



W.P.(MD).No.15198 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.15198 of 2021
and W.M.P(MD)21548 of 2023

S.Rubitha Devi

... Petitioner

Vs

1. The Director,
Medical and Rural Health Services,
Chennai.
2. The Director,
Director of Medical Education, Chennai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent No.1 to regularize the petitioner's service from the date of her initial appointment i.e. on 22.08.2005 on par with her batchmates and consequently direct the respondents to provide all monetary and attendant benefits to the petitioner based on her representation, dated 13.12.2020 within the time period stipulated by this Court.

For Petitioner : Mr.S.G.L.Rishwanth

For Respondents : Mr.P.T.Thiraviyam
Government Advocate



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ORDER

The present writ petition has been filed seeking a direction to the respondent No.1 to regularize the petitioner's service from the date of her initial appointment i.e. on 22.08.2005 on par with her batchmates and consequently direct the respondents to provide all monetary and attendant benefits to the petitioner based on her representation, dated 13.12.2020 within the time period stipulated by this Court.

2.By consent of both parties and considering the limited relief sought for by the petitioner, the Writ Petition is taken up for final disposal at the stage of admission itself.

3.Heard, the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents. Perused the materials on record.

4.(i).The petitioner was appointed as a Staff Nurse on contract basis at Annal Gandhi Memorial Government Hospital, Tiruchirappalli with



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effect from 22.08.2005. Due to her pregnancy, from 01.03.2006 to 24.10.2006 she availed maternity leave. After delivery, when she made a representation to the Dean, Government Hospital, Chennai to rejoin service on 24.10.2006, the said requisition was forwarded to the Director of Medical and Rural Health Services, Chennai. Thereafter, she was posted at Tiruchirapalli on 11.04.2007.

(ii).In the meanwhile, her batchmates, who were appointed along with her, were regularised by the order of the Dean, Government Hospital, dated 16.02.2007. However, the petitioner was not regularised. On the other hand, as per the order, dated 11.04.2007, her post at Tiruchirapalli was considered only as a fresh appointment, without taking into account of her initial service period. Hence, the petitioner made a representation in the year 2008 to the first respondent in this regard to modify the order, dated 11.04.2007. Though she was subsequently regularised on 01.03.2011, her initial service period with effect from 22.08.2005 was not taken into consideration. Then she made various representations seeking to regularise her service from the date of initial appointment ie., on 22.08.2005 and the same was not considered. Hence, this petition came to be filed.



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5.The learned counsel for the petitioner submitted that the respondents ought to have regularised the petitioner on par with her batchmates on 16.02.2007 itself, by taking into account her initial date of appointment ie., on 22.08.2005. Paragraph No.5 of the terms and conditions of appointment order clearly mandates that under any exceptional circumstances anybody is permitted to avail any other leave other than the casual leave of one day a month and day off, then it will be treated only as loss of pay. Without considering the same, the respondents have considered the service of the petitioner as terminated from service and thereafter, permitted to re-join with effect from 11.04.2007, which is against the terms and conditions of her original appointment order and prayed for allowing the writ petition.

6.The first respondent has filed a counter and the learned Government Advocate submitted that, it is not possible to consider the petitioner's service as continuous service, since she was appointed only on contract basis. Further he relied upon the Medical Services Recruitment Board Notification and submitted that the persons, who are appointed on contract basis are not eligible for any kind of leave. Anybody permitted to avail any



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other leave would be treated as only as loss of pay and prayed for dismissal of the writ petition.

7.Since the learned counsel for the petitioner and the learned Government Advocate relied upon the same terms and conditions that an employee serving under contract basis, in case of availing leave other than casual leave under any exceptional circumstances, the same would be treated only as loss of pay, this Court is of the considered view that the respondents ought to have considered the petitioner's case of availing maternity leave from 01.03.2006 to 24.10.2006 only as loss of pay and she should not have been terminated and later permitted to re-join with effect from 11.04.2007.

8.In view of the same, relying upon Paragraph No.5 of terms and condition in the appointment order dated 27.06,2005, which is extracted as follows:

“05. They are not eligible for any kinds of leave as applicable to regular Government servants except casual leave of one day a month and Day off. If for any exceptional circumstances anybody is permitted to avail any other leave that will be treated only as loss of pay.”



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Relying upon the relevant portion of the Medical Services Recruitment Board

Notification, which is extracted as follows:

"Recruitees will be absorbed into regular time scale of pay, after completion of a minimum of years (excluding leave period), subject to availability of regular vacancies (strictly based on seniority and eligibility)."

Further, it is submitted that on contract basis on consolidated pay staff nurse's appointment order, under the caption terms and conditions, it has been mentioned as follows:-

"They are not eligible for any kinds of leave as applicable to regular Government Servants except casual leave of one day a month and Day off. If for any exceptional circumstances anybody is permitted to avail any other leave that will be treated only as loss of pay"

9.I hereby direct the first respondent to consider the petitioner's representation dated 13.12.2020 and regularise the service of the petitioner from the day of her initial appointment ie., on 22.08.2005, on par with her batch mates by calculating the period of maternity leave between 01.03.2006 and 24.10.2006 as loss of pay and consequently provide her with all service attendant and monetary benefits.



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10. With the above direction, this writ petition stands disposed of.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

06.02.2024

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

To

1. The Director,
Medical and Rural Health Services,
Chennai.
2. The Director,
Director of Medical Education, Chennai.



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