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W.P.No.19265 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.19265 of 2024

and

W.M.P Nos. 21129 & 21130 of 2024

M.Devika

.... Petitioner

Vs

1. The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Department of Health and Family Welfare,
Secretariat, Fort St.George,
Chennai – 600 009.

2. The Director,
Directorate of Medical and Rural Health Services,
DMS Compound,
Teynampet, Chennai – 600 006.

3. The Director,
Directorate of Medical Education and Research,
DMS Compound,
Teynampet, Chennai – 600 006.

.... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the G.O.(D) No.55 dated 05.01.2018 passed by the 1st respondent department insofar as it denied the benefit of pay and allowances for the study leave from 21.08.2014 to 24.08.2016 and consequential order dated 30.09.2020



W.P.No.19265 of 2024

bearing letter No.4465/ AA2/ 2020-3 passed by the 1st respondent Government in rejecting the petitioners request / representation seeking for grant of pay and allowance for the study leave and to quash the same as being illegal, arbitrary, unlawful, discriminatory and consequentially direct the respondents to settle the pay and allowance for the period spent on sabbatical leave from 21.08.2014 to 24.08.2016 and to count the said study period for selection grade and to grant all other service benefits payable to a regular employee.

For Petitioners : Mr.V.Govardhanan
For Respondents : Mr.M.Bindran
Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent dated 30.09.2020, thereby rejected the request made by the petitioner seeking regularisation of study period.

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

3. The petitioner had joined in Diploma in General Nursing and Midwifery in Government Headquarters Hospital, Trichy. After completion of Diploma, the petitioner was appointed in the second respondent Directorate as Staff Nurse on contract basis. After completion of two years, her service was



W.P.No.19265 of 2024

regularised and she was issued posting order. After regularisation of her service, she was granted regular scale of pay. While she was in service, she applied for Post Basic B.Sc (Nursing) course through the third respondent. She was allotted a College and had completed the Post Basic B.Sc (Nursing) course and she was posted in Institute of Mental Health, Chennai, as staff nurse. She had registered her additional qualification. As per G.O.(D) No.55 dated 05.01.2018, the period of leave from 21.08.2014 to 24.08.2016 under Rule 16 of the Tamil Nadu Leave Rules by relaxing Rule 18(2) of the Fundamental Rules was regularised without medical certificate. However, she was denied benefits of pay and allowances for the said period. Therefore, the petitioner submitted a representation and the same was not considered. Hence, this writ petition.

4. Similar issue was already dealt with by this Court wherein it was held as follows :

“35. In the absence of production of any rule framed by the Court, regulating admission in professional colleges during 2004,2006, it has to be construed that in exercise of the powers under Article 162 of the Constitution of India, the Government have issued the guidelines for admission for professional courses and in such a view of the matter, when



W.P.No.19265 of 2024

WEB COPY

the prospectus particularly, Clause VI for the year 2004 states that, all Nurses working in Tamilnadu Government and selected for PG Course shall undergo the course on deputation and be paid full pay and allowances, without any reservation, as to whether the in service candidates is selected and allotted to a Government College or private College, the Secretary, Selection Committee, Chennai, or for that matter, the other respondents including the Government cannot deviate from the terms and conditions of the prospectus denying the entitlement of the petitioners, to their pay and allowances, during the period of their study.

36. The above paid view of this Court, would be fortified by the decision of the Government taken in the year 2008 and subsequently, clarified in their prospectus for Admission to [P.G.M.Sc.](#) (Nursing) degree course for the year 2008-09 and for 2010-11, wherein, the Government, dealing with the payment of stipend, during the period of study, in clause, No.9 of the prospectus for 2008-09, have stated as follows:

(i). All service candidates serving in Tamilnadu Medical Service and selected and allotted for PG course in Govt. Institutions shall undergo the course and be paid full pay and allowances.

(ii). Other categories of service candidates shall undergo the PG course as a full time PG course without any extra expenditure to the institution where



WEB COPY



W.P.No.19265 of 2024

he/she is undergoing the PG course of study and also without any extra expenditure to the Government.

(iii) Private candidates selected and allotted Postgraduate courses in Government Institution shall receive stipend as per Government rule in force."

37. The above said aspect has been further clarified in the prospectus for the Academic year 2010-11 as follows:

"(36) Stipend:

- a. All service candidates serving in Tamilnadu Medical Service and selected and allotted for PG Course in Govt. Institutions shall under the course and be paid full pay and allowances.*
- b. Service candidates taking allotment in Self-financing colleges will not be paid salary and they have to avail leave to which they are eligible for the period of study on their own after obtaining prior permission from their head of Department concerned.*
- c. Private candidates selected and allotted Postgraduate courses in Government institutions shall receive stipend as per Government rule in force."*

38. Thus, it could be seen that realising the implication in permitting inservice candidates to pursue higher education, on deputation, in a self financing private colleges, the Government



W.P.No.19265 of 2024

WEB COPY

have come out with specific conditions in the prospectus for admission to P.G.Course in Nursing, the years 2006-09 and 2010-11, wherein the Government, have taken a decision not to sanction pay and allowances to a Postgraduate student, undergoing studies in self financing colleges and that they have to avail leave to which they are eligible for the period of study on their own, after obtaining prior permission from the Head of the Department concerned, which condition admittedly had not been imposed in the prospectus for the year 2004-05 and that there was no condition to the service candidates to avail leave, nor it could be seen from the material on record that the appointing authority / Government had instructed the petitioners to apply for leave for which they are eligible, for the purpose of pursuing their post graduation in self financing institutions.

39. It is evident from the material on record, after provisional selection by the selection committee, the Head of the Department viz., Director of Medical Education, Chennai, has issued instructions to the Deans of the the respective Government Medical College Hospitals viz., Tirunelveli Medical College Hospital, Tirunelveli and Government Stanley Medical Collage Hospital, Chennai, to relieve the petitioners, so as to enable them to report before the selection committee / colleges to which they had been allotted to pursue their higher education. Needless to say that the conditions imposed in 2009-



W.P.No.19265 of 2024

WEB COPY

10, cannot be retrospectively given effect to and that the terms and conditions of the prospectus issued for that particular year alone will prevail. Therefore, when the petitioners were relieved in 2004 and permitted to undergo the two year postgraduate course, they are entitled to pay and allowances for the above said period, as done in the case of R.Lakshmi, stated supra. The impugned orders which are bereft of any reasons, cannot be allowed to be supported by the reasons in the counter affidavit. Reference can be made to the following decisions.

40. In Mohinder Singh Gill v. Chief Election Commr. reported in 1978 (1) SCC 405, and at Paragraph 18 the Apex Court held as follows:

"B. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. An order bad in the beginning may, by the time it comes before the Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Commr, of Police, Bombay v. Gordhandes Bhanji, reported in AIR 1952 SC 16:



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W.P.No.19265 of 2024

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

41. The above position of law has been restated in *Hindustan Petroleum Corpn. Ltd., v. Darius Shapur Chonai* reported in 2005 (7) 3CC 627, and at Paragraph 24 of the judgment, the Supreme Court held as follows:

"When an order is passed by a statutory authority, the same must be supported either on the reasons stated therein or on the grounds available therefor in the record. A statutory authority cannot be permitted to support its order relying on or on the basis of the statements made in the affidavit dehors the order or for that matter dehors the records."

42. For the reasons stated supra the impugned orders are set aside. There shall be a direction to the respondents to pay the full pay and allowances to the petitioners during their period of study between June 2004 and May 2005, within a period of two months from the date of receipt of a copy of this order."



W.P.No.19265 of 2024

5. The above order has already been complied with by the first respondent by an order dated 27.02.2014 in G.O.(2D) No.17, Health and Family Welfare (AA2) Department.

6. The learned counsel appearing for the respondents would submit that the writ petition itself is liable to be dismissed on the ground of laches and the order of the year is 2016 and the petitioner is now challenged before this Court.

7. In this regard, the learned counsel appearing for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India in the case of ***Rushibhai Jagdishchandra Pathak Vs. Bhavnagar Municipal Corporation*** in ***Civil Appeal No.4134 of 2022***, in which, the Hon'ble Supreme Court of India, by an order dated 18.05.2022, held as follows :

“9. The doctrine of delay and laches, or for that matter statutes of limitation, are considered to be statutes of repose and statutes of peace, though some contrary opinions have been expressed. The courts have expressed the view that the law of limitation rests on the foundations of greater public interest for three reasons, namely (a) that long dormant claims have more of cruelty than justice in them ; (b) that a defendant



W.P.No.19265 of 2024

WEB COPY

might have lost the evidence to disapprove a stale claim ; and

*(iii) that persons with good causes of action (who are able to enforce them) should pursue them with reasonable diligence. Equally, change in de facto position or character, creation of third party rights over a period of time, waiver, acquiesce, and need to ensure certitude in dealings, are equitable public policy considerations why period of limitation is prescribed by law. Law of limitation does not apply to writ petitions, albeit the discretion vested with a constitutional court is exercised with caution as delay and laches principle is applied with the aim to secure the quiet of the community, suppress fraud and perjury, quicken diligence, and prevent oppression. Therefore, some decisions and judgments do not look upon pleas of delay and laches with favour, especially and rightly in cases where the persons suffer from adeptness, or incapacity to approach the courts for relief. However, other decisions, while accepting the rules of limitation as well as delay and laches, have observed that such rules are not meant to destroy the rights of the parties but serve a larger public interest and are founded on public policy. There must be a lifespan during which a person must approach the court for their remedy. Otherwise, there would be unending uncertainty as to the rights and obligations of the parties. Referring to the principle of delay and laches, this Court, way back in **Moons Mills Ltd. v. M.R. Mehar, President, Industrial Court, Bombay and Others**, had referred to the view expressed by Sir Barnes Peacock in **The Lindsay***



W.P.No.19265 of 2024

Petroleum Company AND. Prosper Armstrong Hurd, Abram

Farewell, and John Kemp, in the following words:

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

8. Thus, it is clear that the law of limitation does not apply to writ petitions, *albeit* the discretion vested with a constitutional Court is exercised with caution as delay and laches principle is applied with the aim to secure the quiet of the community, suppress fraud and perjury, quicken diligence and



W.P.No.19265 of 2024

prevent oppression. While accepting the rules of limitation as well as delay and latches, the Courts have observed that such rules are not meant to destroy the rights of the parties but serve a larger public interest and are founded on public policy. Further the law recognises a 'continuing' cause of action which may give rise to a 'recurring' cause of action as in the case of salary or pension. So long as the employee is in service, a fresh cause of action would arise every month when they are paid their salary on the basis of a wrong computation made contrary to the rules. If the employee's claim is found to be correct on merits, they would be entitled to be paid according to the properly fixed pay-scale in future and the question of limitation would arise for recovery of the arrears for the past period. The arrears should be calculated and paid as long as they have not become time-barred. Therefore, the entire claim for past period should not be rejected.

9. The contention raised by the respondents that the writ petition is liable to be rejected on the ground of delay and latches cannot be countenanced, since the petitioner has continuous cause of action for claiming her arrears of salary and allowances for her study leave.



W.P.No.19265 of 2024

10. In view of the above, the order passed by the first respondent dated 30.09.2020 is set aside. The respondents are directed to pay salary and allowances for her study leave period and the said period also has to be calculated for all service benefits. However, the petitioner is not entitled for any interest.

11. In the result, this writ petition stands allowed. Consequently, connected miscellaneous petitions are closed. No costs.

22.07.2024
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Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
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To

1.The Principal Secretary,
Department of Health and Family Welfare,
Secretariat, Fort St.George,
Chennai – 600 009.

2. The Director,
Directorate of Medical and Rural Health Services,
DMS Compound,
Teynampet, Chennai – 600 006.



WEB COPY



W.P.No.19265 of 2024

G.K.ILANTHIRAIYAN. J.

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3. The Director,
Directorate of Medical Education and Research,
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W.P.No.19265 of 2024

22.07.2024
(2/2)