

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2017

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.7977 of 2017 & W.M.P. Nos.8718 & 8719 of 2017

L. Kalavathy

Petitioner

vs.

1. State Government of Tamil Nadu
represented by its Principal Secretary
Health and Family Welfare Department
Fort St. George
Chennai - 9
2. The Deputy Director of Medical Education
Kilpauk, Chennai - 10
3. The Selection Committee
Directorate of Medical Education
Chennai - 10
4. The Dean
Government General Hospital
Chennai
5. Appollo College of Nursing
Ayannambakkam
Chennai 600 095
6. The Dean
Chengalpattu Medical College Hospital
Chengalpattu

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the first respondent in letter No.36344/AA2/04-23 (H&FW) (AA2) Department dated 24.04.2009, and forwarded through sixth respondent Ref.No.11174/E1/1/2009 dated 27.09.2009 and consequential order of the second respondent in Ref.No.K.Dis.No.69719/MEH/2008, dated 26.05.2008 and the condition in the allotment order Ref.No.15/SCSIII/PG/2004 dated 28.05.2004 of the third respondent in respect of pay and allowance and quash the same and direct the respondents 1 to 3 to treat the two year course period of Post Graduate M.Sc., (Nursing) Course of the petitioner from 30.05.2004 to May 2006

as deputation period and pay the full pay and allowances as applicable to the petitioner as per Clause VI of the prospectus 2004-2005 issued by the second respondent.

For petitioner Ms. B.Saraswathi

For respondents Mr. T.M. Pappiah
Special Government Pleader

ORDER

This writ petition has been filed challenging the proceedings dated 24.04.2009 of the first respondent / the Principal Secretary to Government, Health and Family Welfare Department, Chennai, refusing to pay the full pay and allowances to the petitioner during her study period of PG Course in M.Sc. (Nursing) between June 2004 and May 2006.

2. Heard the learned counsel appearing on either side.

3. On 24.03.1977, the petitioner was selected and posted as Staff Nurse by the second respondent in the Government Headquarters Hospital, Pudhukottai, where, she worked upto 30.08.1977, after completion of 3½ year Trainee Nurse course in the Government Hospital. On 01.09.1977, she was transferred to Tanjore Medical College Hospital, where, she worked upto 28.02.1979. From the said hospital, she was transferred to various Government Hospitals and finally, she retired on 31.07.2011 as Principal, Gr.-I in Chengalpattu Medical College and Hospital.

4. During her service, the second respondent had implemented a scheme by which the Nurses working in the Tamil Nadu Government are to be selected among the staff nurses to undergo B.Sc. (Nursing) Course, as a service candidate and during the study period of 2 ½ years, full pay and allowances of staff nurse were to be paid by the second respondent to the said Nurses on executing a bond that they would continue to work with the Government for a period of five years. On the basis of the said scheme, the petitioner was selected to undergo B.Sc. (Nursing) course at Madras Medical College from 12.10.1988 till 30.04.1991 and during the said period of 2½ years, she was also paid with full salary. Thereafter, she was posted as Nurse in Stanley Government Hospital from 01.05.1991 till 18.02.2004. On 19.02.2004, she was promoted as Nursing Tutor, Gr. II and transferred to Madras Medical College, Chennai, where, she worked from 20.02.2004 to 31.05.2004.

5. While the matter stood thus, the second respondent issued a prospectus for admission to Post Graduate M.Sc.

(Nursing) Degree course in Government Medical/Self Financing Institutions, Tamil Nadu, for the year 2004-05 for the service and non-service candidates. The petitioner, being a service candidate, applied for the said course, through proper channel, and thereafter, she was also selected for admission to the said Course for the academic year 2004-2005 and thereby, she was allotted to fifth respondent College and in the allotment order, it is stated that she has to join the College on or before 31.05.2004. Therefore, she had also joined in the said College on 31.05.2004 by paying the prescribed fees of Rs.60,000/-. It is also further stated in the allotment order that the service candidates selected in Self-Financing Colleges will not be paid pay and allowances by the Government. Since she was not paid with salary during the period she studied M.Sc. Course, she made several representations to the authorities, but, all went in vain as she did not receive any reply from them.

6. It is also seen that in a similar case, the Government have issued orders in G.O.Ms.No.147, Health and Family Welfare Department, dated 28.08.2006, in the case of one R.Lakshmi and granted pay and allowances for the period of her study in a private medical college i.e. Christian Medical College, Vellore. Therefore, the petitioner, after her retirement, has made a representation to the respondents on 14.07.2014 requesting to regularize her study period i.e. from June 2004 to May 2006 as done in the case of one R.Lakshmi. However, the first respondent, by the impugned order dated 24.04.2009, rejected her request of pay and allowances as not feasible for compliance. Aggrieved by such identical order, other two individuals have filed W.P. Nos.3628 of 2005 and 928 of 2010 and this Court, by order dated 22.11.2011, set aside the impugned order dated 24.04.2009 refusing to sanction pay and allowances during their study period of PG Course. Pursuant to the order of this Court, the first respondent, vide G.O.(2D) No.17, Health and Family Welfare Department (AA2), dated 27.02.2014, has complied with the said order of this Court.

7. In such view of the matter, since the impugned proceedings of the first respondent have already been set aside by this Court vide order dated 22.11.2011 in W.P.Nos.3628 of 2005 and 928 of 2010 and thereafter, the Government have also complied with the order of this Court, this Court finds no impediment to allow this writ petition.

8. Accordingly, the respondents are directed to pay the full pay and allowances to the petitioner during her study of PG Course between June 2004 and May 2006, within a period of four weeks from the date of receipt of a copy of this order.

In fine, the writ petition is allowed. No Costs.
Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CSv)

True Copy

Sub-Assistant Registrar

cad

To

- 1 The Principal Secretary
Health and Family Welfare Department
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2. The Deputy Director of Medical Education
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Chengalpattu

+1 cc to the Government Pleader sr 20580
+1 cc to Ms.B.Saraswathi Advocate sr 20393

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msm(co)
aa21/04/2017