

GOVERNMENT OF TAMIL NADU AND ANR.

v.

K. RAJARAM APPASAMY

APRIL 21, 1997

[K. RAMASWAMY AND D.P. WADHWA, JJ.]

*Service Law :*

*Backwages—Unauthorised absence from duty for five years—Removed from service—Tribunal setting aside the order of removal and directing payment of 50% backwages—On appeal held, there was nothing on the part of the State Government which prevented the employee from attending to his duties—Hence Tribunal was wholly wrong in its direction to pay 50% of backwages from date of absence till reinstatement.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3138-3140 of 1997.

From the Judgment and Order dated 14.5.96 of the Tamil Nadu Administrative Tribunal, Madras in O.A. No. 2354, 2477 and 6373 of 1993.

V. Krishnamurthy for the Appellants.

Dr. V. Gourishankar and S. Rajappa for the Respondent.

The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel for the parties.

These appeals by special leave arise from the Order dated May 14, 1996 passed by the Tamil Nadu Administrative Tribunal, Madras in O.A. Nos. 2354, 2477 and 6373 of 1993. The admitted facts are that the respondent was working as a doctor. He proceeded on leave and made a representation on June 27, 1987 with regard to his posting. He did not report for duty for five years from May 1, 1982. A departmental enquiry came to be conducted against the respondent, under Rule 17(b) of the Tamil Nadu Services (Discipline and Appeal) Rules. The competent authority removed him from service on the ground that the respondent was found

to be un authorisedly absent from duty for five years. The Tribunal in its impugned order set aside the order of his removal from service and directed to pay 50% of the back wages till the date of filing of the original application and full back wages from the date of filing of the original applications till the date of reinstatement. This Court issued notice confined to the question of respondent's entitlement to back wages. It would be obvious that the respondent did not choose to join the duty for five years. There is nothing on the part of the State Government which prevented the respondent from attending to his duties. Under these circumstances, the Tribunal is wholly wrong in its direction to the appellants to pay 50% of the back wages from the date of his absence till the date of filling of the original application and back wages thereafter till his reinstatement. Accordingly, the appeals are allowed and the direction to pay back wages stands set aside. No costs.

Appeals allowed.