

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

FRIDAY, THE TENTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SMT JUSTICE JUVVADI SRIDEVI

WRIT PETITION NO: 21197 OF 2019

Between:

K. Vinodhar, S/o. Late K. Nagabushanam, aged about 68 Years, Occ- Deputy Registrar, NIMS (Retd.), R/o. H.No.6-3-1149/2/A, B.S. Maktha, Begumpet, Hyderabad - 500 016

...PETITIONER

AND

1. State of Telangana, repled. by its Principal Secretary, Health, Medical and Family Welfare Dept. Secretariat Buildings, Saifabad, Hyderabad
2. The Executive Board, Nizams Institute of Medical Sciences. (A University Established under the State Act). Punjagutta, Hyderabad.
3. The Director, Nizams Institute of Medical Sciences, Punjagutta, Hyderabad

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus calling for records pertaining to the impugned order issued by respondent No.1 in his proceedings No. 9745/VCV.2/2015-4 dated 22/10/2018 confirming the order of respondent No.2 proceedings issued in letter Rc. No. 7/1/2006/HRD/H1 dated 27/09/2006 treating the intervening period as substantive punishment and further orders of respondent No.3 issued in his proceedings Rc. No. 3/1/89-H1 dated 16/05/2008 treating the intervening period from the date of compulsory retirement to the date of reinstatement i.e., from 12/06/2002 to 27/09/2006 (1569 days) as Dies-non, and declare the same as illegal, arbitrary and also violative of Art. 14 and 16 of Constitution of India besides being violative of CCA Rules and violative of principles of natural justice, while issuing a consequential direction to the respondents to treat the intervening period from 12/06/2002 to 27/09/2006 (1569 days) as duty with all attendant benefits including notional sanction of increments and revision of pay and pension, and pay arrears accordingly in the interest of justice

Counsel for the Petitioner: SRI. D. GOVERDHANACHARY

Counsel for the Respondent No.1: GP FOR SERVICES II

Counsel for the Respondent Nos. 2&3: SRI G. ARUN KUMAR, SC

The Court made the following: ORDER

THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

WRIT PETITION No.21197 of 2019

ORDER:

Petitioner is aggrieved of the action of respondents in treating the intervening period from the date of compulsory retirement to the date of reinstatement i.e. from 12.06.2002 to 27.09.2006 (1569 days) as "Dies-non" and sought directions to the respondents to treat the aforesaid period as "on duty" with all consequential benefits of Notional Increments, Revision of Pay and Pension, etc.

2. I have heard the submissions of Sri D.Goverdhana Chary, Learned Counsel for the petitioner, Sri G.Arun Kumar, learned Standing Counsel appearing for Respondent Nos.2 and 3 and perused the record.

3. Petitioner has retired from service as Deputy Registrar (HRD) on his superannuation on 31.05.2009. While in service, a Charge Memo was issued to him on 16.11.2001 alleging that he has committed misconduct by extending the Revised Pay Scales in favour of the Legal Assistants (LA), whereas, such Revision of Pay was extended only in favour of the Assistant Registrars (AR) and Assistant Financial Controllers (AFC), as per the recommendations of the Local Committee. Subsequently, an inquiry was conducted into the said charge and the petitioner was compulsorily retired from

service *vide* order, dated 12.06.2002. The appeal preferred by him was also dismissed. However, on his making representation to the Government, he was directed to be reinstated and accordingly he joined duty on 27.09.2006. His grievance is that the interregnum period from 12.06.2002 to 27.09.2006 i.e. 1569 days has been treated as Dies-non in the order, dated 16.05.2008. Hence, the writ petition.

4. Counter affidavit is filed by respondent Nos.2 and 3 stating that the petitioner has committed misconduct by extending the benefit of enhancement of scale of pay of Rs.2200-4000 to the Legal Assistants also by interpolating the recommendations made by the Local Committee extending such benefit only to the Assistant Registrars and Assistant Financial Controllers. It is stated that the proposal for extending such benefit to the Legal Assistants did not come up for discussion before the Local Committee at all. However, the petitioner being the Deputy Registrar (HDR) has interpolated such orders by adding Legal Assistants (LA) also. It is stated that since the allegation against the petitioner has been proved in the inquiry conducted, the punishment of compulsory retirement was imposed and on the representation of petitioner to the Government, he was reinstated. It is contended that in view of the serious mis-conduct committed by the petitioner, the period from the date of compulsory

retirement to the date of his rejoining is rightly treated as Dies-non. Hence prayed for dismissal of the writ petition.

5. The contention of the petitioner is that the respondents have not considered the explanations submitted by him at various stages and imposed the major punishment of compulsory retirement. It is contended that the Charge Memo was not accompanied by relevant documents and the respondents have not furnished him such documents even on his request and they have also not examined any witnesses so as to enable him to cross-examine them. The record reveals that inquiry was conducted by sending the pre-decided questionnaire and some of the relevant officers have not even responded to such questionnaire. Such process of conducting inquiry by sending the questionnaire is against Rule 20 of TS (CCA) Rules and it amounts to violation of principles of natural justice as relevant documents are also not furnished to the petitioner even after his requesting for such documents. In the counter affidavit, the respondents have not at all referred to the contentions raised by the petitioner with regard to conducting of inquiry proceedings. They just recorded the allegations levelled against him without justifying the procedure, they followed. In the absence of the respondents countenancing the allegations of petitioner with regard to the manner in which the inquiry is conducted, it can be safely presumed that the

inquiry was not conducted in accordance with Rules. It is to be noted that the petitioner was subsequently reinstated on his representation and later he retired from service also. Taking into consideration above aspects, this Court is of the considered view that the out of service period of the petitioner can be treated as "on duty" for all purposes.

6. The writ petition is accordingly allowed setting aside the impugned orders. The intervening period from the date of compulsory retirement to the date of reinstatement i.e. from 12.06.2002 to 27.09.2006 (1569 days) shall be treated as "on duty" for all purposes. The respondents are further directed to extend all monetary benefits including increments and Revision of Pay and Pension by treating the above period as duty and pay arrears to the petitioner within a period of four (04) months from the date of receipt of a copy of this order. No costs.

Pending miscellaneous applications, if any, shall stand closed.

SD/- C. PRAVEEN KUMAR
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Secretary, Health, Medical and Family Welfare Dept. Secretariat Buildings, Saifabad, T.S., Hyderabad
2. The Executive Board, Nizams Institute of Medical Sciences. (A University Established under the State Act). Punjagutta, Hyderabad.
3. The Director, Nizams Institute of Medical Sciences, Punjagutta, Hyderabad
4. Two CCs to GP FOR SERVICES II, High Court for the State of Telangana, at Hyderabad [OUT]
5. One CC to SRI. D. GOVERDHANACHARY, Advocate [OPUC]
6. One CC to SRI. G. ARUN KUMAR, STANDING COUNSEL [OPUC]
7. Two CD Copies

B M
GJP

HIGH COURT

DATED:10/11/2023

ORDER

WP.No.21197 of 2019



**ALLOWING THE WRITPETITION
WITHOUT COSTS**

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22/11/23
HVT