



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2017

Date of Reserving the Judgment	Date of Pronouncing the Judgment
08.06.2017	30.06.2017

CORAM:

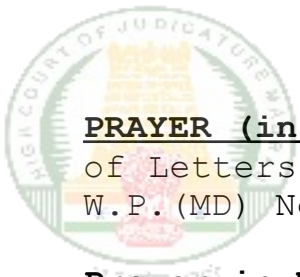
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A. (MD) .Nos.90 & 544 of 2017
and
C.M.P. (MD) Nos.4558 & 855 of 2017

- 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-10... Appellants in W.A.(MD).No.90 of 2017
- 3.N.Muruganandam
Lecturer, College of Nursing
Madras Medical College
Chennai - 3 ... Appellant in W.A.(MD).No.544 of 2017

-vs-

- 1.J.Alamelumangai
- 2.N.Muruganandam
Nursing Tutor Grade II
Government Stanley Medical College
Chennai ... Respondents 1 and 2 in W.A.(MD) No.90 of 2017
- 3.J.Alamelumangai
- 4.The Secretary to Government
Health & Family (AA2) Department
Government of Tamil Nadu
Fort St.George, Chennai
- 5.The Director of Medical Education
Kilpauk, Chennai-1... Respondents in W.A.(MD) No.544 of 2017



PRAYER (in both writ appeals) : Writ Appeals filed under Clause 15 of Letters Patent to set aside the order, dated 24.08.2016 made in W.P.(MD) No.4531 of 2016, on the file of this Court.

Prayer in WP(MD). 4531/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue 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 & 2 herein to give posting to the petitioner in the college of Nursing at Madras Medical College, Chennai, as per the seniority and rules.

For Appellants : Mr.V.Muruganantham, A.G.P.
(In W.A.(MD).No.90 of 2017)

For Respondents : Mr.Veera Kathiravan
(In W.A.(MD).No.90 of 2017) Senior Counsel for Mr.C.Jeganathan
for R1
Mr.S.Doraisamy for R2

For Appellant : Mr.S.Doraisamy
(in W.A.(MD).No.544 of 2017)

For Respondents : Mr.Veera Kathiravan
(in W.A.(MD).No.544 of 2017) Senior Counsel for Mr.C.Jeganathan
for R1
Mr.V.Muruganantham, A.G.P. for R2 & R3

C O M M O N J U D G M E N T

T.S.SIVAGNANAM, J.,

Heard the learned counsel appearing for the parties and carefully perused the materials placed on record.

2. These appeals are directed against the order, dated 24.08.2016, made in W.P.(MD) No.4531 of 2016, filed by the State in W.A.(MD) No.90 of 2017 and the third respondent in the writ petition in writ appeal in W.A.(MD) No.544 of 2017.

3. The first respondent / writ petitioner filed the said writ petition challenging the Government Order in G.O.(D) No.341, dated 26.02.2016 and the consequential order passed by the Director of Technical Education, dated 01.03.2016, in so far as the writ petitioner is concerned and to direct the State and the Director



of Medical Education to post her in the College of Nursing at Madras Medical College, Chennai, as per seniority and rules.

4. The case of the first respondent / writ petitioner is that on promotion from the post of Nursing Tutor Grade II to the post of Lecturer in Medical-Surgical Nursing, the first respondent/ writ petitioner ought to have been posted at the Madras Medical College, Chennai, but she was posted as Lecturer in Nursing in the Speciality of the Surgical in the Government Medical College, Theni and this having being done with a view to accommodate the appellant / third respondent, namely, N.Muruganandam, as Lecturer in Medical Surgical Nursing at the Madras Medical College.

5. It is further contended that as per the norms prescribed by the Indian Nursing Council, the first respondent / writ petitioner ought to have been posted in the vacancy as Lecturer in the Medical Surgical Nursing, the subject in which she had completed her Post Graduation and in spite of a post being vacant in the Madras Medical College, the first respondent / writ petitioner was not accommodated in the said post and the appellant / third respondent was given posting orders.

6. Further it is submitted that the transfers and postings ought to have been conducted by following counselling procedure and without adopting such procedure, the candidates were accommodated in various places resulting in irregularity and illegality. To demonstrate as to how the first respondent / writ petitioner rights have been affected, the total number of the vacancies, which were existing and the manner in which the candidates were accommodated, were referred to by the first respondent / writ petitioner. The Government has passed G.O.(2D). No.131, dated 20.11.2007, by which the Government introduced the counselling system and issued guidelines for transfer and promotion of Medical / Para Medical personnel working in Health and Family Welfare Department and particular reference was made to Clauses 4.1, 10.1, 10.2, 10.3 and 10.4 of the guidelines.

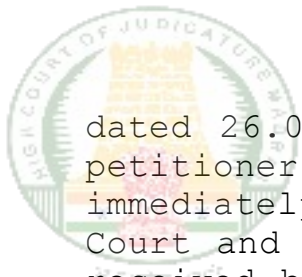
7. It is submitted that not only counselling was not conducted before effecting the posting orders, but there has been a clear breach of seniority and the appellant / third respondent, who was in seniority No.274 has been accommodated in the Madras Medical College in Chennai, where as the third respondent / writ petitioner whose seniority No.245 has been posted in the Government Medical College, Theni, ignoring the fact that her qualification is in Medical Surgical Nursing. To demonstrate that the counselling procedure, which was hitherto followed has been given a goby during the present session. Reference was made to the proceedings of the Director of Medical Education dated 27.03.2009, and submitted that the transfers and postings effected without following counselling is illegal.



8. The appellant / State has justified their action by contending that the Director of Medical Education sent the proposal to the Government for giving promotion to the post of Lecturer in Nursing for the panel year 2015-2016, vide proceedings dated 06.12.2015, and the crucial date for preparation of panel for the post of Lecturer in Nursing was 15.03.2015. At the time when the proposal for drawing panel was sent, there were only 20 vacancies in the post of Lecturer in Nursing. But, the Government took into consideration that vacancy which would arise due to promotion of 12 Lecturers in Nursing and Readers in Nursing and arrived at the actual vacancies as 32 and issued G.O.(D).No.341, dated 26.02.2016, by appointing three eligible candidates from the post of Nursing Tutor I Grade by transfer as Lecturer in Nursing and by promoting 29 eligible candidates in the post of Nursing Tutor II Grade as Lecturer in Nursing temporarily under Rule 39(a) (i) of the General Rules for the Tamil Nadu State and Sub-ordinate Services. It is submitted that such temporary promotion grants no vested right for the candidates to claim any right in the post of Lecturer in Nursing till their names are included in the regular panel. Further it is submitted that the Government took all efforts to post the newly promoted Lecturers in the place or near the place where they were working either as Grade I Nursing Tutor or Grade II Nursing Tutor. The first respondent / writ petitioner was working in the Madurai Medical College from 2006 onwards and therefore she has been accommodated in the Government Medical College, Theni.

9. Further it is submitted that the order of stay granted by this Court was received by the Government only on 09.03.2016 and even before that, all the promoted candidates joined their promoted post and therefore, the order of interim stay could not be given effect to. It is further submitted that the post of Lecturer in Nursing has not been classified speciality wise except for the College of Nursing, Madras Medical College, Chennai and it is unclassified in other four colleges at Madurai, Salem, Chengelpet and Theni. In the absence of classification of Speciality the promotion to the post of Lecturer in Nursing cannot be followed speciality wise and therefore the Government had given promotion and accommodated the candidate in nearby station.

10. The appellant / third respondent was posted at Madras Medical College, considering his earlier posting at Stanley Medical College, Chennai. Thus, the intention of the Government was to post the individual to the nearest place, where they have already worked. Further it is submitted that there is no mandatory provision for conducting counselling to the post of Lecturer in Nursing and therefore in anticipation of the General Services (Recruitment) Rules, 1954, the Tamil Nadu Legislative Assembly during the year 2016, the Government issued posting orders to 32 Lectures by order

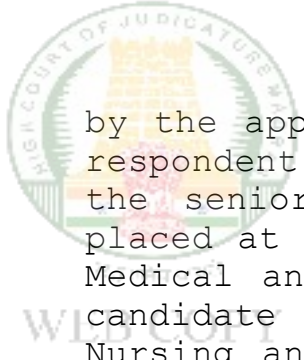


dated 26.02.2016. Further, the representation given by the writ petitioner was received by the Government only on 08.03.2016, and immediately the third respondent / writ petitioner approached this Court and obtained interim order and before the interim order was received by the Government the promoted candidates had joined the promoted posts.

11. Further it is submitted that the panel could not be prepared by Speciality wise for the post of Lecturer in Nursing due to the fact in four colleges, there is no classification of Speciality and further there are six seniors to the first respondent / writ petitioner available with Speciality in Medical and Surgical Nursing and they were also posted in the nearby locations and therefore, the first respondent / writ petitioner cannot claim that she should have been posted in Madras Medical College over-looking six of her seniors. The appellant / respondent, who has been accommodated in the Madras Medical College, would submit that the counselling for promotion will be held if there are more number of candidates than the number of vacancies and promotions will be made as per seniority and if the promotion is relinquished by any candidate, it will be offered to the next candidate. However, in the instant case all the 29 eligible persons were considered for promotion for the post of Lecturer in Nursing and necessity to resort to promotion counselling does not arise.

12. Further it is submitted that there is a marked difference between the counselling for transfer and counselling for promotion and as per the Government Order, transfer counselling will be held earlier than the promotion counselling. During the promotion counselling the candidate cannot make any claim to be posted at a particular station.

13. The Single Bench, by referring to the guidelines framed by the Government for conducting counselling for transfer and promotion in G.O.(2D) No.131, dated 20.11.2007, held that the posts 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. Further, it was held that vacancies shall be filled up only by way of seniority. With regard to the availability of vacancies, the Court observed that there were four vacancies of Lecturer in Medical and Surgical Nursing speciality at the time of effecting promotion in the College of Nursing, Madras Medical College, Chennai, and two vacancies of Lecturer in Medical and Surgical Nursing speciality at the College of Nursing, Madurai Medical College, Madurai and three of the vacancies have been filled up by promoting two individuals, who are admittedly seniors to the first respondent / writ petitioner and the third vacancy of Lecturer in Medical and Surgical Nursing, was filled up



by the appellant / third respondent, who was junior to the first respondent / writ petitioner, as she is placed at Serial No.245 in the seniority list while the appellant / third respondent was placed at Serial No.274. The fourth vacancy, namely, Lecturer in Medical and Surgical Nursing was filled up with other Speciality candidate one Mr.Senthil Kumar, whose speciality is Pediatric Nursing and who is also a junior to the first respondent / writ petitioner and therefore, it is clear that in spite of the vacancies available in the College of Nursing in Madras Medical College, the official respondents have chosen to fill up the vacancies with two seniors and one junior and erroneously kept one post vacant deliberately leaving the first respondent / writ petitioner from posting her at Madras Medical College. Thus, it was held that the Guidelines for Transfer and Promotion have been completely ignored and the seniority of the first respondent / writ petitioner also has been ignored. The Court also took note of the family circumstances of the first respondent / writ petitioner and for all the reasons assigned in the order, the writ petition was allowed and the first respondent / writ petitioner was directed to be given a posting in the College of Nursing at Madras Medical College as per her seniority. Challenging the said order, dated 24.08.2016, these appeals have been preferred.

14. The issue involved in these appeals lies in a very narrow compass. Firstly, whether the promotions and postings effected by the official appellants / respondents are liable to be set aside on the sole ground that counselling was not conducted before effecting promotions. If the answer to this question is in the affirmative, then the appeals have to necessarily fail. But, if the answer to the question is in the negative, then it has to be seen as to whether still the first respondent / writ petitioner was entitled to be posted at Madras Medical College and whether she has a vested right to claim place of posting solely based on her seniority.

15. The Government vide G.O.(2D) No.131, dated 20.11.2007, introduced a counselling system and issued guidelines for conducting counselling for transfer and promotion of Medical / Para Medical personnel working in Health and Family Welfare Department. As per the guidelines, the transfer counselling should be completed on the same day before starting promotion counselling. Promotion to the posts shall be made by counselling in the order of seniority. If the senior is not willing to take up the post, he should relinquish his right for promotion in writing either temporarily or permanently at the time of counselling and the next eligible candidate may be promoted. If a candidate eligible for promotion does not relinquish his right, but chooses to absent himself on the date of counselling, or if he ~~absents himself on the date of counselling~~ but fails to relinquish, it shall be deemed that he is willing to be considered for promotion and shall

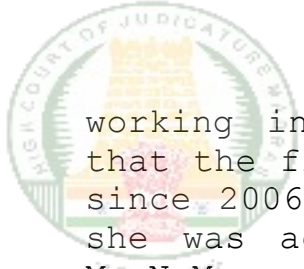


be promoted and posted in one of the vacancies at the discretion of the Director / Government. If he does not join the new post, it will be viewed as an act of indiscipline disobedience and dereliction of duty entailing disciplinary action.

16. During 2013, the procedure contemplated in G.O.(2D) No.131, dated 20.11.2007 was followed and transfer counselling was conducted and thereafter, promotion counselling was conducted on 28.05.2013 and promotions were effected pursuant to such counselling. In 2016, counselling was conducted for the post of Nursing Tutor I Grade, which is a feeder category for promotion to the post of Lecturer in Nursing and as per the outcome of the counselling, posting orders were issued vide proceedings dated 03.03.2013.

17. By referring to the past practices, the first respondent / writ petitioner would contend that the official respondents are not justified in promoting and posting the first respondent / writ petitioner at Theni when admittedly, her junior had been accommodated at the Madras Medical College, where the speciality in which the first respondent / writ petitioner has been qualified, was vacant and available.

18. As mentioned earlier, it has to be seen as to whether the promotion order given to the first respondent / writ petitioner stands vitiated for the reasons set out by her. The first respondent / writ petitioner before being promoted as Lecturer in Nursing was working as Nursing Tutor II Grade at the Madurai Medical College from 2006 onwards and she has been posted to the College of Nursing, Government Theni Medical College, Theni, stating that the said station is nearer to Madurai, where she has been worked since 2006. Initially, there were only 20 vacancies available in the post of Lecturer in Nursing. But, the Government took into consideration the vacancies, which will arise due to promotion, namely, 12 posts of Lecturer in Nursing as Reader in Nursing and arrived at the vacancies as 32 and issued Government Orders in G.O.(D) No.341, dated 26.02.2016, by appointing three eligible candidates from the post of Nursing Tutor I Grade by transfer as Lecturer in Nursing and by promoting 29 eligible candidates in the post of Nursing Tutor II Grade as Lecturer in Nursing temporarily under Rule 39(a)(i) of General Rules for Tamil Nadu State and Subordinate Services. It is relevant to note that the post of Lecturer in Nursing has been classified speciality wise for the College of Nursing, Madras Medical College, Chennai and it is unclassified in other four Medical Colleges, namely, at Madurai, Salem, Chengelpet and Theni. Therefore, the explanation given by the official respondents is that they could not follow the speciality wise criteria for promotion and the Government has ~~not~~ considered the candidates for promotion by adopting a methodology by posting them to a nearby station, where they were already



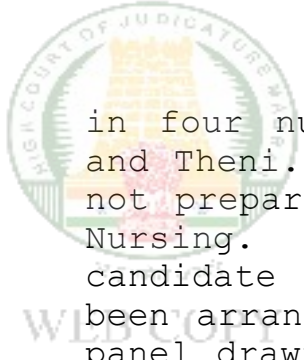
working in the feeder category. Therefore, the explanation is that the first respondent / writ petitioner was working in Madurai since 2006 and considering that Theni would be a nearby station, she was accommodated in the said post and the other candidate Mr.N.Muruganantham was working in the Stanley Medical College and he was posted at the Madras Medical College considering the fact that he is at Chennai. Thus, the official respondents would state that the intention of the Government was to post the individual to the nearest place, where they have already worked. Thus, we are of the view that the methodology adopted by the official respondents cannot be termed as an arbitrary or a capricious exercise, but appears to be on a sound principle so that on promotion, the candidate does not get dislocated to a greater extent.

19. One more aspect, which has to be noted is that there were equal number of posts available in the promoted cadre as there were the number of eligible candidates. Thus, all the 29 / 32 candidates were considered and accommodated. It is not a case where there were more number of candidates and less number of posts available. Therefore, the exercise adopted by the official respondents cannot be faulted as there has been a level playing field for all the candidates and all eligible candidates have been granted promotion.

20. The other explanation given by the official respondents is that in four of the Medical Colleges, namely, Madurai, Salem, Chengelpet and Theni, there is no classification speciality wise and therefore, the first respondent / writ petitioner was accommodated in Theni, considering the fact that it is nearer to her existing station, where she has been working since 2006, namely, at Madurai.

21. On a careful reading of the guidelines framed by the Government in G.O.(2D) No.131, dated 20.11.2007, it is evidently clear that counselling is required to be conducted for promotion and it does not confer on any candidate a vested right to demand a particular place of posting. As long as the official respondents have adopted an uniform and transparent procedure, the Court cannot step into the administrative realm and interfere with the posting orders.

22. The case of the first respondent / writ petitioner is largely pitched on the submission that she is entitled to be posted based on her speciality i.e., the writ petitioner having qualified in Medical and Surgical Nursing ought to have been posted in an institution, where such speciality is available. At the first blush, this submission appears to be impressive, but on a closer consideration, the position that emerges is otherwise. As noticed earlier, there is no classification based on speciality



in four nursing colleges, namely, at Madurai, Salem, Chengelpet and Theni. Owing to this position, the official respondents have not prepared a speciality wise panel for the post of Lecturer in Nursing. Thus, regardless of the speciality in which the candidate has secured the postgraduate qualification, they have been arranged in the panel as per the order of seniority and the panel drawn is not based on the speciality. Therefore, the first respondent / writ petitioner is not justified in contending that she being senior to Thiru.Muruganantham ought to have been posted at Madras Medical College, where the speciality in medical and surgical nursing is available. The contention of the first respondent / writ petitioner cannot be accepted for the simple reason that the panel has not been drawn speciality wise. Therefore, the persons having qualification in a particular speciality cannot claim as a matter of right that they should be accommodated in a particular institution, where speciality is available.

23. Assuming for the sake of argument, if the stand taken by the first respondent / writ petitioner is tenable, still she does not have a chance as the official respondents have stated that there are six candidates, who are seniors to the first respondent / writ petitioner available with speciality in medical and surgical nursing. In the light of this factual position, if we consider the modality adopted by the official respondents in accommodating the candidates based on the location, considering the place where they were working in the feeder category, it appears to be a reasonable and fair procedure. Admittedly, the first respondent / writ petitioner has not raised any specific plea of *mala fides* against the official respondents or the junior candidates. In such circumstances, we do not propose to interfere with the procedure followed by the official respondents in the matter of posting of the promoted candidates and the important factor being that all eligible candidates have been promoted. The explanation given for not being able to conduct counselling, namely, due to the forthcoming general election to the Tamil Nadu Legislative Assembly, appears to be reasonable and there is nothing on record to establish that counselling was not conducted for any other *mala fide* reasons. Though the first respondent / writ petitioner had obtained an order of interim stay before the order could be communicated, all candidates have joined their respective promoted posts except the first respondent / writ petitioner.

24. Reverting back to the guidelines framed by the Government for transfer and promotion, we find that Clause 10.3 of the guidelines stipulates that promotion to the posts shall be made counselling in the order of seniority. Essentially, the said guideline is only for the purpose of promotion and the guideline <https://hcservices.ecourts.gov.in/hcservices/> regard to the place of posting. Therefore, we reiterate what we have observed earlier that the candidate, who is



eligible to be promoted cannot have vested right to be posted in a particular station. In the instant case, it is all the more so because the official respondents have not prepared a speciality wise panel. Clause 10.4 of the guidelines would come into play only when a person eligible for promotion does not relinquish his right, but chooses to absent himself on the date of counselling. Such contingency has not arisen in the case on hand as all eligible candidates have been promoted and posted to various stations.

25. For all the above reasons, we are of the clear view that the procedure adopted by the official respondents in the matter of promotion and posting of the Lecturer in Nursing is in order and does not call for interference. Consequently, the impugned order passed in the writ petition is liable to be set aside.

26. In the result, both the writ appeals are allowed the impugned order, dated 24.08.2016 made in W.P.(MD) No.4531 of 2016 is set aside and consequently, W.P.(MD) No.4531 of 2016 is dismissed. The first respondent / writ petitioner is granted one week time from the date of receipt of a copy of this Judgment to join as Lecturer in Nursing in the Government Theni Medical College, Theni. During the pendency of the writ proceedings as well as the present writ appeals, it appears that the first respondent / writ petitioner has not joined duty. Therefore, the official respondents are directed to regulate the said period in accordance with the Rules. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Crl side)

/ True Copy /

Sub Assistant Registrar(C.S.)

To:

- 1.The Secretary,
Health & Family (AA2) Department,
Government of Tamil Nadu,
Fort St.George, Chenna.i
- 2.The Director of Medical Education,
Kilpauk, Chennai-10.

+1cc to M/S.S.DORAI SAMY, Advocate SR.No.63183

+2cc to M/S.VEERA ASSOCIATES, Advocate SR.Nos.62759&63171

+1cc to Special Government Pleader, SR.No. 63141

krk / ia

MAS/SKN-RSK/SAR2:07.07.2017:10P-7C

COMMON JUDGMENT
IN

W.A. (MD) .Nos.90 & 544 of 2017
and

C.M.P. (MD) Nos.4558 & 855 of 2017
30.06.2017