



W.A.(MD)No.2048 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

**AND**

**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD)No.2048 of 2023

Marvin Manoah Baylis

... Appellant

Vs.

1.The State,

Rep. 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 Appeal filed under Clause 15 of Letters Patent Act, to set aside the orders passed in W.P.(MD)No.268 of 2018, dated 03.02.2022 on the file of this Court.



W.A.(MD)No.2048 of 2023

For Appellant : Mr.M.Gnanagurunathan  
For R1 & R2 : Mr.S.Shanmugavel,  
Additional Government Pleader  
For R3 : Mr.P.Gunasekaran

### **JUDGMENT**

(Judgment of the Court was delivered by ***S.M.SUBRAMANIAM, J.***)

The appellant was appointed as Assistant Surgeon under Rule 10(a)(i) of General Rules for Tamil Nadu State and Subordinate Services (hereinafter referred to as 'the General Rules') on 05.04.1990. The Government issued G.O.(Ms)No.312, Health and Family Welfare Department, dated 20.04.1994 to conduct examination through Tamil Nadu Public Service Commission, so as to regularize the services of the Assistant Surgeons appointed under Rule 10(a)(i) of the General Rules. The Selection Committee during the relevant point of time invited applications for post graduation medical course from the eligible candidates in May, 1994. The writ petitioner underwent post graduation course and on completion, submitted application to issue re-posting order on 26.06.1997. However, there was an administrative delay in issuing re-posting order.



2.The competent authorities found that the writ petitioner suppressed certain material facts at the time of admission to post graduation course and consequentially, a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was issued on 06.04.2002. During the pendency of the charge memo, re-posting order was issued on 23.07.2002. Consequentially, the writ petitioner joined duty in the place, where he was posted on 01.08.2002. An enquiry was conducted and the charge memo was dropped by the Government in G.O.(D)No.1347, Health and Family Welfare (D2) Department, dated 30.10.2007. Thereafter, the case of the appellant was taken into consideration for grant of regularization, which was granted.

3.The Government issued G.O.(D)No.552, Health and Family Welfare (B1) Department, dated 31.05.2010, regularizing the period of absence of the writ petitioner from 29.07.1997 to 28.01.1998 as extraordinary leave without pay and allowances and from 29.01.1998 to 31.07.2002 as non-duty under proviso 2 to Rule 23(a)(ii) of Tamil Nadu Leave Rules, 1933. The appellant has challenged the said Government Order stating that he was not at fault and there was a delay in issuing re-posting order and therefore, the interregnum period has to be regularized as duty with pay.



W.A.(MD)No.2048 of 2023

WEB COPY

4.The learned Single Judge considered the issues and allowed the Writ Petition by modifying the order passed by the Government to the effect that the period from 29.07.1997 to 31.07.2002 shall be modified as 'extraordinary leave without medical certificate'. However, there is no direction to grant pay, since the period was not regularized as duty with salary. Therefore, the writ petitioner has chosen to file the present Writ Appeal.

5.The learned counsel appearing for the appellant mainly contended that the appellant was not at fault and he made application for re-posting order, which was considered and therefore, the learned Single Judge ought to have granted the relief as such sought for in the present Writ Petition.

6.The learned Additional Government Pleader appearing for the respondents 1 and 2 contended that the writ petitioner has suppressed certain material facts even at the time of securing admission to post graduation medical course and charge memo was issued and his services were regularized only in the year 2011 and taking into consideration the facts and circumstances, the Government regularized the period as extraordinary leave without pay and



W.A.(MD)No.2048 of 2023

allowances for six months from 29.07.1997 to 28.01.1998 and in respect of the period of absence from 29.01.1998 to 31.07.2002 as non-duty under proviso 2 to Rule 23(a)(ii) of the Tamil Nadu Leave Rules, 1933.

7.The modification of the period of leave by the learned Single Judge itself is unnecessary, in view of the fact that the interregnum period, during which the writ petitioner had not performed duty, was regularized in accordance with the Tamil Nadu Leave Rules, 1933. The principle of 'no work no pay' is to be applied in this case, in view of the fact that having been appointed as 10(a)(i) Assistant Surgeon, he had not performed his duties and responsibilities during the period from 29.07.1997 to 31.07.2002.

8.In view of the facts and circumstances, we are inclined to modify the impugned order dated 03.02.2022 passed in W.P.(MD)No.268 of 2018 by confirming the Government Order issued in G.O.(D)No.552, Health and Family Welfare (B1) Department dated 31.05.2010. Accordingly, the writ petitioner is eligible to count the period from 29.07.1997 to 31.07.2002 as qualifying services only for the purpose of pensionary benefits. The said period is directed to be reckoned as qualifying service. However, the writ petitioner is not entitled for any



W.A.(MD)No.2048 of 2023

monetary benefits for the said period. Accordingly, the Government Order issued in G.O.(D)No.552, dated 31.05.2010 stands confirmed and the impugned order of the learned Single Judge dated 03.02.2022 passed in W.P.(MD)No.268 of 2018 stands modified. Consequentially, this Writ Appeal stands disposed of. No costs.

**(S.M.S., J.) & (V.L.N., J.)**  
**30.11.2023**  
**(½)**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No

*Yuva*

To

- 1.The 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.



WEB COPY



W.A.(MD)No.2048 of 2023

**S.M.SUBRAMANIAM, J.**

**AND**

**V.LAKSHMINARAYANAN, J.**

*Yuva*

W.A.(MD)No.2048 of 2023

30.11.2023

(1/2)