



W.P.(MD)No.21268 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.10.2024

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.21268 of 2018

and

W.M.P.(MD).Nos.19100 & 19101 of 2018

T.Dorai

... Petitioner

Vs.

- 1.The Principal Secretary to the Government of
Tamil Nadu, (Health and Family Welfare (A2) Department,
Secretariat, St.George Fort,
Chennai-9.
- 2.The Director of Medical and Rural Health Services,
Chennai-6.
- 3.The Joint Director of Health Services,
Vivekanandar Salai, Sikil Raja Veedhi,
Ramanathapuram.

... 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 G.O.(D).No.1269, dated 24.11.2011 on the file of first respondent regularising the petitioner's service for the period from 08.04.1992 to 10.09.1995 as non-duty and the consequential order passed by the third respondent dated 03.06.2014 vide Ref.No.328/E1/2013 and quash the same and consequently direct the Respondents to disburse the salary to the petitioner from



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08.04.1992 to 10.09.1995 and to refix the petitioner's salary and pension by providing appropriate increments for the period from 08.04.1992 to 10.09.1995 and to pay the arrears along with interest @ 12% p.a. within the stipulated time that may be fixed by this Court.

For Petitioner : Mrs.D.Geetha,
for Mr.R.Diwakaran

For Respondents : Mrs.D.Farjana Ghoushia,
Special Government Pleader

ORDER

This Writ Petition has been filed challenging the order dated 24.11.2011, passed by the first respondent and the consequential order dated 03.06.2014, passed by the third respondent.

2. In this Writ Petition, the petitioner is aggrieved by the act of the respondents as seen from the impugned orders by treating the period of the petitioner's service from 08.04.1992 to 10.09.1995 as period of non-duty and thereby, making the petitioner disentitled from receiving salary for the period of his service during that period as well as for non-payment of pensionary benefits and other terminal benefits.



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3. The petitioner contends that since the charges framed against the petitioner relating to the unauthorized absence from duty for the period from 08.04.1992 to 10.09.1995 has been dropped, the petitioner is entitled for the salary, pensionary benefits and other monetary benefits for the said period. However, according to the petitioner, by total non-application of mind to the fact that the Division Bench of this Court had directed the respondents to pay all the terminal benefits and the learned Single Judge of this Court has also made it clear that, if the disciplinary proceedings initiated against the petitioner is not concluded within a period of two months, the charges would be automatically dropped and the said order has also been given effect to by the respondents, the petitioner has been deprived of the aforesaid monetary benefits from the respondents despite several requests.

4. A counter affidavit has been filed by the third respondent on behalf of the respondents denying the contentions of the petitioner and reiterating the contents of the impugned order.

5. Learned counsel appearing for the petitioner drew the attention of this Court to the orders passed by this Court in the Writ Petition filed by the petitioner as well as in the Writ Appeal filed by the respondent State and would



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submit that, when it is clear from the said orders that the charges framed against the petitioner with regard to the petitioner's alleged unauthorized absence from duty having been dropped, the petitioner is entitled for all the monetary benefits, which includes the arrears of salary payable for the period from 08.04.1992 to 10.09.1995. However, she would submit that by total non-application of mind to the orders passed by this Court dated 18.11.2008 in W.P. (MD).No.8002 of 2005 and the order dated 17.02.2011 in W.A.(MD).SR.No. 18899 of 2010, the respondents have treated the period of the petitioner's service from 08.04.1992 to 10.09.1995 as period of non-duty, which is arbitrary and illegal.

6. Learned Special Government Pleader appearing for the respondents would reiterate the contents of the counter affidavit filed by the third respondent before this Court during the course of her submissions.

7. The following are the undisputed facts:

(A). The charge memo issued against the petitioner by the respondents in respect of the petitioner's unauthorized absence from duty for the period from 08.04.1992 to 10.09.1995 has now lapsed, which has also been recorded in the impugned orders.



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(B). The lapsing of the charge memo is only on account of the order passed by another learned Single Judge of this Court in his decision dated 18.11.2008 in W.P.(MD).No.8002 of 2005 and the order of the Division Bench of this Court in W.A.(MD).SR.No.18899 of 2010, dated 17.02.2011.

(C). The respondents have also not disputed the fact that the charges framed against the petitioner in the charge memo dated 18.04.1995 has now has now been dropped.

8. The charges framed against the petitioner in the charge memo dated 18.04.1995, pertains to the alleged unauthorized absence of the petitioner from duty for the period from 08.04.1992 to 10.09.1995. Despite the fact that the charges framed against the petitioner in respect of the petitioner's unauthorized absence for the aforesaid period having been dropped, which is also admitted by the respondents through their counter affidavit, the respondents under the impugned orders have treated the period of the petitioner's service from 08.04.1992 to 10.09.1995 as period of non-duty which is arbitrary and illegal.

9. The order dated 18.11.2008 passed by this Court in the Writ Petition filed by the very same petitioner in W.P.(MD).No.8002 of 2005 also makes it



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clear that, if the disciplinary proceedings initiated against the petitioner does not

get concluded within a period of two months, the charges framed against the petitioner in the charge memo dated 18.04.1995, will be automatically dropped.

The respondents have also preferred an appeal in W.A.(MD).SR.No.18899 of 2010, before the Division Bench of this Court as against the order passed by the learned Single Judge dated 18.11.2008 in W.P.(MD).No.8002 of 2005 and the said appeal was also dismissed by the Division Bench of this Court by its order dated 17.02.2011 and a direction was also issued in the said Writ Appeal to the respondents to pay the terminal benefits to the petitioner.

10. Admittedly, the charges framed against the petitioner under the charge memo dated 18.04.1995, having been dropped, the question of treating the period of the petitioner's service from 08.04.1992 to 10.09.1995, which was earlier considered as the period of non-duty is irrational, arbitrary and illegal and the charges framed against the petitioner under the charge memo dated 18.04.1995, having been dropped, necessarily, the period of the petitioner's service from 08.04.1992 to 10.09.1995 has to be treated as period of duty and the petitioner is legally entitled for payment of salary and other monetary benefits, which includes the pensionary benefits after the petitioner's retirement from service, which falls on 30.06.1997.



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11. For the foregoing reasons, the impugned orders will have to be quashed and the Writ Petition will have to be allowed.

12. Accordingly, the impugned order in G.O.(D).No.1269, dated 24.11.2011, passed by the first respondent and the consequential order passed by the third respondent in Ref.No.328/E1/2013, dated 03.06.2014, are hereby quashed and this Writ Petition is allowed. The second respondent is directed to pay eligible arrears of salary, monetary benefits, pensionary benefits to the petitioner within a period of twelve (12) weeks from the date of receipt of a copy of this order. Insofar as the interest claim is concerned, it is a disputed question of fact that cannot be decided in this Writ Petition and therefore, a direction to the respondents for payment of interest cannot be granted by this Court. No costs. Consequently, connected miscellaneous petitions are closed.

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NCC:yes/no
Index:yes/no
Internet:yes/no
TSG



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To

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- 2.The Director of Medical and Rural Health Services,
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- 3.The Joint Director of Health Services,
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ABDUL QUDDHOSE, J.

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