



Writ Petition No.1369 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.06.2024

PRONOUNCED ON : 09.07.2024

CORAM

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Petition Nos.1369 of 2022
WMP.No.5095 of 2022**

Sathyakani ... Petitioner

Vs

- 1.The Director,
JIPMER,
Puducherry – 605 006.
 - 2.The Deputy Director (Admin),
JIPMER,
Puducherry – 605 006.
 - 3.The Central Administrative Tribunal
Rep., by its Registrar,
High Court Campus,
Chennai – 600 104.
- ... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 01.12.2021, passed in O.A.No.1316 of 2017 by the third respondent and quash the same as



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unconstitutional, non-est in the eye of law, null and void and direct the first and second respondents to promote the petitioner retrospectively to the post of Nursing Sister from 30.08.1997 and further promote petitioner as Assistant Nursing Superintendent from 30.08.2002 by filling the vacancies earmarked for ST candidates on exchange basis with all consequential benefits including seniority, back wages etc.,

For Petitioner : Mr.R.Sreedhar

For Respondent : Mr.M.T.Arunan Standing Counsel for RR1&2

R3 Tribunal

ORDER

(Order of the Court was made by Mr.K.KUMARESH BABU.,J.)

The instant Writ Petition had been filed by the unsuccessful applicant wherein the Original Application filed by the petitioner challenging the order passed by the second respondent rejecting her claim for retrospective promotion *inter alia* on the ground that there was no Rules for exchange of reservation between the SC and ST candidates were available.

2.Heard Mr.R.Sreedhar, learned counsel appearing for the petitioner and Mr.M.T.Arunan, learned Standing counsel appearing for



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the respondents 1 and 2.

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3. The learned counsel appearing for the petitioner would contend that the petitioner was appointed as a Staff Nurse in the year 1994 and that she was eligible for promotion to the next higher post namely the Nursing Sister on completion of 3 years of service and thereafter she was entitled to be promoted to the next higher category of Assistant Nursing Superintendent. However by non-drawing the list of reserved candidates to the next higher post and for the reasons best known to the respondents, the petitioner was first promoted as Nursing Sister in the year 2000 only even though she was entitled to be promoted in the year 1997. Even though she was eligible to be promoted to the next higher post of Assistant Nursing Superintendent in the year 2005 i.e., after completion of 5 years residency period as a Nursing Sister, she was promoted as Sister Tutor, which is equivalent to the post of Nursing Assistant Superintendent only in the year 2013. Hence, he would submit that the petitioner is entitled for retrospective promotion to the respective category. He would submit that the non promotion was a gross violation of the RRs and the constitutional mandates provided under Article 14 & 16 of the Consti-



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tution. He would further submit that the non availability of the candidates in ST category, the respondents ought to have transferred such vacancy to the SC community and ought to have promoted SC candidates and if they had done so, the petitioner would have been promoted. Therefore, he would submit that the petitioner is entitled for retrospective promotion. Without considering the case in a proper prospective, the Tribunal had rejected the claim of the Applicant. Hence she approached this Court by way of this Writ Petition.

4. Countering his arguments, the learned Standing counsel appearing for the respondents 1 and 2 would at the out set submit that there is no provision under the Official Memorandum providing for exchange of reserved vacancies between SC and ST candidates. He would further submit that the promotions could be only granted as and when vacancies arise in the higher category. What had been prescribed under the RR was the qualification by length of service in a particular feeder category for promotion to the next higher category, cannot be read as the period by which a particular employee would have to be promoted.



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Promotions would be made only as and when the vacancy arises in the higher category and not otherwise. Therefore, he would submit that there is no error or infirmity in the order passed by the Tribunal and he would seek dismissal of the Writ Petition.

6. We have considered the rival submissions made by the learned counsels appearing on either side and perused the materials placed on record.

7. The claim of the petitioner is that on the completion of the necessary qualifying period in the feeder category, the petitioner should have been promoted to the next higher category. We are afraid that if such a contention is accepted, it would create an anomalous situation where a person in a feeder category would be entitled for promotion to the next higher category, even though there are no vacancies in the higher category which would lead to a situation, where there will be more number of persons working in the higher category than the sanctioned strength. In such view of the matter, we are not inclined to accept the contention made



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by the learned counsel appearing for the petitioner.

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8. With regard to the claim of the petitioner that the vacancies in the reserved category particularly in SC & ST candidates ought to have been adjusted between them in view of the non-availability of a particular category is concerned, there is no provision pointed out by the petitioner for following such a procedure, on the other hand, it has been vehemently contended that there is no such procedure contemplated under the Official Memorandum on the subject.

9. Be that as it may, if the claim of the petitioner that there should be an exchange of a particular reserved category candidates, when there are no candidates available in the particular category to another category, is to be accepted, the same would go against the mandate of Article 16 of the Constitution of India. Reservation in promotion had been made only to see that there are sufficient representations of a particular reserved category. If the contention of the petitioner is to be accepted and if such exchanges are permitted, it would lead to a situation,



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where there will be no representation of a particular reserved category, which would be violating the mandate of Article 16 (4A) of the Constitution, which we also do not intend to trespass upon.

10. In fine, we do not find any infirmity or irregularity in the order impugned before us and for the said reason, this Writ Petition fails and accordingly, the same is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(D.K.K.,J.)

(K.B., J.)

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Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
pbn

To

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