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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition(MD)No.4531 of 2016

and

Contempt Petition(MD)No.475 of 2016

and

W.M.P(MD)Nos.4111, 4112 and 6694 of 2016

J.Alamelumangai

... Petitioner in both WP & Cont.P

vs.

1)The Secretary to Government,
Health & Family (AA2) Department,
Government of Tamil Nadu,
Fort St.George, Chennai.

2)The Director of Medical Education,
Kilpauk, Chennai-600 010.

3)N.Muruganandam,
Nursing Tutor Grade-II,
Government Stanly Medical College,
Chennai.

... Respondents in W.P

1)Mr.J.Radhakrishnan, I.A.S.,
The Secretary to Government,
Health & Family (AA2) Department,
Government of Tamil Nadu,
Fort St.George, Chennai.

2)Dr.R.Vimala,
The Director of Medical Education,
Kilpauk, Chennai-600 010.

... Respondents in Cont.P

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 1st respondent in G.O(D)No.341 dated 26.2.2016 and the consequential impugned order of the 2nd respondent in Ref.No.28778/N2/2016 dated 1.3.2016, quash the same in so far as the petitioner is concerned and consequently direct the respondents 1 and 2 herein to give posting to the petitioner in the College of Nursing at Madras Medical College, Chennai, as per seniority and rules.



Contempt Petition filed under Section 11 of the Contempt of Courts Act, to punish the respondents for wilful disobedience of the order passed by this Honourable Court dated 07.03.2016 made in W.M.P(MD)No.4112 of 2016 in W.P(MD)No.4531 of 2016.

Prayer in WMP(MD)NO.4112/ 2016 in W.P(MD)No.4531 of 2016 :

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to stay the impugned order of the 1st respondent in G.O(D)No.341 dated 26.02.2016 and the consequential impugned order of the 2nd respondent in Ref.No.28778/N2/2016 dated 01.03.2016 in so far as the petitioner is concerned, pending disposal of the above WP.

Appearance in WP & Cont.P:-

For Petitioner : Mr.Veera Kathiravan for
Mr.C.Jeganathan

For Respondents 1 & 2 : Mr.R.Anandharaj
Government Advocate

For R3 : No appearance

COMMON ORDER

Mrs.J.Alamelumangai, who was appointed as a Staff Nurse on 23.03.1990, by the Director of Medical Services and subsequently got promoted as Nursing Tutor Grade-II in February 2006, has filed this writ petition challenging G.O(D)No.341, Health and Family Welfare (AA2) Department, dated 26.02.2016, to quash the same, on the ground that instead of posting her as Lecturer in Medical Surgical Nursing in the vacancies at Madras Medical College, Chennai, she has been wrongly posted as Lecturer in Nursing in the Speciality of Psychiatric in Government Theni Medical College, Theni, only to accommodate the 3rd respondent as Lecturer in Medical Surgical Nursing at Madras Medical College, Chennai.

2.Mr.Veera Kathiravan, learned Senior Counsel appearing for the petitioner would submit that the petitioner is senior to the 3rd respondent/N.Muruganandam from the date of appointment. She was appointed as a Staff Nurse on 23.03.1990, by the Director of Medical Services, on the basis of her Diploma qualification in Nursing and after her appointment, she studied B.Sc Nursing course in the college of Nursing, Madras Medical College, Chennai, during the period 2001-03, as a service candidate and that after completion of 16 years of service as a Staff Nurse, she was posted in the education side of the Medical Department on 08.02.2006 as Nursing Tutor Grade-II in the school of Nursing, Madurai. She has also completed her post graduation in M.Sc., Medical Surgical Nursing, which is a prescribed qualification for higher promotion as Lecturer in Medical Surgical Nursing as per the Indian Nursing Council norms.



3.He would further submit that after completion of her post graduation, the petitioner was posted in the college of Nursing in Madurai Medical College and has been working from July 2011 till date, thereby, she has completed six years of unblemished service. Considering her post graduation, length of service and seniority, she has been promoted by the 1st respondent, vide impugned G.O., as Lecturer in Nursing in the Nursing Colleges run by the Government and that the said promotion is based on seniority. The seniority of the petitioner is, '245' as per the finalisation of the seniority list, whereas, the 3rd respondent's seniority is, '274', which clearly shows that the petitioner is much senior to the 3rd respondent.

4.Adding further, learned Senior Counsel would submit that while effecting promotion to the posts of Lecturer in the Nursing Colleges, the 1st respondent posted the petitioner as Lecturer in Government Medical College at Theni. However, as per the norms prescribed by the Indian Nursing Council, since the petitioner has completed post graduation in Medical-Surgical Nursing, she has to be posted only in the vacancy of Lecturer in Medical-Surgical Nursing, for the reason that the said post is a more specialised one as per the Indian Nursing Council norms. Even now, there are several vacancies in the post of Lecturer in Medical-Surgical Nursing and other Specialities in Madurai Medical College, Madurai, Chenglepet Medical College, Chenglepet, Mohan Kumara Mangalam Medical College Hospital, Salem, and Theni Medical College, Theni.

5.Continuing his arguments, he would submit that when there are three vacancies in Madras Medical College, Chennai, the petitioner's seniors have chosen the existing vacancies, therefore, the petitioner should be considered in the list of vacancies at Madras Medical College, Chennai. While so, by the impugned G.O., the 3rd respondent, who is ranked at '274', in the seniority list, has been wrongly posted as Lecturer in the speciality of Medical Surgical Nursing in Madras Medical College, Chennai, but the petitioner who is senior to the 3rd respondent, has been posted as Lecturer in Nursing in the Speciality of Psychiatric at Government Theni Medical College, Theni. The petitioner, who has acquired M.Sc in the speciality of Medical Surgical Nursing cannot take classes to the Nursing students in Psychiatric speciality, hence, she made a representation to the 1st respondent on 02.03.2016, narrating the above facts with a request to post her at Chennai.

6.Learned senior counsel would further submit that admittedly, the petitioner is holding a P.G degree namely, M.Sc in Medical Surgical Nursing and she is much senior to the 3rd respondent, therefore, the impugned G.O., posting the petitioner



as Lecturer in Psychiatric department, is against the norms of the Indian Medical Council and also detrimental to both the petitioner as well as the students in Psychiatric Department, hence, the same is liable to be set aside.

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7.It is his further contention that the petitioner being a senior most person, she has an option to choose the place in the existing vacancies, but the respondents 1 and 2 are not conducting any counselling, therefore, the entire process of posting the petitioner without counselling, is liable to be set aside.

8.Explaining further, learned Senior counsel would submit that when there were four vacancies of Lecturer in Medical Surgical Nursing speciality at the time of promotion in the College of Nursing, Madras Medical College, Chennai, and two vacancies of Lecturer in Medical-Surgical Nursing speciality in the college of Nursing, Madurai Medical College, the respondents 1 and 2 out of four vacancies, have filled up only three vacancies, by promoting two individuals, who are admittedly seniors to the petitioner, therefore, the respondents 1 and 2 ought not to have filled up the third vacancy, by appointing the 3rd respondent, who is admittedly a junior to the petitioner, further, the 4th vacancy in Medical-Surgical Nursing speciality was filled up with other speciality candidate Mr.Senthil Kumar, whose speciality is Pediatric Nursing, who is also a junior to the petitioner.

9.He further contended that the above facts clearly show that in spite of the vacancies available in the post of Lecturer in Medical-Surgical Nursing speciality in the College of Nursing, Madras Medical College, the respondents 1 and 2 have chosen to fill up two seniors, one junior and kept one post vacant deliberately leaving the petitioner from posting her at Madras. Similarly, the two vacancies in the post of Lecturer in Medical-Surgical Nursing Speciality in the College of Nursing, Madurai Medical College, Madurai, were also filled up by two persons admittedly seniors to the petitioner, therefore, the contention of the respondents 1 and 2 that temporarily promoted persons have been accommodated in nearby places, cannot be accepted, for the sole reason that the petitioner, who happened to work at Madurai, has not been accommodated at Madurai, whereas, she has been posted to Theni, but a person from Trichy has been accommodated at Madurai, to suit their convenience, thus, the contention of the respondents 1 and 2 that the Government has good intention to post the incumbents in the nearby places, is wholly misconceived and seniority of the petitioner also has been completely ignored.



10. Concluding his arguments, learned Senior Counsel would submit that the petitioner's son is studying 11th Standard and her husband is a worker in a private company, which is a non transferable job, therefore, every weekend she has been travelling to Chennai for the past 4 years and 8 months, at the age of 53. Now, adding fuel to fire, she has been posted to Theni. Although she had attended five transfer counselling from July 2011, she is not able to get transfer to Chennai, this has added further problem to the petitioner. Moreover, the 3rd respondent, who is admittedly junior to the petitioner and a male member, has been given special concession while the petitioner/woman has been discriminated, therefore, without conducting counselling, giving posting order at the instance of the individual, is highly irregular and violation of the transfer policy, hence, the transfer and posting order given without counselling, he pleaded, are liable to be set aside.

11. A detailed counter affidavit has been filed by the respondents 1 and 2. Mr. R. Anandharaj, learned Government Advocate appearing for the respondents 1 and 2 would submit that the post of Lecturer in Nursing is governed by *ad hoc* rules and the Government is the appointing authority and panel drawing authority for the post of Lecturer in Nursing. As on today, the cadre strength of the post of Lecturer is, 32 and it has been distributed to five Colleges of Nursing, as follows:-

Sl. No.	Name of the Institution	Sanctioned strength
1	College of Nursing, Madras Medical College, Chennai.	10
2	College of Nursing, Madurai Medical College, Madurai.	6
3	College of Nursing, Government Mohan Kumaramangalam Medical College, Salem (including Vice Principal)	6
4	College of Nursing, Government Chengalpattu Medical College, Chengalpattu, (including Vice Principal)	5
5	College of Nursing, Government Theni Medical College, Theni (including Vice Principal)	5
Total		32



12. Adding further, he would submit that the post of Lecturer in Nursing has been classified in Speciality-wise only in the College of Nursing, Madras Medical College, Chennai, but the same classification has not been done in other colleges of Nursing at Madurai, Salem, Theni and Chengalpattu. The petitioner, who is presently serving as Nursing Tutor Grade-II from 08.06.2006, underwent M.Sc Nursing Course in the Speciality of Medical-Surgical from 27.07.2009 to 26.07.2011, thereafter, the 2nd respondent sent a proposal to the Government, for giving her promotion to the post of Lecturer in Nursing for the panel year 2015-16, vide proceedings dated 06.12.2015, drawing the crucial date for panel as 15.03.2015. At the time of sending the proposal, there were only 20 vacancies available in the post of Lecturer in Nursing, but the Government, taking into account the future vacancies that would occur due to the promotion of 12 Lecturers in Nursing as Readers in Nursing, have arrived at the actual vacancies as 32, and accordingly issued G.O(D)No.341, Health and Family Welfare (AA2) Department, dated 26.02.2016, appointing three eligible candidates from the post of Nursing Tutor Grade-I, by transfer as Lecturer in Nursing and by promoting 29 eligible candidates from the post of Nursing Tutor Grade-II as Lecturer in Nursing, temporarily under rule 39(a)(i) of the General Rules for Tamil Nadu State and Subordinate Services, therefore, the candidates who have been promoted temporarily, have no rights in the post of Lecturer in Nursing till their names are included in the regular panel.

13. Learned Government Advocate has further contended that in the present case, the Government, while issuing posting orders to the individuals, have taken all efforts and posted the newly promoted Lecturers to the places where they have worked in the previous cadre i.e., Nursing Tutor Grade-I and Nursing Tutor Grade-II and before getting promotion as Lecturer in Nursing, the petitioner was working as Nursing Tutor Grade-II at Madurai Medical College, Madurai, from 2006 onwards, thus, she has been posted at College of Nursing, Theni Medical College, Theni, which is nearer to her old station. Similarly, the same analogy has been followed in the case of the 3rd respondent and he has been posted as Lecturer in Medical Surgical Nursing in the College of Nursing, Madras Medical College, Chennai, considering his nearby working station, namely, Government Stanley Medical College, Chennai.

14. Continuing his arguments, learned Government Advocate has submitted that Tmt.V.K.R.Periyar Selvi, Lecturer in Nursing, College of Nursing, Madras Medical College, Chennai, with the seniority No.218, Tmt.C.S.V.Umalakshmi, Lecturer in Nursing, College of Nursing, Madras Medical College, Chennai, with the seniority No.231, and the 3rd respondent/Thiru.N.Muruganandam,



Lecturer in Nursing, College of Nursing, Madras Medical College, Chennai, with the seniority No.274, having worked at Chennai, they have been appointed and posted in the College of Nursing at Madras Medical college, therefore, it is clear that the intention of the Government is to post the individuals to the nearest places where they have already worked, which cannot be found fault with. Moreover, there is no mandatory provision for conducting counselling for the post the Lecturer in Nursing.

15.He further contended that again, reiterating the vital point that when there were only 20 vacancies available in the post of Lecturer in Nursing, the Government taking into account the future vacancies going to occur due to the promotion of 12 Lecturers in Nursing as Readers in Nursing, have arrived at 32 actual vacancies. In view of that, he pleaded, the petitioner is also getting the advantage. If the Government had not arrived at the actual vacancies as 32, neither the petitioner nor the 3rd respondent, would be able to get posting. Moreover, in the College of Nursing, Madras Medical College, out of 10 sanctioned vacancies, only three vacancies have been allotted to the speciality of Medical-Surgical Nursing and for that three vacancies, three eligible candidates nearer to Chennai alone have been posted at Madras Medical College. Considering the fact that the petitioner was working in Madurai Medical College, she has been posted at the College of Nursing, Theni Medical College. Moreover, six seniors are also available with the speciality of Medical and Surgical Nursing than the petitioner herein, they are also posted in the nearest place only, therefore, it is not open to the petitioner to contend that she alone has been sidelined in giving the posting order.

16.Concluding his arguments, learned Government Advocate has contended that when the petitioner has been put in more than 20 years of service in the College of Nursing, out of which more than 9 years of teaching experience, she cannot claim that the filed of Psychiatric, in which she has been posted by the impugned G.O., is unknown to her.

17.Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents 1 and 2. Despite service of notice, the 3rd respondent has not entered his appearance either in person or through pleader.

18.The petitioner is a post graduate degree holder in Medical-Surgical Nursing. While so, the Director of Medical Education, Chennai, has sent a proposal to the Government, for giving her promotion to the post of Lecturer in Nursing for the year 2015-16 on 06.12.2015, taking the crucial date as 15.03.2015. Although there were only 20 vacancies available in



the post of Lecturer in Nursing, the Government, taking into account the future vacancies that would occur due to promotion of 12 Lecturers in Nursing as Readers in Nursing, have arrived at the actual vacancies as 32 and issued impugned G.O(D)No.341, Health and Family Welfare (AA2) Department, dated 26.02.2016, by appointing 3 eligible candidates from the post of Nursing Tutor Grade-I, by transfer as Lecturer in Nursing and by promoting 29 eligible candidates from the post of Nursing Tutor Grade-II as Lecturer in Nursing temporarily under rule 39(a)(i) of General Rules for the Tamil Nadu State and Subordinate Services.

19.It is pertinent to mention herein that the Government also have issued G.O(2D)No.131, Health and Family Welfare (A1) Department, dated 20.11.2007, introducing a counselling system with proper guidelines for conducting counselling from time to time, for transfer and promotion of Medical / Para Medical personnel working in Health and Family Welfare Department. The relevant criteria and method for promotion/transfer prescribed in the said G.O., is given as under:-

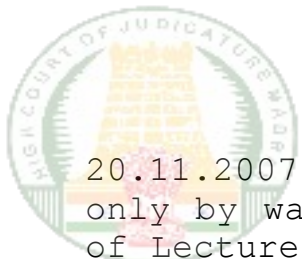
'10.1 No mutual transfers shall be considered.

10.2 Transfer Counselling should be completed on the same day before starting promotion counselling.

10.3 Promotion to the posts shall be made by counselling in the order of seniority. If the senior is not willing to take up the posts, he should relinquish his right for promotion in writing either temporarily or permanently at the time of counselling and the next eligible person may be promoted and posted in that vacancy.'

20.Clause 10.3 of the Guidelines for Transfer and Promotion issued with G.O(2D)No.131, Health and Family Welfare (A1) Department, dated 20.11.2007, shows that promotion to the posts shall be made only by counselling, that too, in the order of seniority. Clause 10.13 of the abovesaid guidelines also states that as a rule, no transfer shall be effected in-between the counselling periods, other than those required on administrative grounds or in the public interest or in the interest of the medical education or public health.

21.A conjoint reading of Clause 10.14 of the abovesaid Guidelines shows that the posts so filled up must invariably be notified as vacancies for the next counselling and the individuals posted temporarily in those posts must be directed to appear for counselling and no exception shall be made to this rule.



20.11.2007, are very clear that the vacancies shall be filled up only by way of seniority. Admittedly, there were four vacancies of Lecturer in Medical Surgical Nursing speciality at the time of promotion in the College of Nursing, Madras Medical College, Chennai, and two vacancies of Lecturer in Medical-Surgical Nursing speciality at the College of Nursing, Madurai Medical College, Madurai. In respect of the first four vacancies of Lecturer in Medical-Surgical Nursing at the College of Nursing, Madras Medical College, Chennai, 3 vacancies have been filled up by promoting two individuals, who are admittedly seniors to the petitioner and the third vacancy of Lecturer in Medical-Surgical Nursing, was filled up by the 3rd respondent, who is admittedly a junior to the petitioner, because, the petitioner is placed at Serial No.245 in the seniority list while the 3rd respondent is placed at Serial No.274. Again, the 4th vacancy namely, Lecturer in Medical-Surgical Nursing was not filled up, but the said vacancy was filled up with other Speciality candidate Mr.Senthil Kumar, whose speciality is Pediatric Nursing, who is also a junior to the petitioner, therefore, it is crystal clear that in spite of the vacancies available in the College of Nursing in Madras Medical College, the respondents 1 and 2 have chosen to fill up two seniors, one junior and erroneously kept one post vacant deliberately leaving the petitioner from posting her at Madras.

23. Similarly, the two vacancies in Medical-Surgical Nursing Speciality at Madurai, were also filled up by two persons who are seniors to the petitioner, one of them who was working at Trichy, has been accommodated, therefore, the stand taken by the respondents 1 and 2 in the counter affidavit that while filling up the vacancies, taking into account the nearest working place, the 3rd respondent was accommodated in Chennai, and the petitioner was posted from Madurai to Theni, is far from acceptance. If the respondents 1 and 2 really followed such method, the petitioner who was working at Madurai, could have been accommodated in Madurai, whereas, she has been posted to Theni, on the other hand, a person from Trichy has been accommodated in Madurai, to suit their convenience, resultantly, the Guidelines for Transfer and Promotion have been completely ignored and the seniority of the petitioner also has been ignored. That apart, when Guidelines for Transfer and Promotion issued with G.O(2D)No.131, Health and Family Welfare (A1) Department, dated 20.11.2007, make it clear that as a rule, no transfer and promotion shall be effected without conducting counselling, the contention of the respondents 1 and 2 that there is no mandatory provision for conducting counselling to the post of Lecturer in Nursing is fallacious and unacceptable.



24. The representation of the petitioner dated 02.03.2016, enclosed in the typed set of papers, shows that after completion of her M.Sc 2 years course in Medical and Surgical Nursing specialty in 2009-11 session at College of Nursing, Madras Medical College, Chennai-3, she was posted as Nursing Tutor Grade-II at College of Nursing, Madurai Medical College, Madurai, from July 2011 till date. As she has got her family at Ernavoor, Chennai, and her son is also studying in 11th Standard, besides her husband is a worker in a private company, which is a non transferable job, every weekend, she has been travelling to Chennai at the age of 53 years for the past 4 years and 8 months. Although she had attended five transfer counselling from July 2011, she could not get transfer to Chennai.

25. For the reasons mentioned above, this Court is of the considered view that the impugned G.O(D)No.341, Health and Family Welfare (AA2) Department, dated 26.02.2016, posting the 3rd respondent as Lecturer in Medical Surgical Nursing at Madras Medical College, Chennai, who is admittedly a junior to the petitioner and not even appeared before this Court despite service of notice, has been issued completely contrary to the Guidelines for Transfer and Promotion issued with G.O(2D)No.131, Health and Family Welfare (A1) Department, dated 20.11.2007, therefore, the same is liable to be set aside, accordingly, G.O (D)No.341, Health and Family Welfare (AA2) Department, dated 26.02.2016, is hereby set aside in so far as the petitioner is concerned and the respondents 1 and 2 are hereby directed to give posting to the petitioner in the College of Nursing at Madras Medical College, Chennai, as per her seniority and the Guidelines for Transfer and Promotion issued with G.O(2D)No.131, Health and Family Welfare (A1) Department, dated 20.11.2007.

26. With regard to contempt petition, it may be mentioned that this Court has granted an order of interim stay on 07.03.2016, staying operation of the impugned G.O(D)No.341, Health and Family Welfare (AA2) Department, dated 26.02.2016. The respondents 1 and 2 have taken a stand that copy of the stay order dated 07.03.2016, passed by this Court was received by them only on 09.03.2016, through the petitioner, by that time, all the individuals who were promoted as Lecturers in Nursing, except the petitioner herein, had joined the promoted posts, therefore, the interim order passed by this Court could not be given effect to, however, the counter affidavit does not mention on what date, 3rd respondent has taken charge as Lecturer in Nursing at Chennai. In any event, since the writ petition is now allowed as prayed for, the respondents 1 and 2 shall enforce this order in letter and spirit.



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In the result, the writ petition is allowed and the contempt petition is closed. No costs. W.M.P(MD)Nos.4111, 4112 and 6694 of 2016 are closed.

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Sd/
Assistant Registrar(P&A)

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Sub Assistant Registrar

To

1)Mr.J.Radhakrishnan, I.A.S.,
The Secretary to Government,
Health & Family (AA2) Department,
Government of Tamil Nadu,
Fort St.George, Chennai.

2)Dr.R.Vimala,
The Director of Medical Education,
Kilpauk, Chennai-600 010.

+1cc to Special Government Pleader in SR.No.47445
+1cc to M/S.C.Jeganathan, Advocate in SR.No.47335

Writ Petition(MD)No.4531 of 2016
and
Contempt Petition(MD)No.475 of 2016
and
W.M.P(MD)Nos.4111, 4112 and 6694 of 2016
24.08.2016

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PA/CK/SAR CO/29.08.2016/11P/5C (IT)