



W.P.(MD).No.4413 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.4413 of 2016

and

W.M.P.(MD).Nos.3961 and 3962 of 2016

Dr.T.Mary Lalitha

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its,
Secretary to Government,
Health and Family Welfare (K2) Department,
Fort St.George, Chennai – 9.
- 2.The Director of Public Health and
Preventive Medicine,
Teynampet,
Chennai – 6.
- 3.The Director of Medical and Rural Health Services,
Teynampet,
Chennai – 6.
- 4.The Principal,
Sidha Medical College,
Palayamkottai – 627 002,
Tirunelveli District.

... Respondents



W.P.(MD).No.4413 of 2016

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the second respondent in R.No. 14595/PHC-3/A3/2009 dated 16.05.2011 and the consequential appellate order passed by the first respondent in G.O.(D) No. 1088 Health and Family Welfare (K2) Department dated 27.08.2015 and quash the same and consequently direct the respondents to reinstate the petitioner in Service as Assistant Surgeon with back wages and all attendant and monetary benefits.

For Petitioner : Mr.M.Saravana Kumar

For Respondents : Mrs.D.Farjana Ghoushia,
Special Government Pleader.

ORDER

This Writ Petition has been filed for Certiorarified Mandamus to quash the impugned order dated 16.05.2011 and consequential order passed in G.O.(D).No.1088 Health and Family Welfare (K2) Department dated 27.08.2015.

2. The facts as stated in the affidavit are that the petitioner was appointed as Assistant Surgeon (General) in Tamil Nadu Medical Services through Tamil Nadu Public Service Commission on 17.03.1997 and her services were



W.P.(MD).No.4413 of 2016

regularized vide proceedings dated 01.03.2001 with effect from 17.03.1997.

The petitioner was transferred and posted at Government Hospital, Gingee, Villupuram District on 07.07.2005. The petitioner's husband was working in Neyveli Lignite Corporation Limited, Neyveli and her family was residing at Neyveli. The petitioner was under medication for 'Hypothyroidism' (Autoimmune Thyroiditis), Hypertension and Menorrhagia since 2002. Due to ill health, the petitioner was unable to travel long distances and she had applied for leave from 29.07.2005 to 27.08.2005. In the meanwhile, the petitioner's father-in-law who had an attack of stroke became very sick and therefore, the petitioner applied for extraordinary leave on loss of pay (EOL) for six months from 28.08.2005. In the meantime, the petitioner's aged mother became victim of Chickungunya and her father underwent Angioplasty. Her father-in-law died on 18.08.2006 and the petitioner also suffered from Chickungunya. In the meanwhile, the petitioner received communication dated 24.12.2005 and 19.02.2007 to joining at Government Hospital, Gingee, Villupuram District. On receipt of such communication, the petitioner approached the third respondent in person and submitted her willingness to rejoin duty and requested to issue transfer-cum-posting order in Tirunelveli District. But the third respondent without considering the petitioner's request, issued a charge memo dated 05.02.2008 under Rule 17(b)



W.P.(MD).No.4413 of 2016

of the Tamil Nadu Civil Services (Discipline and Appeal) Rules alleging,

WEB COPY

i. That the petitioner applied for EOL from 29.07.2005 to 27.08.2005 for 30 days and again applied for extension of EOL for 6 months. She did not join duty even though the leave applied for was refused with instructions to rejoin duty immediately is an unauthorized absence from duty till date.

ii. That the petitioner is unauthorized absence from 29.07.2005 to till date and disobeyed the orders of her superiors and exhibited lack of devotion to duty thereby violated Rule 20 of Tamil Nadu Government Servants Conduct Rules, 1973.

On receipt of the charge memo, the petitioner submitted his explanation on 17.04.2008 and thereafter an enquiry officer was appointed and the petitioner submitted his detailed explanation before the enquiry officer and the enquiry officer held that the charges are proved. On receipt of enquiry report, the respondents issued a show cause notice vide his proceedings dated 11.08.2009 and directed the petitioner to submit a explanation within a period of 15 days. In the meanwhile, the petitioner's husband met with road accident and the petitioner's health was also deteriorated and she was diagnosed of having cancer in her right kidney. The petitioner underwent partial Nephrectomy in her right kidney in the year 2009. Therefore, the petitioner submitted explanation on 06.12.2010 and explained her illness and further requested the respondents to treat the period as loss of pay and drop the proceedings. On receipt of the explanation, the third respondent vide



W.P.(MD).No.4413 of 2016

proceedings dated 14.01.2011 issued a Transfer-cum-Posting order and posted the petitioner at Government Hospital, Melapalayam, Tirunelveli District. Accordingly, the petitioner rejoined in service on 05.02.2011. In September 2011, the petitioner was diagnosed to have cancer in her left kidney and also Myoma uterus and surgery was planned in October 2011. In the meanwhile, the petitioner was transferred from Melapalayam to Nanguneri vide proceedings dated 03.10.2011. As per the order, the petitioner rejoined at Nanguneri on 11.10.2011. Again she was transferred from Nanguneri to Palayamkottai and rejoined in service on 23.12.2011. In the meantime, the impugned termination order dated 16.05.2011 was passed by the second respondent against which the petitioner filed an appeal before the first respondent on 13.05.2013. Thereafter the petitioner filed W.P.No.18693 of 2013 and this Court vide order dated 10.07.2013 directed the respondents to consider the appeal within the stipulated time. Thereafter, the Government has passed the impugned Government Order in G.O.(D)No.1088 Health and Family Welfare (K2) Department dated 27.08.2015. Aggrieved over the same, the present Writ Petition is filed.

3. The respondents had filed a counter affidavit stating that the petitioner was unauthorized absentee in the second spell where the application to the extent of extraordinary leave on loss of pay was rejected. In spite of rejecting



W.P.(MD).No.4413 of 2016

the leave application, the petitioner did not join the service. Therefore, the disciplinary proceedings were initiated after affording opportunity to the petitioner and the second show cause notice was issued to the petitioner. The second respondent has passed the impugned termination order dated 16.05.2011. However, the impugned order was not served immediately. In the meanwhile, the petitioner was allowed to rejoin the service and continued her service. Thereafter, the petitioner had preferred an appeal before the Government. The Government has passed a Government Order confirming the termination order. The contention of the respondents is that the petitioner's leave application was rejected vide telegram dated 25.10.2005 directing the petitioner to rejoin the duty immediately. Thereafter, the petitioner rejoined the service on 05.02.2011. The Government servant is duty bound to rejoin, when the leave application is rejected. Hence, the petitioner is duty bound to rejoin. The impugned Government order is passed confirming the termination order. Therefore, the respondents submitted that there are no merits in this case and prayed to dismiss this Writ Petition.

4. Heard Mr.M.Saravana Kumar, the Learned Counsel for the petitioner and Mrs.D.Farjana Ghoushia, Learned Special Government Pleader appearing for the respondents and perused the records.



W.P.(MD).No.4413 of 2016

WEB COPY

5. On perusing the records it is seen from the documents that the petitioner submitted a leave application from 29.07.2005 to 27.08.2005 and the said leave application was allowed. Subsequently, the petitioner had submitted another application for extraordinary leave on loss of pay thereby extended the leave from 28.08.2005 and the said leave application was rejected by the respondents. The petitioner has narrated her inability to rejoin because of the calamity that has occurred in the family. The petitioner was also ill due to cancer in her right kidney and subsequently the cancer had spread to her left kidney and uterus and she had undergone surgery and had undergone further treatment for cancer. The respondents have not denied the plea of illness of the petitioner.

6. Therefore, this Court is of the considered opinion that the case of the petitioner ought to be considered sympathetically due to her serious and severe illness. It is seen from the records that the petitioner has put in service from 17.03.1997 to 28.07.2005 and thereafter from 05.02.2011 to 05.05.2013. If these periods are taken into account, the petitioner has put in service for a period of 10 years approximately. Hence the impugned termination order dated 16.05.2011 is set aside and the punishment is modified as compulsory



W.P.(MD).No.4413 of 2016

retirement. The petitioner is entitled to continuity of service and the respondents are directed to disburse the applicable terminal benefits to the petitioner including the pensionary benefits. But the petitioner is not entitled to any backwages for the period she was absent from duty based on the principles of “No Work No Pay”.

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

20.09.2022

Index : Yes / No
Internet : Yes/ No
Nsr



W.P.(MD).No.4413 of 2016

To

WEB COPY

1. The Secretary to Government,
The State of Tamil Nadu,
Health and Family Welfare (K2) Department,
Fort St.George, Chennai – 9.
2. The Director of Public Health and
Preventive Medicine,
Teynampet,
Chennai – 6.
3. The Director of Medical and Rural Health Services,
Teynampet,
Chennai – 6.
4. The Principal,
Sidha Medical College,
Palayamkottai – 627 002,
Tirunelveli District.



WEB COPY



W.P.(MD).No.4413 of 2016

S.SRIMATHY, J.

Nsr

W.P.(MD).No.4413 of 2016

20.09.2022