CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the day, 23rd day of March Two Thousand And Twenty One

PRESENT:

THE HON'BLE SHRI S.N. TERDAL, MEMBER(J)
THE HON'BLE SHRI C.V. SANKAR, MEMBER(A)

O.A.310/992/2016

Marie Noella Ignace,
W/o. Ignace Morris,
Christian, Aged about 55 years,
Working as Associate Professor,
KM Center for PG Studies,
Puducherry-605 008. .....Applicant

(By Advocate:M/s. Menon, Karthik Mukundan and Neelakantan)

Vs

1. The Union of India through
the Union Territory of Puducherry Rep. by
the Secretary to Government,
Education Department,
Government of Puducherry,
Chief Secretariat,
Puducherry;

2. Director of Education,
Directorate of Collegiate & Technical Education,
Government of Puducherry;

3. The Director,
Directorate of Accounts and Treasuries,
Puducherry;

4. The Secretary,
Department of Personnel and Administrative Reforms,
Chief secretariat,
Government of Puducherry,
Puducherry. ...Respondents

(By Advocate: Mr. R. Syed Mustafa)

CAV On :09.03.2021

ASVS

ORDER

(Pronounced by Hon'ble Mr. C.V. Sankar, Member(A))

The relief prayed in this OA is as follows:-

> "to declare that the applicant is entitled for Extraordinary Leave on medical grounds for the period from 19.06.1995 to 15.06.2000 as originally granted by the 2nd respondent on 05.01.1999, 04.01.2000 and 20.02.2003 and consequently set aside G.O.Ms. No. 16 dated 16.3.2007 issued by the 1st respondent and G.O.Ms. No. 84 dated 04.09.2012 and further direct the respondents to grant Selection Grade in Lecturer's post to the applicant with effect from 01.06.1995 with all consequential benefits including monetary benefits and pass such further or other orders as may be deemed fit and proper."

2. The case of the applicant in brief is that while she was working as Lecturer in French under the Government of Puducherry, on her request, she was granted permission to visit her relatives in France from 10.05.1995 to 20.06.1995. During her stay in France, she developed a medical condition which required medical attention and therefore she applied for Extraordinary Leave (EOL) on medical grounds. The request was supported by

a Medical Certificate issued by a qualified Medical Practitioner in France. Subsequently, she made five more requests for grant of EOL which was duly sanctioned by the competent authority. The applicant rejoined duty on 04.07.2000. Later, on 13.12.2002, her service was confirmed with retrospective effect from 12.07.1984. On 20.02.2003, the Officer on Special Duty (Collegiate Education) ratified the decision of the 2nd respondent to grant EOL on medical grounds. Later, she was granted Selection Grade in the post of Lecturer with effect from 01.08.1995. However, on 04.09.2012, the same was postponed to 26.05.2002. It is submitted that upon making inquiries, she was informed that the EOL granted on medical grounds was converted to EOL on personal grounds by G.O.Ms. No. 16 dated 16.03.2007. Further, the eligibility service was considered as seven years in senior scale and not five years, for the purpose of grant of Selection Grade. The applicant points out that G.O.Ms. No. 16 was never communicated to her. In such circumstances, the applicant made representation for restoration of the EOL on medical ground which would be considered as qualifying service for the purpose of pension under the Pension Rules. From the information furnished under the RTI Act, the

applicant came to know that the opinion of the Law Department was sought for which in turn had opined that the change of EOL was not proper. Notwithstanding the same, the respondents have not restored the period as EOL on Medical grounds which is causing huge prejudice and hardship to the applicant. Hence, she filed the instant OA seeking the aforesaid relief.

2. The main contention of the respondents is that at the time of granting her EOL on medical grounds, the applicant was not a permanent government servant and, therefore, was not eligible for extraordinary leave beyond a period of 18 months. Even though the fact of her not being confirmed at the time of proceeding on and sanction of EOL cannot be denied, the respondents have also admitted that on 13.12.2002 the applicant was confirmed in service with retrospective effect from 12.07.1984. As can be seen from note at Annexure-A7, the Law Department of the respondent's themselves clarified in the year 2004 that when an order is made to take effect retrospectively from a particular date, it has to be taken that the said order has been very much in force right from that particular date. In other words, the order issued in 2002 confirming the appointment of

the applicant with effect from 12.07.1984 can only mean that, contrary to what the respondents claimed, she was a regular servant with effect from 12.07.1984 and therefore at the time of sanctioning the EOL she was very much a permanent government servant eligible for a maximum of five years of leave. The leave was originally sanctioned to her in 1999 vide Annexure-A2 and again in year 2000, vide Annexure-A3 and subsequently ratified vide Annexure-A6 order dated 20.2.2003. Apparently, when she sought for voluntary retirement in the year 2002, her case was re-examined and the Annexure-A8 Government Order which is impugned in this application came to be passed. The main contention taken in the said G.O. was that she was not eligible for grant of EOL beyond a period of 18 months since the individual was not a permanent government servant at the time of proceeding on EOL. As we have already noted, in the year 2002, her appointment was confirmed with effect from 12.07.1984 and, therefore, the respondents have clearly erred in taking the stand that she was not a permanent government servant at the time of proceeding on leave. The order issued confirming her from 1984 would clearly stand in

favour of the applicant and the stand taken by the respondents subsequent to the confirmation cannot be accepted.

3. The respondents have relied mainly upon the noting given by the Department of Personnel and Administrative Reforms elaborated in Para -12 of their reply. Here again the plea taken was that of her being a non-permanent servant. The second point mentioned in the said note related to the power of the Director of Education to issue an order for exceeding the prescribed period. As we have already seen, the fact of her being confirmed with effect from 1984 would nullify this point relating to the absence of any power vested with the Director to grant such leave and also ratify the leave already granted. Therefore, we are unable to accept the contention of the respondents that she was not a permanent government servant at the time of proceeding on leave. We have therefore no hesitation in setting aside the impugned order vide Annexure-A8.

4. The 2nd issue relates to the grant of Selection Grade to the applicant vide Annexure-A9 dated 24.1.2008 wherein the applicant was granted Selection Grade with effect from 1.6.1995. As could be seen from Annexure-A/10, the period of

service prescribed for Selection Grade is five years. Vide Annexure-A11, the respondents have modified their order to give the selection grade with effect from 26.5.2002 i.e. 7 years after the date mentioned in the earlier order in 2008 citing the government order issued in 2007 converting her EOL from medical grounds to that of personal grounds. As rightly pointed out by the applicant in her representation dated 3.2.2016 vide Annexure -A15 wherein, as stated by her, she was placed in the Selection Grade with effect from 1.6.1995 and her EOL started only from 19.6.1995 i.e. later than the said date of effect of Selection Grade. Therefore, even though for an argument's sake, the respondents were competent to change the EOL from medical grounds to personal grounds vide Annexure-A8, this would not have any effect in view of the fact of the Selection Grade having been given with effect from 1.6.1995 itself. Inasmuch as we have held Annexure-A8 government order to be invalid, the Annexure-A11 order will also not stand. The respondents in their reply have pointed out that the leave on medical grounds certified and recommended by a medical practitioner abroad cannot be construed to be the leave recommended by an authorized Medical Attendant in India

defined under Rule 20 of CCS (Leave) Rules, 1972. This ground was not taken by the respondents in any of the previous orders and in fact in the impugned G.O. at Annexure A8, the only contention taken by the respondents was that she was not a permanent government servant at the time of proceeding on EOL. To raise this contention at this point of time without having given any opportunity to the applicant to either defend it or to obtain relevant certificate as per rules, is clearly not acceptable. The respondents have also raised the question of limitation stating that the orders issued in the year 2007 & 2012 are being challenged now. We dismiss this contention also since the applicant has been making representations in the meantime right from the year 2012 which was rejected by the respondents in 2014. Therefore, we do not find any inordinate delay on the part of the applicant in approaching this Court. The respondents have clearly erred in going back on the leave that was sanctioned by the competent authority at the time when the applicant proceeded on leave and there was no whisper relating to any irregularity in the said sanction even at the time when the applicant reported back for duty in the year 2000. Had any attempts been made by the respondents to raise the objections

at the relevant point of time, they would be well within their rights to claim that they can rectify an error and the error cannot be allowed to be continued when it was brought to their notice. We do appreciate that the applicant may not have been eligible for the EOL at the time of proceeding on leave since her confirmation came only in the year 2002. However, since the respondents had confirmed her with effect from 1984 itself, this infirmity is also washed away. Having allowed her extraordinary leave on medical grounds and also the Selection Grade with effect from 1.6.1995, the respondents are estopped from canceling the same on untenable grounds.

5. OA is therefore allowed and the Annexure-A8 and Annexure-A11 orders are quashed. The applicant is entitled for all the consequential benefits flowing from the above order and the respondents are directed to take necessary steps within a period of three months to comply with the order. No order as to costs.