

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 03.01.2023**

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY****W.P. (MD)No. 16287 of 2018**

WEB COPY

E.Sundari Prabha Rani

... Petitioner

Vs.

1. The State Government of Tamilnadu,
Represented by its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort Saint George, Chennai.

2. The Director,
Medical and Rural Health Service Department,
Chennai - 600 006.

3. The Chief Civil Surgeon/Chief Medical Officer,
Government Hospital,
Paramakudi, Ramanathapuram District.

4. The Accountant General,
Office of Accountant General (A& E),
Guindy, Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of **Writ of Certiorarified Mandamus** calling for the records relating to the impugned G.O.(P).No.1052, Health and Family Welfare Department, dated 05.05.2017, issued by the 1st respondent in so far as treating the period between 27.02.1985 to 08.06.1997 as non-duty period under Rule 23 (a) (ii) of the Tamil Nadu Leave Rules and quash the same consequently direct the respondents 1 and 4 herein to take into account the period between 27.08.1984 to 08.06.1997 as qualifying service for the purpose of pension and issue revised pension orders, within the time limit fixed by this Court.

For Petitioner: Mr.VR.Shanmuganathan, for
M/s.A.L.Kannan

For R-1 to R-3: Mr.P.Thambidurai,
Government Advocate

For R-4 : Mr.P.Gunasekaran
Standing Counsel

**ORDER**

This Writ Petition has been filed to quash the impugned G.O.(P).No.1052, Health and Family Welfare Department, dated 05.05.2017, issued by the 1st respondent in so far as treating the period between 27.02.1985 to 08.06.1997 as non-duty period, under Rule 23 (a) (ii) of the Tamil Nadu Leave Rules and also sought for a consequential direction to the respondents 1 and 4 to take into account the period between 27.08.1984 to 08.06.1997 as qualifying service for the purpose of pension and issue revised pension orders, within the time limit that may be fixed by this Court.

2. The petitioner joined service in the year 1982, as Staff Nurse. The petitioner was transferred to various places. On 27.08.1984, the petitioner was transferred and posted to Institute of Obstetrics and Gynecology and Women and Children Hospital, Chennai, but she did not joined in the said post. Subsequently, the petitioner submitted the joining report, after lapse of one year. In the meanwhile, the 3rd respondent did not allow the petitioner to join either in the earliest post or in the transferred post, from 27.08.1984 to 08.06.1997 the petitioner was kept under waiting period. Finally, the petitioner was allowed to join the post. In the meanwhile, the respondents have issued a charge memo for unauthorised absence. The petitioner has participated in the enquiry, which was ended by imposing punishment of increment cut for five years with cumulative effect. Subsequently, the petitioner had attained superannuation and retired from service on 31.10.2010.

3. The issued raised before this Court is that the respondents have regularized the said period from 1984 to 1987 as non-duty period. This has resulted in decrease in the terminal benefits of the petitioner. Hence, the petitioner is before this Court by way of filing this writ petition.

4. The 1st respondent has filed counter and stated that the petitioner did not join the transfer post and unauthorizedly absented from duty for a period from 27.08.1984 to 08.06.1997. The said period is consisting of two spells and the 1st spell from 27.08.1984 to 26.02.1985 (six months) which has been treated under Rule 23(a)(ii) of the Tamil Nadu Leave Rules, as loss of pay and the 2nd spell from 27.02.1985 to 08.06.1997 the said period has been treated as Non-duty period as per second Proviso to Rule 23(a)(ii) of the Tamil Nadu Leave Rules and hence, the petitioner cannot be allowed to claim as duty period. Since it is a deliberate unauthorized absence, the respondents have prayed to dismiss the writ petition.



5. Heard Mr.VR.Shanmuganathan, for M/s.A.L.Kannan, learned Counsel appearing for the petitioner and Mr.P.Thambidurai, learned Government Advocate appearing for the respondents 1 to 3 and Mr.P.Gunasekaran, learned Standing Counsel, appearing for the 4th respondent. Perused the material documents available on record.

6. The contention of the petitioner is that the petitioner was unauthorizedly absented for the period from 1984-1985. Subsequently, when the petitioner intended to join the post in the year 1985, the respondents did not allow to join the duty. The 3rd respondent ought to have posted the petitioner in some other vacant post. The respondents have failed to pass such order, but kept the petitioner in the "waiting period" for a period from 1985 - 1997 i.e., more than 12 years. It is the deliberate mistake of the respondents keeping the petitioner in waiting period and for which the petitioner cannot be punished. The respondents are well aware that it is the mistake of the respondents and that is why the respondents have imposed lesser punishment of stoppage of increment and has treated the period of absence in two spells.

7. By taking into consideration of the facts and circumstances, this Court is of the considered opinion that the respondents cannot blame the petitioner for her unauthorized absence for the period from 1985 to 1997, since it is a mistake of the respondents to keep the petitioner under compulsory waiting. Therefore, the respondents are bound to treat the said period from 1985 to 1997 as duty period, atleast for conferring service benefits.

8. Accordingly, this Court is passing the following Order:

1. The impugned order regularizing the period as loss of pay from **(*)27.08.1984** to **(*)26.02.1985** is confirmed.
2. The period from **(*)27.02.1985** to 08.06.1997 is hereby quashed. The respondents are directed to consider the period as duty period. The petitioner is not entitled to any monitory benefits, however, the petitioner is entitled to service benefits.
3. The respondents are directed to grant service benefits and the same effect shall be granted in the pensionary benefits.
4. The said exercise shall be completed within a period of 12 weeks, from the date of receipt of a copy of the order.
5. Thereafter, the necessary entries shall be made in the Service Book of the petitioner, with regard to the same.



9. With the above observations, this Writ Petition is allowed. No Costs.

Sd/-

Assistant Registrar(CS-III)

(*)Corrected as per the order of this court dated 28.03.2023in WP (MD) .No. 16287 dated 2018

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/04/2023

Sub Assistant Registrar(CS)

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(*)To be substituted the order already despatched on 23.03.2023
To

1. The Principal Secretary to Government,
State Government of Tamilnadu,
Health and Family Welfare Department,
Secretariat, Fort Saint George,
Chennai.
2. The Director,
Medical and Rural Health Service Department,
Chennai - 600 006.
3. The Chief Civil Surgeon/Chief Medical Officer,
Government Hospital,
Paramakudi,
Ramanathapuram District.
4. The Accountant General,
Office of Accountant General (A& E),
Guindy, Chennai.

+1 CC to M/s.VR.SHANMUGANATHAN, Advocate (SR-951[F] dated
05/01/2023)

**Order made in
W.P. (MD)No. 16287 of 2018
03.01.2023**

SI(17.03.2023) 4P/ 6C

KB(11.04.2023) 4P/ 6C