

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

WP.No.13734 of 2009

Sarah Rosaline Ebenezar
Petitioner

Vs

- 1.The Secretary to Government of Tamil Nadu
Municipal Administration and Water Supply Department
Chennai-9
- 2.The Commissioner of Municipal Administration
Chennai-5
- 3.The Commissioner of Municipality
Pudukkottai
Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the letter No.40980/ME3/08-1, dated 7.1.2009 on the file of the 1st Respondent and to quash the same and to direct the Respondents to revise pay scale of the Petitioner at par with the pay scale for the post of staff nurse in the Tamil Nadu Medical Service.

For Petitioner : Mr.T.P.Prabakaran

For Respondents : Mr.S.Gunasekaran, AGP-RR1&2
Mr.J.Rajakalifulla-R3

ORDER

In this Writ Petition, the Petitioner seeks to quash the order of the 1st Respondent , dated 7.1.2009, rejecting the claim of the Petitioner to revise the pay scale of the Petitioner at par with the pay scale for the post of staff nurse in the Tamil Nadu Medical Service.

2. This court heard the learned counsel on either side and also perused the materials placed on record.

3. Originally the Petitioner was appointed as Nurse
<https://hcservices.ecourts.gov.in/hcservices/>

Midwife under a special scheme and she has not been given any promotion till date, as she was appointed under the special scheme. Whereas according to her, the work rendered by her as Nurse Midwife and the work of Staff Nurse are identical in nature, but the pay parity for the said two posts is totally different i.e. pay scale of Nurse Midwife is Rs.975-1660 and the pay scale of Staff Nurse is Rs.1400-2000. Therefore, the Petitioner would contend that she made a representation after three years, which was rejected and thereafter, she had applied to the Government. Originally the Petitioner filed OA, which was converted into WP and this court directed to consider her representation and thereafter, the impugned order came to be passed. Now, the Petitioner would contend that alternatively if she is not able to get equal post of Staff Nurse, at least in the newly created post of Health Inspector, she may be considered.

4. The learned counsel for the 3rd Respondent would mainly contend that the Petitioner made a representation in 1993 itself, which was rejected in 1994 and thereafter, she made further representation and therefore, when she has not challenged the original order, the whole effort of considering and passing orders has caused the whole problem. What could not have been considered was directed to be considered and ultimately, she has challenged nothing. Therefore, he would contend that work of the Staff Nurse is totally different from that of the Nurse Midwife and hence, the impugned order has rightly been passed.

5. The learned Additional Government Pleader for the Respondents 1 and 2 would contend that the authority has clearly considered that the said two posts are totally different and hence, they could not be equated.

6. On a careful perusal of the orders, as rightly pointed out by the learned senior counsel for the 3rd Respondent, the Petitioner did not challenge the original orders and thereafter, she made representations and unfortunately, the matter has been dragged on and such things cannot be accepted in view of the decision of this court reported in 2010 2 LW 785 (M.Ingaci Vs. The Commissioner, Devakottai Municipality and others), wherein the decision of the Honourable Supreme Court reported in 2006 3 SCC 674 (APSRTC Vs. G.Srinivas Reddy) was relied upon and it has been held in paragraphs 19 and 20 as under:-

"19. There are also several instances where unscrupulous petitioners with the connivance of "pliable" authorities have misused the direction "to consider" issued by court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a

representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to "consider" and dispose of the representation. When the court disposes of the petition with a direction to "consider", the authority grants the relief, taking shelter under the order of the court directing him to "consider" the grant of relief. Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order "to consider" as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to "consider", may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction to "consider" the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/ absorption into regular service is a species of cases, where there has been a large-scale misuse of the orders "to consider".

20. Therefore, while disposing of the writ petitions with a direction to "consider", there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time-frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter."

7. In view of the said decision, this Writ Petition is not maintainable. But at the same time, the Petitioner who has rendered service for the past 25 years, though she has been getting the revised pay, she has been stagnated at one post and she was not given any promotion. In such view of the

matter, the Petitioner can make a representation to the Government, who is the Competent Authority, seeking for upgradation to the post of Sector Health Nurse within a period of 10 days from the date of receipt of a copy of this order and if any such representation is made, the same shall be disposed of, on merits and in accordance with law, as expeditiously as possible.

8. With the above directions, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Srcm

To:

1. The Secretary to Government of Tamil Nadu
Municipal Administration and Water Supply Department
Chennai-9
 2. The Commissioner of Municipal Administration
Chennai-5
 3. The Commissioner of Municipality
Pudukkottai
- 1 cc to Mr.J.Jayendrkrishnan, Advocate, sr.47268

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bvr co
kra 23.09.2016

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