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W.A. No.1681 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2024

CORAM:

THE HON'BLE MR. D. KRISHNAKUMAR, ACTING CHIEF JUSTICE
and
THE HONOURABLE MR. JUSTICE P.B. BALAJI

W.A. No.1681 of 2024 and C.M.P. No.11906 of 2024

- 1 The State of Tamil Nadu
represented by its Secretary to Government
Health & Family Welfare Department
Fort St. George
Chennai
- 2 The Director of Medical and Rural Health Services
Teynampet
Chennai 600 006
- 3 The Joint Director of Medical and Health Services
Thanjavur District
Kumbakonam 612 001
- 4 The Hospital Superintendent
Government Hospital
Kumbakonam 612 001

Appellants

v

Dr. (Sqn. Ldr.) S.B. Rajesh Ram

Respondent

Writ Appeal filed under Clause 15 of the Letters Patent challenging
the order dated 30.09.2021 passed in W.P. No.21028 of 2021.



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For appellants Mrs. M. Sneha
Special Counsel

For respondent Mr. C.S.K. Sathish

JUDGMENT

(delivered by the Hon'ble Acting Chief Justice)

This writ appeal impugns the order dated 30.09.2021 passed in W.P.No.21028 of 2021.

2. The facts which are necessary for deciding this writ appeal are as under:

2.1. The respondent, who is a Government doctor at the Government District Headquarters Hospital, Kumbakonam, along with other doctors, had allegedly remained absent unauthorisedly and partaken in a strike and hence, he was issued with a charge memo dated 30.10.2019 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and he was also transferred *vide* order of even date to the Government Hospital, Nilakkottai, Dindigul District. From 30.10.2019 to 28.02.2020, he was on medical leave.



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WEB COPY 2.2. Challenging the transfer order dated 30.10.2019, the respondent preferred a writ petition being W.P. No.33075 of 2019, which was heard by a Single Bench, along with other writ petitions filed by similarly placed doctors.

2.3. The Single Bench, *vide* paragraph 54 of the common order dated 28.02.2020, quashed the transfer orders and *vide* paragraph 55 of the said order, observed that the respondent shall be recalled in the next transfer counselling and restored to his original position.

2.4. In pursuance of the aforesaid order, when the respondent reported to duty at the Government District Headquarters Hospital, Kumbakonam, on the very next day, *i.e.*, on 29.02.2020, he was not permitted to join duty for some time on the ground that the Joint Director, *i.e.*, the third appellant, has to be consulted.



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2.5. After the respondent addressed some representations seeking permission to join duty, eventually, he was allowed to join duty on 05.06.2020. However, the period of the respondent's service between 29.02.2020 and 04.06.2020 was declined to be regularised by the appellants on the ground that he did not attend duty during those days.

2.6. Hence, the respondent addressed a representation dated 20.08.2021 requesting regularisation of his service from 29.02.2020 to 04.06.2020 on the ground that he cannot be found fault with for not attending duty, inasmuch as, though he reported to duty, it was only the appellants who did not permit him to join duty.

2.7. Since there was no response to the said representation, the respondent filed W.P. No.21028 of 2021 seeking a writ of mandamus directing the appellants to treat him as having joined duty on 29.02.2020 and to pay arrears of salary with interest at 6% per annum and also grant continuity of service and other attendant service benefits, by considering his representation dated 20.08.2021.



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WEB COPY 2.8. A Single Bench of this Court, *vide* order dated 30.09.2021, observing that though the respondent attempted to join duty on 29.02.2020, he was allowed to join duty only on 05.06.2020, directed the second appellant to consider the respondent's representation dated 20.08.2021 favourably and pass orders and also to pay arrears of income which has been deducted.

2.9. Challenging the aforesaid order, the State has preferred this writ appeal.

3. The issue that falls for consideration of this Court is whether the period between 29.02.2020 to 04.06.2020 is entitled to be regularised or not, in pursuance of the order dated 30.09.2021 impugned in this writ appeal.

4. Admittedly, the respondent comes under the service of Directorate of Medical and Rural Health Services. The main submission of



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the learned Special Counsel for the appellants is that in paragraph 55 of the order dated 28.02.2020, there is no direction, much less any specific direction, as regards the respondent who comes under the service of Directorate of Medical and Rural Health Services and as a sequel, the respondent's claim cannot be considered in the light of the order dated 30.09.2021 impugned in this writ appeal.

5. When, according to the appellants, paragraph no.55 of the order dated 28.02.2020 is applicable only to Directorate of Medical Education and not to Directorate of Medical and Rural Health Services, because of which, there was delay in permitting the respondent to join duty on 05.06.2020, in the opinion of this Court, the appellants ought to have sought legal opinion as to whether the Single Bench concerned could be moved by filing an appropriate application seeking clarification in this regard. It appears that no such effort has been taken by the appellants. That apart, the respondent, for his part, has addressed representations dated 05.03.2020, 05.05.2020 and 05.06.2020 to the third appellant seeking permission to join duty, but to no avail.



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6. In the absence of any effort on the part of the appellants in seeking clarification of paragraph no.55 of the order dated 28.02.2020 and also considering the inaction on the part of the appellants in considering and passing orders on the respondent's aforesaid three representations, this Court finds no merit in this writ appeal and the appellants are directed to implement the order dated 30.09.2021 passed by the Single Bench, within a period of twelve weeks from the date of receipt of a copy of this judgment.

With the above direction, this writ appeal stands dismissed. No costs.

Connected C.M.P. stands closed.

(D.K.K., A.C.J.) (P.B.B., J.)
02.09.2024

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and

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