

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2008

CORAM

THE HON'BLE MR.JUSTICE S. MANIKUMAR

W.P.No.29890 of 2006

T. Salvin Chelladurai .. Petitioner

Vs.

1. The Director of Medical and  
Rural Health Services  
Madras □ 6.

2. The Deputy Director General of Health  
Services, Paramakudi,  
Ramnad District. .. Respondents

Writ Petition came to be numbered under Article 226 of Constitution of India by way of transfer of O.A.No.4869 of 1996 from the Tamil Nadu Administrative Tribunal praying for the issuance of a writ of Mandamus, to direct the respondents to pay salary to the petitioner from 13.3.89 to 28.5.95 and grant all consequential benefits such as continuity of service, promotion and other increments and pass further orders.

For Petitioner : Mr. Arvind for Mr. G. Saravanan  
For Respondents: Mr. S. Gopinathan, A.G.P.

O R D E R

The petitioner has sought for a direction to pay salary to him from 13.3.89 to 28.5.95 and other monetary and service benefits.

2. Facts of this case are as follows :

The petitioner was appointed as Pharmacist and posted to Primary Health Centre, Kothannallur on 18.02.80 by the District Health Officer, Kanyakumari District. He was on probation for a period of two years from 19.6.81. By proceedings dated 29.3.82, his probation was declared. In September 1982, the petitioner decided to undergo B. Pharmacy Course at Madurai Medical College. On his request, by proceedings dated 13.8.82, the District Medical Officer, Primary Health Centre, Muttom relieved him to pursue B. Pharmacy course. After completion of the course, the petitioner submitted a representation dated 13.03.1989 to the District Health Officer, Kanyakumari District requesting him to issue posting orders. The said representation was forwarded to the Director of Medical and Rural Health Services, Chennai-6 on 18.03.89 and orders were not passed for a long time and therefore the petitioner was constrained to file the Original Application No.596 of 1995 before the Tamil Nadu Administrative Tribunal for a direction to issue posting orders. Subsequent to the filing of said Original Application, by order dated 18.05.95, the Director of Medical and Rural Health Services, Chennai posted the petitioner to work as Pharmacist in Primary Health Centre, Uthinatham, Ramnad District and he joined the said station. While issuing the posting orders, the

pay of the petitioner was fixed at Rs.1,350/-, with effect from 29.5.95 and the posting order was silent about the petitioner's pay from 13.3.89, the date, on which he had submitted his willingness to rejoin duty, after completing his B. Pharmacy course, upto 28.5.95, the date on which his pay was fixed at the minimum time scale.

3. It is the grievance of the petitioner that as soon as he reported for duty on 13.03.89 before the District Health Officer, Kanyakumari District, he should have been given necessary posting orders. According to him, on completion of the course, it is the duty of the respondents to provide postings and in which event, the petitioner would have drawn his pay, other monetary benefits, continuity of service in the post of Pharmacist. He has further submitted that the inordinate delay taken by the respondents in issuing the posting orders to the petitioner, due to administrative delay should not be put against him, which would affect his pay, continuity of service and other attendant benefits. It is also the contention of the petitioner that the principle of 'No work, No pay' is not applicable to the facts of this case, when the respondents have denied appropriate posting orders. Hence the petitioner has prayed that the respondents may be directed to fix the scale of pay by treating the period from 30.03.89 to 28.5.95 as duty and grant all consequential benefits.

4. The respondents in their counter affidavit have submitted that the petitioner was appointed as Pharmacist on 18.2.1980 by the then District Health Officer, Kanyakumari under 10(a)(i) of the Tamil Nadu State and Subordinate Services. His probation was declared on 19.2.82. He was relieved on the Forenoon of 13.9.82 to undergo B. Pharm. Course at Madurai Medical College by the Medical Officer, Primary Health Centre, Muttom on the directions of the District Health Officer, Nagercoil dated 8.9.82. The petitioner has represented to the District Health Officer on 13.3.89 for permission to rejoin duty in any one of the vacancies in Kanyakumari District. The District Health Officer, Nagercoil forwarded the said application to the Director of Primary Health Centre for further action. The petitioner has submitted a representation dated 4.6.94 to the Deputy Director of Health Services, Nagercoil and sent a further letter dated 2.7.94 to the Director of Medical and Rural Health Services requesting them to issue posting orders at the previous station where he had worked as Pharmacist.

5. The respondents have further submitted that the Tamil Nadu Administrative Tribunal in O.A. No. 596/95, passed an order directing the respondents therein to give posting in any one of the existing vacancies. Since the petitioner insisted for posting in Kanyakumari District, the matter was referred to the learned Senior Standing Counsel by the then Director of Medical and Rural Health Services on 27.3.95. By letter dated 28.3.95 the learned Senior Standing Counsel opined that pending disciplinary action, he may be posted as Pharmacist in any one of the vacancies in the State. Accordingly, the petitioner was directed to be posted at Primary Health Centre, Uchinatham, Ramanathapuram District. However, the Deputy Director of Health Services, Paramakudi posted the petitioner in Primary Health Centre, Kadaladi and the petitioner joined duty on 29.5.95. The service register of the petitioner was returned to the Deputy Director of Paramakudi for pay fixation and the said officer fixed the scale of the petitioner at Rs.1350/- with effect from 29.5.95, at the minimum, in the revised scale of pay of Rs. 1350-30-1440-40-1800-50-2200, with eligibility to draw arrears from 29.5.95. The respondents have further submitted that the Deputy Director of Health Services, Paramakudi has fixed the petitioner's scale of pay at the minimum of Rs. 1350-2200, since the period of service between 13.3.89 to 28.5.95 was not regularised and that the petitioner rejoined duty only on 29.5.95 at the Primary Health Centre, Kadaladi.

6. The respondents have further submitted that during 13.3.89 to 28.5.95, he was not working and therefore following the principles of 'No work No pay' the petitioner is not entitled to salary and other service benefits for the above said period. Hence, prayed for dismissal of the writ petition.

7. Heard the learned counsel for the parties and perused the materials available on record.

8. Admittedly, the petitioner had satisfactorily completed the period of probation on 19.2.82 and on the directions of the District Health Officer, Nagercoil dated 8.9.82, he was relieved by the Medical Officer, Primary Health Centre, Muttom to undergo B.Pharm Course at Madurai Medical College. It is not disputed that the petitioner had submitted a representation on 13.3.89 for permission to rejoin duty in any one of the vacancies in Kanyakumari District. The said application was forwarded by the District Health Officer, Nagercoil to the Director of Primary Health Centre for further action.

Perusal of the letter dated 29.5.89 of the District Health Officer, Kanyakumari District, Nagercoil addressed to the Director of Primary Health Centres, reveals that there was a communication between the office of the Director of Primary Health Centre and the District Health Officer, Nagercoil and the files relating to relieving the petitioner to undergo B. Pharm course and the service register was sent to the Director of Primary Health Services for follow-up action.

Subsequently, the Director of Primary Health Centres, Chennai in R.No. 11769/ PHCs.III/A2/89 dated 19.10.90 seemed to have sought for certain particulars from the District Health Officer, Kanyakumari District, Nagercoil. In response to the above, the District Health Officer in his letter dated 23.11.90 has furnished the following particulars:

1.Thiru T. Selvin Chelladurai formerly Pharmacist, Primary Health Centre, Muttom has been permitted to undergo B. Pharmacist course in this office R. No. 8990/A2/82 dated 8.9.82.

2.The fact of permission issued to the individual has not been intimated to the Director of Primary Health Centres, Madras by mistake.

3.The acknowledgement for the receipt of file containing pages 26 sent with your letter R. No. 11769/PHCs.III/89/A2 dated 29.7.89 has already been sent to the Directorate, Madras vide this office R.No. 3138/A1/89 dated 1.12.89.

9. In the said letter dated 23.11.90, the District Health Officer, Kanyakumari District, Nagercoil has further stated that necessary proposals for getting appropriate orders would be sent separately, soon after the receipt of certain particulars from the individual. It is evident from the letter dated 25.4.94, appended at page 60 of the typeset of papers, that the Director of Medical and Rural Health Services, Chennai had requested the Deputy Director of Health Services, Nagercoil to state as to whether the petitioner, who had formerly worked at Primary Health Centre, Muttom had submitted a joining report and the action taken by the Deputy Director of Health Services in the matter, since a reply to the Government was to be sent in the matter. He was also further instructed to take action expeditiously and send a reply at once. In response to the above said letter, along with letter R. No. 4116/A1/94 dated 27.5.94, the Deputy Director of Health Services, Nagercoil has sent a copy of the petitioner's request for joining duty, copy of the relieving order of the Dean, Madurai Medical College, Madurai etc., with the service register (one volume) for further action.

10. It is evident from the above that though the petitioner had submitted a representation dated 13.3.89 seeking for appropriate posting, the authorities have been exchanging letters, in collecting various particulars such as, Service Register, joining report, copy of relieving order from the Dean, Madurai Medical College. If there was any difficulty for the respondents in issuing posting orders within Kanyakumari District, they could have very well posted him in some other place. When the matter had gone upto the level of the Government, the Director of Health Services, Madras has instructed the Deputy Director of Health Services, Paramakudi, Ramnad District, to take action expeditiously and send a report immediately, so as to enable him to send a reply to the government. It is apparent that in the meantime, considerable delay has occurred due to administrative reasons, for which the petitioner should not be made to suffer. A person who had worked in a particular place, before being relieved to undergo studies would expect postings in the same district and authorities ought not to have delayed the posting orders on that score. There is no fast and hard rule that the principle of 'No work No pay' should be applied to every case and for the fault of the

department in not issuing the posting orders, the government servant cannot be put to pecuniary loss, by placing him at the minimum time scale of pay.

11. When the government servant had already expressed his willingness to work as Pharmacist, the respondents ought to have issued appropriate posting orders. Unnecessarily he had been forced to approach the Tribunal for getting posting orders. Had he been given posting orders then and there, he would have joined the new station. If he was aggrieved of posting in any station, he would have challenged the same in the manner known to law. Without issuing any orders, he cannot be found fault with for the sole reason that he insisted for posting in Kanyakumari District and therefore the department could not issue the order. Such an explanation from the side of the department is not acceptable as their hands are not tied by any orders of Court. In these circumstances, it can only be inferred that the petitioner was not allowed to discharge his duties, though he was willing to do so and therefore the principle of 'No work No pay' is not applicable to the facts of this case. The Government or the officers concerned cannot take advantage of their laches in refusing the petitioner to rejoin duty after study leave.

12. In this regard, it would be useful to extract few judgments of the Supreme Court.

(i) In Union of India v. K. V. Janakiraman, reported in 1991 SC 2010, in paragraph 7 of the judgment, the Supreme Court held as follows :-

"The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases."

(ii) In Burn Standard Co. Ltd., and another v. Tarun Kumar Chakraborty and others reported in 2003 SCC (L&S)1015, the first respondent therein was kept out of service and not permitted to work. The appellants contended that due to pendency of a case filed by the association, they bonafide believed that they could not permit him to join duty. The Supreme Court accepting the contention of the respondent therein, held that if there was no impediment in law in permitting the employee in joining the duty, then there is no justification in denying the salary to him. Accordingly, the Court, directed the appellant to pay the salary and other emoluments for the period not covered by the litigation and interim orders."

13. In these circumstances, I am of the considered view that the petitioner is entitled to the relief sought for in the writ petition. Hence, a direction is issued to the respondents to pay the arrears of salary to the petitioner from 13.3.1989 to 28.5.1995, with all consequential service and monetary benefits, within a period of three months from the date of receipt of a copy of this order.

14. Hence, the writ petition is allowed. No costs.

29.08.2008

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Index: Yes/No

Website: Yes/No

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2. The Deputy Director General of Health

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Ramnad District.

S. MANIKUMAR J.

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