

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.34940 of 2016
and W.M.P.No.30081 of 2016
and Cont.P.No.2638 of 2016

R.Jayanthini

... Petitioner in
both W.P & Cont.P.

Vs.

1.The Principal Secretary to Governor,
Raj Bhavan,
Guindy, Chennai - 600 022. ...Respondent in Cont P

2.The Director of Medical Education,
Kilpauk, Chennai - 600 010. ... Respondents 1 & 2 in
W.P

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of writ of Certiorari calling for entire records pertaining to C.No.A2/1817/2016 dated 27.09.2016 passed by the 1st respondent and quash the same.

Contempt Petition is filed under Section 11 of the Contempt of Courts Act, praying issue notice to the petitioner and punish the respondent herein for willful disobedience of the order passed by this Court in WPMP No.30081 of 2016 in W.P.No.34940 of 2016, dated 03.10.2016.

For Petitioner: Mr.L.Chandrakumar

For Respondents: Ms.CNG. Niraimathi [R1]

Mr.K.Dhananjayan,

Special Govt. Pleader

ORDER

The petitioner alleging non compliance of the interim order dated 03.10.2016 made in W.M.P.No.30081 of 2016 in W.P.No.34940 of 2016, has filed the present contempt petition.

2. The petitioner challenges the order of transfer in the main writ petition. Since the first respondent has filed the counter affidavit in the main writ petition itself, the writ petition is taken up for final disposal.

3. The petitioner in the affidavit filed in support of this petition, would aver that she was appointed as Staff Nurse on 11.11.2005 in Kunnavakkam Primary Health Centre, Kanchipuram District and working there for four years and thereafter, on 08.05.2009, she was transferred to Rajiv Gandhi Government Hospital, Chennai and while she was working there, the second respondent has conducted interview for filling up the vacancy of Staff Nurse in Raj Bhavan Dispensary, Raj Bhavan, Guindy. The petitioner had attended the interview and gave her willingness to work as a Staff Nurse. The petitioner was issued with transfer order and posting order by the second respondent and joined the service as Staff Nurse in Raj Bhavan Dispensary, Raj Bhavan, Guindy and claims to have rendered hard, sincere and unblemished service to the satisfaction of the Superior Officer. The petitioner would further state that salary was also claimed by Raj Bhavan authorities and it was paid. However, to the shock and surprise, the first respondent, vide proceedings dated 27.09.2016, has directed the petitioner to report before the parent department, stating that former Governor Dr.K.Rosaiah, completed his tenure and as such staff nurses deputed during the period was directed to report to their parent department. The petitioner, challenging the legality of the said order, has filed the writ petition.

4. The learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents filed in the writ petition as well as the contempt petition and would submit that for all practical purposes, the petitioner has been absorbed as Staff Nurse in Raj Bhavan Dispensary, Raj Bhavan, Guindy and as such, she cannot be transferred from that place to the parent department and would further submit that in similar facts and circumstances, one Nagaraj, who was similarly placed, made a challenge to the similar order of transfer and this Court was pleased to allow the same and as such the petitioner is entitled to retain as Staff Nurse in the Raj Bhavan Dispensary, Raj Bhavan, Guindy.

5. Per contra, Ms.C.N.G.Niraimathi, the learned counsel appearing for the first respondent has drawn the attention of this Court to the counter affidavit filed on behalf of the first respondent as well as the typed set of documents and would submit that as per G.O.(Ms).No.1752 Health and Family Welfare (E1) Department, dated 03.08.1977, the administrative control of the Raj Bhavan Dispensary, Guindy be vested with the Secretary to the Governor and Comptroller, Governor's Household, Raj Bhavan and the expenditure be debited to the Major Head "21-Governor-AD Medical Establishment of the Governor" to be opened newly. The expenditure will continue to be charged on the consolidated fund of the State and as far as the appointment of Para-Medical Staff is concerned, they will be drafted from the

Medical Department and whenever a change in the incumbency is to be effected, a panel of names be sent to the Secretary to the Government and Comptroller, Governor's Household for selection.

6. It is the further submission of the learned counsel appearing for the first respondent that since Dr. Rosaiah is hailing from the State of Andhra Pradesh and while he was appointed as the Governor of Tamil Nadu, the Raj Bhavan Dispensary was in need of two additional Nurses, who could converse well in Telugu to cater to the medical requirements of the Governor and his family members. Hence, a letter was addressed to the Director of Medical Education in this regard and the service of two nurses, who were working before were placed at the disposal of the DME for their posting elsewhere in any other Dispensary and as such, a panel of nurses were drawn and the petitioner was interviewed and selected for posting at Raj Bhavan Dispensary as a wait-listed candidate and subsequently got accommodated and for the purpose of interview, the first respondent satisfied himself whether the empanelled Nurses are suitable for the requirement, for which, their services are being availed. It is the further submission of the learned counsel appearing for the petitioner that the Raj Bhavan Dispensary is a part and parcel of the Medical Education Department with a special arrangement for posting and transferring staff and as such, it is not a separate service and the petitioner also is not permanently absorbed as a Staff Nurse in the Raj Bhavan and in fact, an earlier occasion also nurses were deputed to the services of Raj Bhavan Dispensary and they were reverted back to the parent department and as such, the claim made by the petitioner is wholly untenable and prays for dismissal of the writ petition.

7. This Court has considered the rival submissions and also perused the materials before it.

8. A perusal of the materials placed before this Court in the form of counter affidavit would clearly indicate that since the former Governor Dr. Rosaiah hail from the State of Andhra Pradesh, the Governors household thought fit that to require the services of two additional nurses, who would converse well in Telugu and accordingly, the Director of Medical Examination has forwarded a panel of Nurses, who were willing to serve at Raj Bhavan Dispensary and the petitioner was interviewed and that only for the purpose of satisfying as to whether they are suitable for the requirement of the household, for which their services are being made.

9. In the considered opinion of this Court, in the light of the said requirement it cannot be stated that the petitioner, after interview, was regularly absorbed in the service of Raj Bhavan Dispensary. It is also pertinent to point out at this

juncture, there is no separate service called staff nurse in "Raj Bhavan Dispensary" and admittedly, Director of Medical Education on request, had forwarded the panel of the names who are willing to serve in the Raj Bhavan Dispensary and after conducting interview for the above said limited purpose only, they were accommodated in Raj Bhavan Dispensary. The petitioner is under the impression that their services were regularly absorbed and it is to be pointed out at this juncture that even as per G.O.Ms.No.1752 Health and Family Welfare (E1) Department dated 03.08.1977, the annual budget of the dispensary is to be submitted by the Medical Officer to the Director of Medical Education for scrutiny and transmission to the Government for sanction of necessary funds. The petitioner prior to this service of Staff Nurse in Raj Bhavan Dispensary, Raj Bhavan, was employed in Government Rajaji Hospital, Chennai and as such, the claim made by her that since she is permanently absorbed in Raj Bhavan Dispensary, Raj Bhavan, she cannot be transferred to anywhere is wholly unsustainable. In the considered opinion of this Court, the said stand of the petitioner is also wholly untenable and also misconceived.

10. This Court, in the light of the materials placed before it and the points urged by the learned counsel appearing for the petitioner, find no merit and substance in the writ petition and therefore, the writ petition is dismissed. No costs.

Contp.No.2638 of 2016

11. In the light of the stand taken by the first respondent in the counter affidavit, this Court is of the view that there is no violation of the interim order passed by this Court and therefore, the contempt petition is closed.

-Sd/-

Asst.Registrar

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Sub Asst. Registrar

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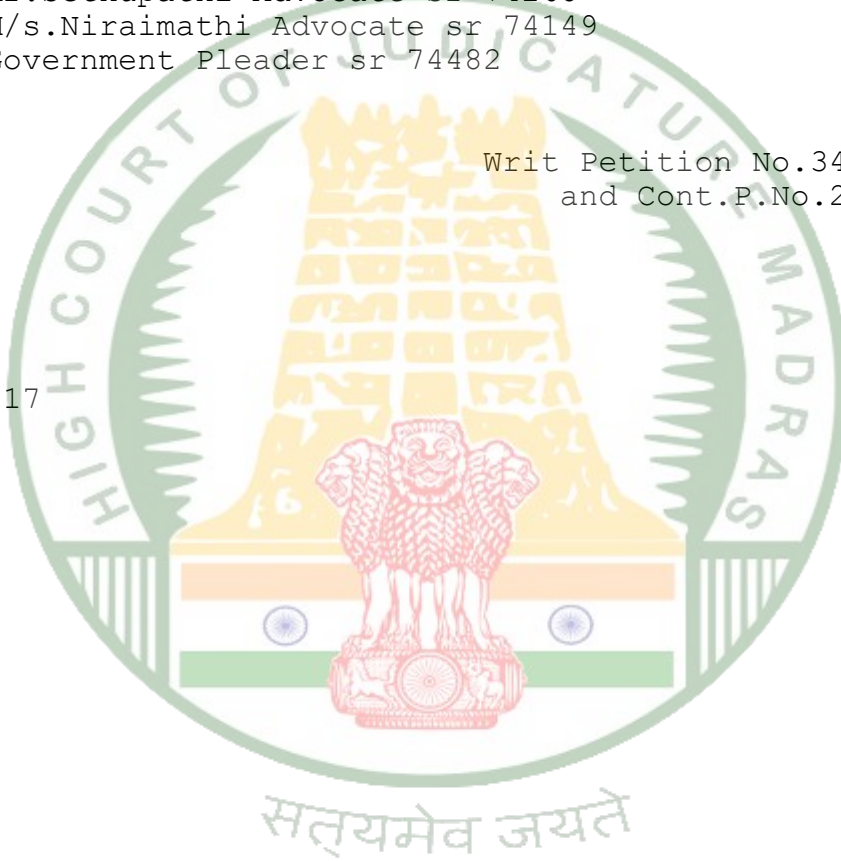
1.The Principal Secretary to Governor,
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2.The Director of Medical Education,
Kilpauk, Chennai - 600 010.

+1 cc to Mr.Sethupathi Advocate sr 74268
+1 cc to M/s.Niraimathi Advocate sr 74149
+1 cc to Government Pleader sr 74482

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