

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2016

CORAM

THE HON'BLE MR. JUSTICE B.RAJENDRAN

WP.No.28744 of 2016

A.V.Meenakshi

.. Petitioner

Vs.

1.The Director of Medical and Rural Health Services
Chennai-600 006.

2.The Joint Director of Health Services
Udhagamandalam
Nilgiris District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus, to direct the 1st respondent to give promotion to the petitioner from Staff Nurse to Nursing Superintendent Grade-II with all monetary benefits by considering the decision of the Hon'ble Full Bench reported in **2011 (3) CTC 129** and petitioner's representation dated 01.07.2016 and pass such further orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.S.Vinoth Kumar

For Respondents: Mr.R.Venkatesh
Government Advocate

ORDER

By consent, the Writ Petition is taken up and disposed of at the admission stage itself.

2. This Writ Petition has been filed to issue a Writ of **Mandamus**, to direct the 1st respondent to give promotion to the petitioner from Staff Nurse to Nursing Superintendent Grade-II with all monetary benefits by considering the decision of the Hon'ble Full Bench reported in **2011 (3) CTC 129** and petitioner's representation dated 01.07.2016.

3. The petitioner was appointed as Staff Nurse at Government Hospital, Pallipalayam, by direct recruitment in the year 1986. While, the petitioner was working as Staff Nurse at Government Hospital, Sathyamangalam, Erode District, a charge memo, dated 03.10.2012, was issued to the petitioner, for which, the petitioner has submitted her reply. An Enquiry Officer was appointed and he submitted his report, dated 27.06.2013, holding that the charges "not proved". On 09.10.2014, the 1st respondent imposed punishment of stoppage of increment for one year without cumulative effect. Against which, an appeal was preferred before Government and the same was rejected on 05.12.2015. The petitioner's name was included as Sl.No.173 for consideration for the inclusion in the panel to the post of Nursing Superintendent Grade-II for the year 2014-2015, but, due to

punishment the respondents denied the promotion. The punishment period is over on 30.06.2016. For the panel year 2015-2016 also his name was not included. In this regard, the petitioner has made a representation on 01.07.2016, but, till date, there was no response. Hence, the present Writ Petition has been filed seeking the relief stated supra.

4. Mr.S.Vinoth Kumar, the learned counsel for the petitioner would submit that the petitioner would be satisfied, if the 1st respondent is directed to consider the representation of the petitioner, dated 01.07.2016, in the light of the Full Bench judgment of this Court reported in **2011(3) CTC 129, Deputy Inspector General of Police, Tanjore Range vs.V.Rani**, wherein, the Full Bench in paragraph No.28 has held as follows:-

"1. During the period of currency of minor punishment, an employee cannot claim as a matter of right to be promoted to the next category merely on the basis that he is otherwise fit for promotion and to that extent, the finding of the Division Bench in Subramanian v. Government of Tamilnadu rep. by its Secretary, Chennai and others (supra) stands

overruled. It is needless to state that after the currency of punishment period, the Government servant is entitled to be considered for promotion to the next post, if otherwise eligible.

2. ...

3. ...

4. ...

5. *Consequently, the embargo put on the right of Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of 'check period' viz., one year in the case of censure and five years in the case other minor punishments is illegal and impermissible under the statutory rules."*

5. Mr.R.Venkatesh, the learned Government Advocate, who took notice on behalf of the respondents, has got no serious objection in directing the 1st respondent to consider the representation of the petitioner, dated 01.07.2016 and to pass appropriate orders, on merits and in accordance with law.

6. Considering the above submission, this Court, without going into the merits of the claim made by the petitioner, directs the 1st respondent to consider the representation of the petitioner, dated 23.02.2016, and pass appropriate orders, on merits and in the light of the Full Bench judgment of this Court reported in **2011(3) CTC 129, Deputy Inspector General of Police, Tanjore Range vs.V.Rani**, as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any opinion with regard to the merits of the claim made by the petitioner.

7. The Writ Petition is disposed of accordingly. No costs.

18.08.2016

Index : Yes / No

Internet : Yes/ No

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B.RAJENDRAN,J

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To

- 1.The Director of Medical and Rural Health Services
Chennai-600 006.
- 2.The Joint Director of Health Services
Udhagamandalam
Nilgiris District.

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