



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) .No.268 of 2018

and

W.M.P. (MD) No.278 of 2018

Marvin Manoah Baylis

...Petitioner

Vs.

1. The State,  
Represented by its Principal Secretary,  
Health and Family Welfare Department,  
Secretariat, St.George Fort, Chennai.

2. The Director of Public Health and  
Preventive Medicine,  
Teynampet, Chennai-600 006.

3. The Principal Accountant General,  
Chennai-600 018.

...Respondents

**PRAYER:** Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order bearing G.O.(D)No.552 dated 31.05.2010 issued by the first respondent and the consequential proceedings of the second respondent bearing MOO.Mu.No.104471/Aasuni5/U1/08 dated 06.07.2010 and quash the same insofar as it relates to regulation of period from 29.01.1998 to 31.07.2002 as non duty period and consequently direct the first respondent to regularize the said period from 29.01.1998 to 31.07.2002 as duty period of the petitioner with subsequent monetary and service benefits.

|                |                                                   |
|----------------|---------------------------------------------------|
| For Petitioner | : Mr.K.Samidurai                                  |
| For R1 and R2  | : Mr.Jeyakumar,<br>Additional Government Pleader. |
| For R3         | : Mr.P.Gunasekaran                                |

**ORDER**

Heard the learned counsel on either side.

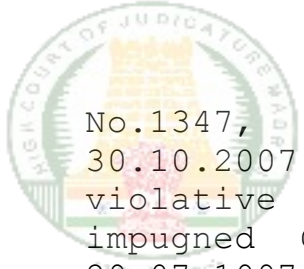
2.By consent of both parties, the Writ Petition is taken up for final disposal.

3.The writ petitioner was appointed as a Surgeon on 05.04.1990. He was a Rule 10(a)(i) appointee. He underwent Post Graduate Course as a service candidate from 29.07.1994 to



28.07.1997. After completing his post Graduate course, the petitioner sought reposting. He submitted representations dated 26.06.1997, 11.07.1997, 25.07.1997, 24.10.1997 and 19.03.1998 in this regard. Unfortunately, his plea fell on deaf ears. He was not issued with any reposting order. Instead he got a charge memo. He was thereafter issued with the reposting on 23.07.2002. Subsequently, the disciplinary action initiated against the petitioner got dropped vide G.O.(D).No.1347, Health and Family Welfare (D2), Department, dated 30.10.2007. In fact, the Government issued final order in this regard on 14.11.2007. On 31.05.2010, the Government issued the impugned G.O.(D).No.552, by treating this period from 1997 till 31.07.2002 as an interruption in service and as a non duty period. It was also further held that it would not count for the purpose of leave and that the leave earned prior to the non duty period also lapsed. Instead of questioning this Government order then and there, the petitioner chose to engage the Government in a prolonged correspondence. He submitted representations. Since they did not elicit any response, he has chosen to file the present Writ Petition.

4. This Court entertained the Writ Petition on 08.01.2018. The Government was asked to take notice and submit its reply. Thereafter, it was called on 05.02.2018, 19.02.2018, 26.02.2018, 07.03.2018 and again 12.03.2018 and again today i.e., 22.03.2018. Though as many as five adjournments were given, the Government has not chosen to file its response. But, in this case, the materials on record are not controvertible and therefore this Court can proceed to take up the matter even without a formal counter affidavit from the respondents. What is under challenge is a Government order and obviously the respondents cannot improve their stand by giving additional reasons in the counter affidavit. The petitioner is no doubt a Rule 10(a)(i) appointee. He underwent post graduation study from 1994 to 1997. After successful completion of the Post Graduate Degree, the petitioner asked for reposting. The materials on record clearly indicate that the petitioner was diligent in asking for a posting order. The Government ought to have responded to the said request. Instead it chose to keep quiet and after a gap of almost five years it issued a charge memo. The petitioner was not found guilty of the charges framed against him. In fact, the Disciplinary action came to be dropped. Therefore, the petitioner cannot be held to be guilty of any blameworthy conduct. The petitioner is entitled to be given the benefit accrued to him in view of the dropping of the charges vide G.O.(D).No.1347, Health and Family Welfare (D2), Department, dated 30.10.2007. Having dropped the charges framed against the petitioner, the Government could not have directed the treatment of the period from 29.07.1997 to 31.07.2002 as an interruption in service. It was ~~denied~~ <https://hdc.judges.gov.in/jsp/Services> which did not avail the services of the petitioner, even though, he was ready and willing to work. The Government cannot take advantage of its own wrong. The impugned G.O.(D).



No.1347, Health and Family Welfare (D2), Department, dated 30.10.2007 is unfair, iniquitous and arbitrary and therefore violative of Article 14 of the Constitution of India. The impugned Government order stands quashed. The period from 29.07.1997 to 31.07.2002 shall be treated as one on loss of pay. In other words, the applicability of the principle of no work no pay is acceptable to the petitioner. The said period shall count for all other purposes including increment and pension. There shall be continuity of service.

5.The Writ Petition is allowed accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary,  
The State,  
Health and Family Welfare Department,  
Secretariat, St.George Fort, Chennai.
2. The Director of Public Health and  
Preventive Medicine,  
Teynampet, Chennai-600 006.
3. The Principal Accountant General,  
Chennai-600 018.

+1cc to Mr.P.Gunasekaran, Advocate Sr.No.57682

+1cc to Mr.K.Samidurai, Advocate Sr.No.57189

+1cc to Spl.Government Pleader Sr.No.57602

TSG

VB/SKN/RSK/SAR1/31.05.2018/3P/7C

ORDER MADE IN  
**W.P. (MD) .No.268 of 2018**  
**22.03.2018**