in M.S. Surgery in 1976. Till 1978, the petitioner worked as an Assistant Surgeon in Thanjavur Medical College Hospital and as a Tutor in Surgery in Thanjavur Medical College. In December, 1978 the petitioner was transferred to Tirunelveli and while serving in Tirunelveli, the petitioner availed leave by complying with the formalities and due permission. Since the upheaval was of such nature that warranted the petitioner to stay beyond the period of leave originally sought for, he could not resume duty and continued on leave. The petitioner was therefore served with a charge memo dated 11.07.1982, under Rule 17 (b) of the Tamil Nadu Civil Services (Classification, Control & Appeal) Rules for unauthorised absence from 16.04.1982 and also for dis-obeying the orders

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of higher authorities and not joining duty, despite specific orders to join duty. After following the procedure and on due enquiry the petitioner was imposed with a punishment of removal from service vide the order dated 26.10.1984.

4.The petitioner filed the Writ Petition in W.P.No.4187 of 1985, challenging the said order of removal from service. Meanwhile, Tamil Nadu Administrative Tribunal (TAT) was constituted with effect from 1986 and the writ petition was transferred to the said Tribunal and numbered as T.A. 208 of 1992. The Administrative Tribunal by order dated 05.07.2002 set aside the order of removal from service with a direction to the respondents to take suitable action in terms of order dated 21.10.1989 passed by it in the batch of cases in O.A.No.1120 of 1989. Thereafter the Government of Tamil Nadu issued G.O.Ms.No.1433 dated 22.12.2004 reinstating the petitioner, but with a direction to initiate disciplinary proceedings against him afresh for his unauthorised absence from 16.04.1982 to 26.10.1984. By order dated 18.01.2005, the petitioner was reinstated in service. The respondent issued a fresh charge memo dated 25.10.2005 to the petitioner for unauthorised absence from 16.04.1982 to



26.10.1984. The enquiry officer was appointed vide letter dated 19.12.2005 and thereafter the petitioner attained superannuation on 31.12.2005. The petitioner was permitted to retire from service vide order dated 30.12.2005, but without prejudice to the disciplinary proceedings initiated against him. The petitioner participated in the enquiry proceedings and also submitted his explanation dated 28.12.2007, against enquiry report which was served on him on 19.11.2007. Thereafter on consideration of the enquiry report and the explanation of the petitioner, the impugned order was passed on 18.03.2009. Aggrieved by the impugned order, the petitioner filed the above writ petition.

5.The respondent filed counter, tracing the entire service record of the petitioner right from the date of his appointment, till the date of the impugned order. From the counter filed by the respondent, one additional fact that has come to light is that the petitioner on an earlier occasion had gone on unauthorised leave between 01.07.1979 to 09.04.1982 and at that time a punishment of "Censure" was imposed on him. He joined duty and again went on unauthorised leave from 16.04.1982 to 26.10.1984. It is seen



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that after the order of the Hon'ble Tribunal dated 05.07.2002, the opinion of the Additional Government Pleader, High Court was taken wherein, the Additional Government Pleader opined that an appeal was not necessary as the Hon'ble Tribunal had given liberty to proceed afresh against the petitioner.

6.The respondent in the light of the opinion of the Additional Government Pleader and the order passed by the Administrative Tribunal reinstated the petitioner into service by order dated 18.01.2005. The respondent issued a fresh charge memo dated 25.10.2005, wherein two charges were framed, one for unauthorised absence from 16.04.1982 to 26.10.1984 and other for not joining duty, inspite of specific instructions thereby disobeying the orders of higher authorities. The enquiry officer was appointed on 19.12.2005 and after complying with the requisite procedure the enquiry officer filed his report wherein he found the petitioner guilty of the charges.

7.The explanation of the petitioner to the enquiry report was not



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accepted by the disciplinary authority and therefore, the disciplinary authority passed the impugned order dated 20.02.2009. In the impugned order, the respondent noted that as the petitioner had retired from service, the only punishment that could be imposed was a cut-in pension for a specified period or on permanent basis as per Rule 9 of the Tamil Nadu Pension Rules. As the petitioner had not rendered 10 years of qualified service for pension, the said punishment could not be imposed on him and further as the petitioner superannuated on 31.12.2005 the respondent directed to drop the charges against the petitioner, even though the finding of the enquiry officer on the charges being proved was confirmed.

8.The only point canvassed by the learned counsel for the petitioner is that the service rendered by the petitioner from 16.04.1982 to 26.10.1984 ought to be considered for all purposes and services rendered by the petitioner from 1976 till 31.12.2005, ought to be taken as qualified service for pension with all consequential retirement benefits thereon.

9. According to the learned counsel for the petitioner, the natural



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consequence of reinstatement is the automatic extension of continuity of service and all consequential benefits. Therefore, according to the learned counsel, the respondent's erred in their view that the petitioner did not render 10 years of qualified service for claiming pension.

10. On the other hand, the learned counsel for the respondent after referring to the facts of the case, the period of unauthorised absence and also the order of the Administrative Tribunal submitted that the impugned order cannot be faulted and that the petitioner was not eligible for pension as he had not worked for a minimum of 10 years period, which is mandatory under Rule 43(2) of the Tamil Nadu Pension Rules, 1978. The petitioner was therefore eligible for gratuity only and the same was paid to him. In the light of the said submissions the learned counsel contended that the writ petition deserves to be dismissed.

11.I have heard both the learned counsels and perused the records.

12.The crucial and the only issue to be decided in this writ petition is



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whether the petitioner is entitled for regularisation of his services for the period from 16.04.1982 to 13.12.2005 for the purpose of attendant service benefits and whether the service of the petitioner from 1976 till 31.12.2005 should be considered as qualified service for claiming pension with all consequential benefits.

13.It is undisputed that the petitioner had joined the service on 26.08.1971, as Assistant Surgeon and then he obtained a Post Graduation Degree in 1976 in M.S (General Surgery). The petitioner served in Madras Medical College from 01.04.1972 to 17.11.1975 and thereafter joined as Tutor in Thanjavur Medical College Hospital from 24.11.1975 to 06.12.1978. The petitioner was later transferred to Tirunelveli Medical College and served there from 14.12.1978 to 30.06.1979. The petitioner went on unauthorised leave from 01.07.1979 to 09.04.1982 and for the said period of unauthorised absence a punishment of "Censure" was imposed on him. Thereafter he joined as Tutor in Physiology in Tirunelveli Medical College and worked there from 10.04.1982 to 14.04.1984. The petitioner proceeded on leave from 15.04.1984 and from 16.04.1984 onwards he



stayed away from duty. The respondent therefore initiated disciplinary proceedings against the petitioner and a charge memo was issued on 21.07.1982 and the following two charges were framed against him:

"1. That he has abruptly stopped away from duty with effect from 16.04.1982 and left the headquarters without proper and prior permission from the competent authority; and

2. that he has disobeyed the orders of his higher authorities in having not rejoined duty when he has been specifically instructed to do so."

14. After due enquiry and after following the procedure, the petitioner was removed from service vide the order dated 26.10.1984. The petitioner challenged the said order in W.P.No.4187 of 1985, which was later transferred to Tamil Nadu Administrative Tribunal and numbered as T.A.No.208 of 1992. The Administrative Tribunal vide order dated 05.07.2002, set aside the order of removal from service and remanded the matter for conducting fresh proceeding by the respondent with a direction to consider the nature and circumstances, the duration of pendency of the case



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and also the age of the applicant.

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15.The Government of Tamil Nadu on the basis of opinion of the Additional Government Pleader considered the case of the petitioner and reinstated him in service vide order dated 22.12.2004, but with a direction to initiate disciplinary proceeding for unauthorised leave from 16.04.1982 to 26.10.1984. A fresh charge memo was issued on 25.10.2005 for misconduct of unauthorised absence for a period from 16.04.1982 to 26.10.1984. The enquiry officer was appointed vide letter dated 19.12.2005 and by the time, the enquiry was completed the petitioner superannuated from service on 31.12.2005. The petitioner was permitted to superannuate vide order dated 30.12.2005, but without prejudice to the disciplinary proceedings which were already initiated and pending. The enquiry officer returned the finding that the charges were proved. The enquiry officer's report was forwarded to the petitioner, to which an explanation was submitted by him and thereafter the impugned order was passed on 20.02.2009. The respondent in the impugned order held that the charges were proved but meanwhile as the petitioner had superannuated, the charges

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were dropped and further as the petitioner had completed only 5 years and 8 months of service he was found ineligible for pension.

16.It is seen from the counter affidavit filed by the respondent that the petitioner had suppressed the fact that earlier also for the period of unauthorised absence from 01.07.1979 to 09.04.1982, a punishment of "Censure" was imposed on the petitioner. The respondent has not raised the issue of suppression of fact, but the said fact is nevertheless relevant as it reflects on the petitioner's conduct. A minor punishment of Censure was imposed then and, the petitioner rejoined duty and worked for 4 days only and thereafter again went on unauthorised leave from 16.04.1982 to 26.10.1984.

17.The present proceedings relate to the second period of unauthorised absence, the petitioner now seeks to have the period from 16.04.1982, till the date of reinstatement for all purposes and to extend all attendant benefits, both service and pensionary and to further fix the petitioner's service from 1976 till 31.12.2005, as qualified service for claiming pension with all consequential terminal benefits.



WEB COPY 18. In this context, the prayer in T.A.No.208 f 1992 is extracted which is as follows:

The Tribunal may be pleased to call for the records of the first respondent comprised in G.O.Ms.No.1868, Health and Family Welfare Department, dated 26.10.1984 quash the said proceedings dated 26.10.1984 of the first respondent herein and consequently direct the reinstatement of the petitioner in service with back salary, continuity of service, due seniority and all other attendant benefits and perquisites.

19. It is seen that the Administrative Tribunal inspite of the said prayer was pleased to set aside the removal order with liberty to the respondent to proceed afresh. The order passed by the Tribunal is as follows:

"The subject matter of this case is covered by the Judgement of this Tribunal bearing O.A.Nos.1120 of 1989 etc. batch of cases dated 21.10.1999. Therefore, the order of termination is set-aside. However, liberty is given to the



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respondents to proceed against him afresh without reference to Fundamental Rule 18(3). Further, as stated in the earlier cases, in this case also, before proceeding further the respondents shall consider nature and circumstances, duration of the pendency of the case and also the age of the applicant and decide whether it is necessary to conduct fresh proceedings against the petitioner"

20.The respondent on the basis of advice of the Additional Government Pleader reinstated the petitioner without any continuity of service or other consequential benefits but with a rider to initiate disciplinary proceedings afresh for the petitioner's unauthorised absence from 16.04.1982 to 26.10.1984. It is pertinent to note here that the petitioner chose to accept the reinstatement order and joined the service.

21.The learned counsel for the petitioner contends that as the petitioner was reinstated by the respondent the consequential benefits,



continuity of service etc., should have been given to him.

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22.It is seen that the petitioner during his service had gone on unauthorised absence from 01.07.1979 to 09.04.1982 and the punishment of Censure was imposed on him by conducting an enquiry. The petitioner rejoined duty and worked for 4 days and again he went on unauthorised leave from 16.04.1982, causing dislocation to essential medical duty.

23.The petitioner challenged the removal order dated 26.10.1984, by way of writ petition, which was later transferred to the file of the Administrative Tribunal and the Tribunal passed the order dated 05.07.2002 setting aside the removal order with a direction to proceed afresh. Therefore, it is seen that the petitioner was out of service from 1984 to 18.01.2005, which is almost 20 years. The petitioner further accepted the order of reinstatement which contained a rider to initiate fresh disciplinary proceeding without any demur. The petitioner did not raise any issue at the time of reinstatement, but he has chosen to file the writ petition only as an afterthought.



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24.The Tamil Nadu Pension Rules, 1978 is extracted hereunder:

43.Amount of Pension – [(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years the amount of service gratuity shall be calculated at the uniform rate of half month's emoluments for every completed six monthly period of service.]

(2) In the case of Government servant, retiring in accordance with the provisions of these rules after completing qualifying service of not less than 10 years, the amount of pension shall be appropriate amount as set out below namely:

25.From the above rules it is seen that to claim pension a minimum qualifying service of 10 years is mandatory. In the present case, the petitioner joined Government service on 26.08.1971, as Assistant Surgeon



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in Primary Health Centre, Sivakkam, South Arcot District and worked till 16.10.1971. He thereafter joined as Non-clinical Tutor in Pathology in Thanjavur Medical College from 23.10.1971 to 31.03.1972. After finishing his Post Graduation course in M.S. (General Surgery) in Madras Medical College from 01.04.1972 to 31.03.1975, the petitioner joined as Tutor in Pathology in Madras Medical College from 07.04.1975 to 17.11.1975. He joined as Tutor in Surgery in Thanjavur Medical College Hospital, Thanjavur and worked from 24.11.1975 to 06.12.1978. He was thereafter transferred to Tirunelveli Medical College and worked as Tutor in Surgery from 14.12.1978 to 30.06.1979. The petitioner went on unauthorised leave from 01.07.1979 to 09.04.1982 and a punishment of “Censure” was imposed on him for unauthorised absence for the said period. He joined duty as Tutor in Physiology in Tirunelveli Medical College and worked there from 10.04.1982 to 14.04.1982 and thereafter went on unauthorised leave from 15.04.1982 onwards. The petitioner filed the above said litigation and he was reinstated on 18.01.2005 and finally retired on 31.12.2005.

26.From the above, it is seen that the petitioner has worked for a



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period of five years and eight months only right from 1971. It is to be noted that the respondent in the impugned order has clearly stated that both the charges framed against the petitioner were proved, but not pressed. The reason for dropping the charges was that the petitioner superannuated and therefore the punishment under Rule 9 of the Tamil Nadu Pension Rules could not be imposed, as the petitioner did not have the minimum qualifying service of 10 years. It is therefore seen that the petitioner was not exonerated of the charges, but the same were dropped considering the fact that he had retired from services.

27.I am of the view that when the respondent specifically held that the charges were proved, but the same were not pressed, it cannot be said that the petitioner was given an honourable exit. Once it is held that the petitioner was guilty of misconduct, then it would be putting a premium on the respondent and rewarding the petitioner if the prayer of the petitioner is countenanced. It is no doubt true that pension is not a bounty, but a legal right of an employee. But to crystallise into a legal right the employee should have put in the requisite service. As seen from the above facts the



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petitioner has put in only 5 years and eight months service and therefore, I am of the considered view that the petitioner is not entitled to the relief claimed by him, moreso, when the petitioner as a Doctor by profession has put “Self” before Service.

28.In view of all the above facts the writ petition is dismissed as meritless. There shall be no order as to costs. Consequently connected Miscellaneous petition is closed.

08.11.2022

Speaking Order: Yes/No

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Internet: Yes/No

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To

The Secretary
Department of Health & Family Welfare,
The State of Tamil Nadu,
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