

Shobha Nelson vs The State Of Madhya Pradesh on 31 October, 2017

Equivalent citations: AIR 2017 SUPREME COURT 5569

Author: L. Nageswara Rao

Bench: S.A. Bobde, L. Nageswara Rao

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No. 17425 of 2017
(Arising out of Special Leave Petition (Civil) No.18737 of 2007)

SHOBHA NELSON

.... Appellant(s)

Versus

THE STATE OF MADHYA PRADESH & ORS.

....Respondent(s)

WITH

CIVIL APPEAL No. 17426 of 2017
(Arising out of Special Leave Petition (Civil) No.19004 of 2007)

CIVIL APPEAL No.17428 of 2017
(Arising out of Special Leave Petition (Civil) No.23332 of 2007)

CIVIL APPEAL No. 17427 of 2017
(Arising out of Special Leave Petition (Civil) No.21415 of 2007)

JUDGMENT

L. NAGESWARA RAO, J.

Leave granted.

Dr. Shobha Nelson and Dr. Sudhir Kumar Nelson went to Zanzibar in 1975, while they were in Government service of the State of Madhya Pradesh. Though they had submitted a joining report on 13.08.1991, they were allowed to join back in Government service only from 03.01.1996. Aggrieved, Dr. Shobha Nelson and her husband Dr. S.K. Nelson approached the High Court of Madhya Pradesh

at Jabalpur. The Writ Petitions filed by them were disposed of by the High Court with a direction to the Respondents therein to accept the joining report of the writ petitioners w.e.f. 13.08.1991 with consequential benefits. The State of Madhya Pradesh filed Writ Appeals which were allowed in part by a Division Bench of the High Court. The Division Bench held that the Appellants i.e. Dr. Shobha Nelson and Dr. S.K. Nelson shall be deemed to be in service w.e.f. 03.01.1996 and entitled to 20 per cent of their salary from 03.01.1996 till the date they attained their superannuation. Dr. Shobha Nelson and Dr. S.K. Nelson filed Civil Appeals assailing the legality of the said judgment of the High Court. The State of Madhya Pradesh also filed two Civil Appeals having been aggrieved by the same judgment.

2. Dr. S.K. Nelson was a Surgeon in the Cancer Hospital, Medical College, Jabalpur. Dr. Shobha Nelson, his wife was a Lecturer in Gynaecology, Cancer Hospital, Medical College, Jabalpur. For the sake of convenience Dr. Shobha Nelson and Dr. S.K. Nelson will be referred to as the Appellants and the State of Madhya Pradesh as the Respondent.

3. The Government of Madhya Pradesh informed the Appellants that they have been selected by the Zanzibar Government to serve as Medical Officers and they will be permitted to go to Zanzibar on Foreign Service in public interest. They were also told that their resignation from State Government service during their stay abroad would not be accepted. The Appellants were informed that they would be permitted for the foreign assignment after the completion of required formalities. The Respondent communicated their unwillingness to release the Appellants for the foreign assignment to the Central Government on 15.04.1975. The Appellants left India and started working in Zanzibar from May, 1975. According to the Appellants, they returned to India and requested the Respondent to give them posting orders in 1980. As they were not given posting orders by the Respondent they went back to Zanzibar. They returned to India and requested the Respondent to permit them to join back in service. As their request was not acceded to, they approached the Madhya Pradesh Administrative Tribunal. An interim order was passed by the Tribunal on 13.03.1991 directing the Respondent to issue posting orders to the Appellants. Due to the non compliance of the direction in the order dated 13.03.1991 of the Tribunal which was reiterated in another order dated 28.10.1991, the Appellants filed a contempt petition before the Tribunal.

4. By an order dated 03.01.1996, the Under Secretary, Medical Education Department, Government of Madhya Pradesh permitted the Appellants to join their duties in their original posts. It was mentioned in the said proceeding that an inquiry will be conducted to find out whether the Appellants took prior permission before leaving for Zanzibar on deputation. In case the Appellants had gone abroad without seeking permission from the Government of Madhya Pradesh, the period spent by them in Zanzibar will be treated as 'period of absence' and a departmental inquiry would be initiated against them for going to a foreign country without taking permission from the competent authority.

5. The Director of Health Services, Madhya Pradesh conducted an inquiry and held that the Appellants did not seek permission before going on deputation to a foreign country. The Appellants filed Writ Petitions 15094 of 2003 and 15095 of 2003 seeking a direction to the Respondent to permit them to join w.e.f. 13.08.1991 with all consequential benefits. They also filed Writ Petition

16754 of 2003 in which they sought for a relief of quashing the proceeding ordered on 03.01.1996. By a judgment dated 15.12.2004, the High Court directed the Respondent to accept the joining of the Appellants w.e.f. 13.08.1991. There was a further direction that the Appellants would be considered for promotion to higher post if they were entitled. The finding in the inquiry conducted by the Director of Medical Health that the Appellants did not obtain permission before leaving for deputation to Zanzibar was upheld. The Respondent challenged the judgment by filing Writ Appeals. A Division Bench of the High Court held that the direction given by the learned Judge to permit the Appellants to join w.e.f. 13.08.1991 was erroneous. The Division Bench further held the Respondent responsible for not issuing posting orders even after the order dated 03.01.1996 was passed. It was also directed that the Appellants shall be deemed to be in service from 03.01.1996. The Appellants were found entitled for only 20 per cent of the salary w.e.f. 03.01.1996 till their dates of superannuation. The Appellants as well as the Respondent state have filed Civil Appeals assailing the judgments of the Division Bench of the High Court.

6. The undisputed facts of this case are that the Appellants were working as Doctors in the service of the Government of Madhya Pradesh. They went and worked in Zanzibar from 1975 to 1991. There is a finding recorded in the inquiry conducted by the Director of Medical Health that they left for Zanzibar without seeking permission. The said finding was confirmed by the Single Judge of the High Court which was not challenged by the Appellants. The Division Bench affirmed the said finding. It is clear that the Appellants submitted their joining report in 1991. The interim orders passed by the Administrative Tribunal on 13.03.1991 and 28.10.1991 whereby the Respondent were directed to issue posting orders to the Appellants were not implemented. The Appellants had to resort to filing a contempt petition. Ultimately an order was passed by the Respondent directing the Appellants to join duty w.e.f. 03.08.1996.

7. The fact remains that actual posting orders were not issued to the Appellants. We agree with the Division Bench that the Respondent should be held responsible for not issuing actual posting orders to the Appellants. We see no reason as to why the Appellants would not have joined if they were given posting orders.

8. The order dated 03.08.1996 by which the Appellants were directed to join was made subject to certain conditions. A fact finding inquiry was directed to be conducted to find out whether the Appellants had obtained permission before going abroad on deputation. If the Appellants were found guilty of not taking permission, the period spent by them in Zanzibar would be treated as 'period of absence'. A departmental inquiry was also contemplated in case the Appellants were found to have left India without taking permission from the competent authority. Though the Director of Health Service by an order dated 22.11.2000 found that the Appellants had not taken the requisite permission from the competent authority before going abroad, no steps were taken by the Respondent to treat the period spent by them in Zanzibar as 'unauthorised absence'. The Respondent also did not proceed to initiate a departmental inquiry against the Appellants for the alleged delinquency.

9. Dr. Shobha Nelson attained the age of superannuation on 18.05.2002 and is aged 74 years now. Dr. S.K. Nelson would have retired from service on attaining the age of superannuation on

27.11.2000. Dr. S.K. Nelson died on 17.11.2014 and the application filed for substitution to bring his LRs on record was allowed by us on 07.04.2017.

10. We are afraid that we cannot approve the findings of the Division Bench of the High Court that the Appellants are entitled to be deemed in service only from 03.01.1996. There is no interruption of their status as civil servants. Their services were not terminated at any time. We approve the view of the learned Single Judge that the Appellants should be given the benefit of joining back w.e.f. 13.08.1991. As stated supra, the Respondent has to be held responsible for not giving the posting orders to the Appellants in spite of interim orders passed by the Tribunal. It appears that the order dated 03.01.1996 was passed only because of the contempt petition filed by the Appellants in the Tribunal. The Division Bench did not assign any reason as to why the direction given by the learned Single Judge that the Appellants were entitled for the relief from 13.08.1991 had to be interfered with.

11. Having decided that the Appellants are entitled to the service from 13.08.1991, the point that is to be determined is whether they should be treated to be in service even during period of their absence between 1975 to 1991. In view of the finding that they did not take permission before going to Zanzibar in 1975, the normal course would have been to permit the Respondent to proceed with the departmental inquiry as contemplated in the order dated 03.01.1996. But taking note of the fact of retirement of both the Appellants and death of Dr. S.K. Nelson we do not see any useful purpose being served by directing any inquiry at this stage. We hold that the period from 1975 to 1991 spent by the Appellants in Zanzibar shall be treated as duty for the purpose of computation of pension only. They shall not be entitled for any salary or allowance for that period. The Appellants shall be treated to have joined back in service on 13.08.1991. They shall be entitled for salary and other benefits to which they are entitled from 13.08.1991 till the date of their superannuation.

12. The Appeals are disposed of accordingly.

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.....J. [S. A. BOBDE]J. [L. NAGESWARA RAO] New Delhi, October 31, 2017.