



WEB COPY



W.P.No. 7209 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

**W.P.No.7209 of 2024
and
W.M.P.No.8054 of 2024**

Dr.K.Karunakaran

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Petitioner

Vs

1. Government of Tamil Nadu,
Rep.by its Principal Secretary to Government,
Health and Family Welfare (B1 Department)
Secretariat, Fort St.George,
Chennai-600 009.

2. The Director of Medical and Rural Health Services,
O/o the DMS,
DMS Complex, Teynampet,
Chennai-600 006.

3. The Joint Director of Health Services,
'E' Block, 3rd Floor,
Collectorate Complex,
Ranipet, Ranipet District.

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Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, after calling for the concerned records from the 1st respondent, quash the order of the 1st respondent dated 12.12.2023 bearing Lr.No.4473/B1/2023-1 as illegal,



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arbitrary and contrary to law and consequently direct the respondents to take into account of the period of extraordinary leave for the purpose of promotion, seniority, leave and increment in terms of Rule 21 of the Tamil Nadu Study Leave Rules and also regularize the service of the petitioner with effect from 18.03.2005.

For Petitioner : Ms.R.Kamatchi Sundaresan

For Respondents : Mr.E.Sundaram
Government Advocate

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent dated 12.12.2023, thereby rejected the request made by the petitioner to take into account the period of extraordinary leave for the purpose of promotion, seniority, leave and increment in terms of Rule 21 of the Tamil Nadu Study Leave Rules.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioner had joined as Contract Medical Consultant on 18.03.2005. By G.O.Ms.No.302, dated 20.11.2006, his service was brought



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in time scale of pay. After completion of special qualifying examination conducted by the Tamil Nadu Public Service Commission during the year 2007, his service was regularised with effect from 01.11.2006. Thereafter, he was promoted to pursue his D.Ortho Course at Mahatma Gandhi Medical College, Puducherry as a private candidate. The petitioner was granted study leave by G.O.(D) No.796, Health and Family Welfare (B1) Department, dated 10.08.2012 and G.O.(D) No.1135, Health and Family Welfare (B1) Department, dated 18.10.2013. Accordingly, the petitioner was extended with extraordinary leave without pay and allowances for a period of two years. In the above said orders, the first Government order was passed for the first year and the second Government order was passed for the second year. After completion of D.Ortho, he had joined duty on 01.05.2014 and he was posted at ESI Hospital, Vellore. The total period of leave was 1 year 8 months and 16 days.

4. As per the existing Rules, on completion of 8 years of continuous service as Assistant Surgeon, the candidate would be eligible for promotion to the post of Senior Assistant Surgeon and after completion of



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15 years of continuous service, they would be eligible for promotion to the post of Civil Surgeon. Accordingly, the respondents ought to have given promotion to the petitioner with effect from 19.06.2016 to the post of Senior Assistant Surgeon and promotion to the post of Civil Surgeon from 18.06.2021. However, the period of extraordinary leave of 1 year 8 months 16 days was not included while calculating his service period.

5. Admittedly, the petitioner was granted leave without salary to pursue his D.Ortho . The petitioner is entitled for other benefits for those period, except salary. Therefore, the petitioner submitted a representation. However, it was rejected on the ground that the petitioner had completed D.Ortho at Mahatama Gandhi Medical College and Research Institute, Puducherry, which is outside the State of Tamil Nadu, by giving an undertaking that he would study at his own cost and requested to treat the period as extraordinary leave without pay and allowance. It is further stated that as per National Medical Commission norms, stipends are given to Diploma Course candidates. There is no exigency of Public Service to enable the petitioner to undergo Diploma in Ortho Course outside Tamil



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Nadu institutes. Therefore, the period of study cannot be considered and as such, the study leave cannot be treated as duty for the purpose of seniority and promotion.

6. A perusal of G.O.Ms.NO.2036, dated 12.01.1981 reveals that the study period of service candidate undergoing Post Graduate/Diploma Course in Medical Colleges in the State Quota has treated as 'On Duty' for all purpose regarding probation, increment, pension, etc. The petitioner was newly permitted to pursue his Diploma Course in D.Ortho without salary. It was treated as extraordinary leave without pay and allowance. In fact, the petitioner had completed his D.Ortho at Mahatama Gandhi Medical College and Research Institution, Puducherry, which is a recognized institution. Since he is qualified from an institute outside the State of Tamil Nadu, it is not a reason for denial of the request for including the leave period for all purposes. The petitioner was permitted to do his D.Ortho privately on his own expenses. Therefore, the petitioner is not entitled for any salary for that period. Now the petitioner seeks for the said period to be taken into account for the purpose of promotion, seniority, leave and increment in



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terms of Rule 21 of Tamil Nadu Study Leave Rules. Therefore, the impugned order cannot be sustained and is liable to be quashed.

7. In view of the above, the impugned order dated 12.12.2023 passed in Lr.No.4473/B1/2023-1 by the first respondent is hereby quashed. The first respondent is directed to take into account the period of 1 year 8 months and 16 days for the purpose of promotion, seniority, leave and increment and also regularization of his service and pass appropriate orders on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

8. In the result, this Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

20.03.2024

Internet : Yes/No
Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation : Yes/No
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To
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1. The Principal Secretary to Government,
Government of Tamil Nadu,
Health and Family Welfare (B1 Department)
Secretariat, Fort St.George,
Chennai-600 009.
2. The Director of Medical and Rural Health Services,
O/o the DMS,
DMS Complex, Teynampet,
Chennai-600 006.
3. The Joint Director of Health Services,
'E' Block, 3rd Floor,
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G.K.ILANTHIRAIYAN, J.

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