

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 162/2010

Wednesday, this the 9th day of November, 2011.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

Agnes Jose, D/o George Vaveen J,
Primary Teacher,
Kendriya Vidyalaya No.1,
Kallekulangara.P.O.
Palakkad-678 009.

....Applicant

(By Advocate Mr Millu Dandapani)

v.

1. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Chennai Region,
IIT Campus, Chennai-600 006,
Tamil Nadu.

2. The Principal,
Kendriya Vidyalaya No.1,
Hemambiga Nagar,
Palakkad-678 009.

....Respondents

(By Advocate Mr Thomas Mathew Nellimoottil)

This application having been finally heard on 9.11.2011, the Tribunal on the same day delivered the following:


ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The question involved in this case is whether the applicant should be granted extra ordinary leave for the period of absence from 20-09-1998 to 24.07.2001 when she was under certain medical treatment. Respondents rejected the request of the applicant for grant of such leave and held the period as dies non. Hence this OA seeking the relief that the impugned order dated 22-12-2009 wherein the above decision was affirmed be quashed and set aside and

it be declared that the applicant is entitled to treat the 3 years period from 29-09-1998 to 24-07-2001 as Extra Ordinary Leave and to grant the applicant the consequential benefits arising therefrom.

2. Briefly stated, the applicant joined the respondent's organization in 1985 as Primary School Teacher. In 1994-95 she had to undergo certain surgery for Ovarian Tumor and according to the applicant while undergoing the treatment the hospital had cut the left Urator and for further treatment she had been referred to a Urologist at Coimbatore and she was further referred to CMC Hospital at Vellore, wherein two major surgeries and three minor surgeries were conducted and the applicant who incurred expenses to the tune of Rs 2.75 lakhs was reimbursed a meager sum of Rs 35,000/- in 1997. In 1998 the applicant's Urator related problem was aggravated and she had started having treatment at the Government General Hospital at Trivandrum. She had applied for Earned Leave on medical ground from 09-09-1998 to 28-09-1998 as she was treated at that time as an in-patient in the said Hospital. The health condition was a prime cause for her husband to seek divorce. This forced the applicant to depend upon for assistance during her treatment her brother at Jabalpur, where the applicant had to shift (on 19-08-1998) and where also, she was under treatment. Meanwhile, the applicant got a medical certificate arranged from Trivandrum as well where she initially underwent the treatment. This medical certificate was issued for a longer period, which incidentally, clashed with the period of medical treatment at Jabalpur. In the meantime, the respondents had directed the applicant to join duty sometimes in November, 1998. Annexure A-2 refers. As the applicant was very sick at that time, she was issued with a medical certificate by the Chief Medical and Health Officer, Jabalpur. The respondents on receipt of the same directed the applicant for further medical examination before the District Medical Officer, Government General Hospital,

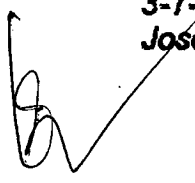


Jabalpur as and when intimation was given from the office of the 1st respondent. Though the applicant was ready, as no follow up action was taken by the respondents, the applicant continued to have her treatment from Jabalpur where she had the treatment. This treatment prolonged for a substantial period upto 01-04-2000. Thereafter too, the applicant had been sending leave application on medical grounds and thus, she sought leave on medical grounds at intervals of 3 month or four months.

3. While so, the applicant stood transferred from Pallipuram to Palakkad vide Annexure A-V. The applicant was issued with a show cause notice also for her continued absence. The applicant had been making repeated representations explaining her case before the authorities.

4. Meanwhile, applicant's daughter sought certain information from the respondents under the RTI, whereby the applicant came to know about the decision of the authorities in respect of the treatment of the absence of the applicant for the aforesaid period of 2 years and ten months as dies non. The communication vide Annexure A-11 addressed to the Principal, K.V. No. 1, Palakkad, reads as under:-

"I am to refer to your Letter No. F 2-25/KVP/2008-09/414 dated 08-09-2009 on the subject mentioned above and to inform that the required information as desired by Ms. Viji Jose, D/o Smt. Agnes Jose, PRT under RTI Act, 2005 has been processed with all available records of KVS, RO, Chennai as well as with personal file in respect of Smt. Agnes Jose, PRT collected from KV No. 1, Palakkad to find out the previous correspondence for further process to regularize the leave and to settle the issue. In this regard, it is to state that the Competent authority and Appellate authority has gone through the case and he is in the view of that earlier action taken by the principal under Rule 25 of the CCS Leave Rules the entire absence was treated as Dies Non and communicated vide Lr. No. F/PF/Agnes/KVP/2005-06/473 dated 3-7-2005 stands final. The personal file in respect of Smt. Agnes Jose, PRT is returned herewith. "

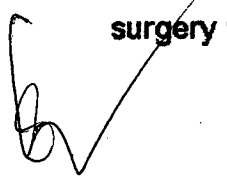


5. Challenging the aforesaid Annexure A-11, the applicant has moved this Tribunal seeking the relief as already stated in para 1 above.

6. Respondents have challenged the OA. They have raised doubts over the applicant's having treatment simultaneously at two places which are 2000 kms apart. The respondents have also questioned the applicant's approaching the Tribunal four years after the decision was taken and it could not be the case of the applicant that she was not aware of the decision as every year service book is made available and in this case, even photocopy of the service book was made available in 2005.

7. The applicant had moved an application for condonation of delay vide MA No. 201 of 2010.

8. Senior Counsel for the applicant argued that the applicant had to undergo the trauma of acute medical problem of ovarion Tumor which though removed, the complication arose due to the mistake of the doctor who conducted surgery. Again, her domestic life had been shattered due to the poor health condition inasmuch as a divorce petition was filed by her husband indexing the health problem as the main cause. Her daughter was to prosecute her studies elsewhere, while for attendant purpose, the applicant had to depend upon her relatives at Jabalpur. While initially she did undergo treatment at Trivandrum, later she had to move to Jabalpur, where her treatment continued. The medical certificate issued by the Hospital at Trivandrum was obtained by the daughter of the applicant while the applicant obtained the medical certificate from the Jabalpur Hospital. The counsel also submitted that earlier in 1994 for the surgery while the applicant had to spend a stupendous Rs 2.75 lakhs, what she



got as reimbursement was only Rs 35,000/-. Absence of the applicant for two years and ten months was due to the ill health of the applicant and the entire period is covered by medical certificate. As regards the knowledge of decision of the authorities, the counsel submitted that the same came to be known to her only in 2009. This has been stated in the application for condonation of delay. The senior counsel thus prayed for condonation of delay in moving the application. The Senior Counsel also argued that there has been no appeal or whatsoever from her and it is not known as to how the appellate authority had to consider the case of the applicant.

9. Counsel for the respondents echoed the contents as contained in the reply.

10. Arguments were heard and documents perused. First as to condonation of delay. The applicant had challenged Annexure A-11 communication. Earlier the applicant had been continuously making representation but no response was made. Thus, the applicant could come to know of the decision only through Annexure A-11 order which her daughter obtained under RTI. Though there has been substantial delay, the condonation of delay would not in any way affect the vested rights etc., of others. It has been held by the Apex Court in the case of *Union of India v. Tarsem Singh*, (2008) 8 SCC 648, as under:

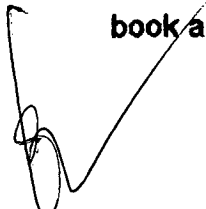
"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc.,

affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition." (emphasis supplied)

11. Following the above, in the instant case, the delay deserves to be condoned and we order so.

12. As regards merits of the matter, admittedly, the applicant had been under medical treatment though as per certificates there have been certain overlappings of the period of treatment. When the respondents have directed the applicant to face medical examination before the District Medical Officer, Government Hospital, Jabalpur and when she was ready for the same, there was no follow up action from the respondents/hospital. This averment vide para 4.6 of the O.A. remained unrebutted in the reply. We do not find any mischief played by the applicant in the instant case. Provision exists for grant of extra ordinary leave for a total of five years. And, the leave sought for is nearly half of the same only. As regards the prayer, it is as minimum as it could be, i.e. grant of extra ordinary leave on medical grounds. The applicant does not claim any salary or any other benefits. The consequential benefits could at best be continuity in service and nothing else.

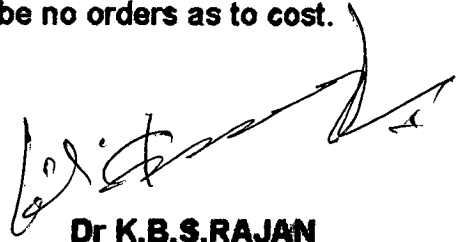
13. In view of the above, the OA is allowed. Annexure A-11 order is quashed and set aside. Respondents are directed to treat the absence of the applicant as extra ordinary leave on medical grounds for the period from 29-09-1998 to 24-07-2001 and issue suitable orders accordingly and reflect the same in the service book as well.



14. Under the above circumstances, there shall be no orders as to cost.



K NOORJEHAN
ADMINISTRATIVE MEMBER



Dr K.B.S. RAJAN
JUDICIAL MEMBER

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