

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE SUBRAMONIUM PRASAD

W.P.No.6911 of 2010

and

M.P.No.1 of 2010

B.Sasikala Devi

.. Petitioner

.Vs

1.Government of Tamil Nadu,
Rep.by its Secretary to Government,
Health and Family Welfare Department,
Chennai.

2.Director of Medical and Rural Health Services,
DMS Compound,
Chennai-6.

3.Government District Headquarters Hospital,
Rep.by its Hospital Superintendent,
Mannargudi-614 001.
Tiruvarur District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records from the 2nd respondent relating to the impugned order dt.22.03.2010 signed on 30.03.2010 bearing ref.No.23534/N2/1/09 and quash the same as illegal, arbitrary, without jurisdiction, violative of Principles of Natural Justice and consequently direct the respondents to continue the petitioner in the post of Nursing Superintendent Grade II with due seniority and all other monetary and other benefits.

For Petitioner : Mr.R.Thirunanam

For Respondents: Mr.J.Ramesh, AGP

O R D E R

The petitioner joined the services of the Director of Medical and Rural Health Services as a Staff Nurse. While working as a Staff Nurse, disciplinary proceedings were initiated against her under Rule 17(b) of Tamil Nadu Civil Service (Disciplinary and Appeal) Rules, on the following charges.

"1) She attempted for signature campaigning among the Staff Nurse to insist the higher officials to post some more Staff Nurse in the children's ward at Government Raja Mirasudhar Hospital, Thanjavur. It is against the Rule 22 of Tamilnadu Government Servant Conduct Rule 1973.

2) She has abused the Staff Nurse who have refused to put signature in the representation. This is against the conduct Rules.

3) She has refused to receive or obey the orders of her higher official which ultimately resulted in dereliction of duty.

4) She has acted against the Rule of 20(1) of the Tamilnadu Government Servant Conduct Rule 1973.

2. The petitioner was awarded with punishment of Censure by an order dated 23.03.2006. The petitioner's name was withheld for consideration of promotion to the post of Nursing Superintendent Grade III for the year 2006-2007, on the ground of the charges that were framed.

3. For promotion for the year 2007-2008, the petitioner's name was considered and she was promoted as a Nursing Superintendent Grade III by an order dated 07.01.2008. Within 10 months, by an order dated 11.11.2008, the petitioner was given promotion as a Nursing Superintendent Grade II. The said order is reads as under:

"In continuation of this office reference cited, the name of the following Nursing Superintendent Grade-III is included in the panel already approved in the respective place.

Sl. No.	Seniority No.	Sl.No.In the Panel	Name of the Nursing Personnel	Place of Postings
1.	5104	42.A	B.Sasikaladevi Nursing Superintendent Grade-III Thanjavur Medical College Hospital, Thanjore.	Government Hospital, Mannargudi, Tghanjavur District.

She is fully qualified for the appointment as Nursing Superintendent Grade-II and eligible for fixation of pay under R 22(B). Under the powers delegated in the G.O cited and under Rule 3a(a)(i) of the General Rules, Tmt.B.Sasikaladevi, Nursing Superintendent Grade-III, Thanjavur Medical College Hospital, Thanjavore is temporarily promoted and appointed as Nursing Superintendent Grade-II in the scale of pay of Rs.6500-200-10,500/- in Tamil Nadu Medical Service with effect from the date of joining in the post of Nursing Superintendent Grade-II. Tmt.Balu Sasikaladevi, Nursing Superintendent Grade-III, Thanjavur Medical College Hospital, Thanjavore is posted to Government Hospital, Mannargudi, on promotion as Nursing Superintendent Grade-II. She is instructed to join in the promoted post.

The receipt of this order may be acknowledged.

P.NANDAGOPALSAMY,
DIRECTOR OF MEDICAL AND RURAL
HEALTH SERVICES.

To

Tmt.B.Sasikaladevi,
Nursing Superintendent Grade-III,
Thanjavur Medical College Hospital,
Thanjavur.

--thro' the Dean, Thanjavur Medical College Hospital,
Thanjavore.

Copy to : The Dean,
Thanjavur Medical College Hospital, Thanjavore.

: The Director of Medical Education,
Chennai-10

4. The respondents found that there was a mistake committed by the Department by promoting her as Nursing Superintendent Grade II for the reason that she had not attained her due seniority in the feeder cadre in the Nursing Superintendent Grade III. The petitioner was therefore reverted to the post of Superintendent Grade III by the impugned order. The impugned order dt.22.03.2010 reads as under:

Tmt.B.Sasikala Devi (Seniority No.2913) then Staff Nurse at Government Raja Mirasudar Hospital, Thanjavur was not included in the panel issued in reference first cited, for promotion and appointment for the post of Nursing Superintendent Grade III in the panel year 2006-2007 due to the currency of punishment of "Censure" awarded to her.

In the subsequent panel year 2007-2008, the name of Tmt.B.Sasikala Devi, Staff Nurse was included and promoted and appointed as Nursing Superintendent Grade III in the reference second cited, on the ground that her name was passed over once and no need to be passed over for the next panel for the same punishment.

At the time of preparation of panel for the post of Nursing Superintendent Grade II in the panel year 2008-2009, on her representation and declaration obtained from her dated 17.09.08 to the effect that she agreed to whatsoever the decision taken by the administration in due course, she was promoted and appointed as Nursing Superintendent Grade II in the 2008-2009 Panel, vide reference third cited.

In the meantime, she has preferred an appeal to the Government against her "Censure" order and the Government in G.O.(D).No.1096, Health and Family Welfare (1-2) Department, dated 22.09.2008 have issued orders rejecting her appeal, based on the remarks furnished by the Tamil Nadu Public Service Commission that the punishment of "Censure" awarded to her was very very meagre for the proved charges framed against her.

In as much as, in the light of the instructions issued in Government letter No.28250/S/04-6, dated 19.01.2005 of P& AR Department, Chennai 9, the promotion issued in this Office Prof Fef.No.32000/N2/1/08, dated: 11.11.08 in respect of Tmt.B.Sasikala Devi is hereby cancelled as she has not attained the due seniority in the feeder category of Nursing Superintendent Grade III.

In view of the above circumstances, Tmt.B.Sasikala Devi, now Nursing Superintendent Grade II, Government Hospital, Mannargudi, Thiruvarur District is reverted as Nursing Superintendent Grade III and restored her seniority to the original place in the Nursing Superintendent Grade III Panel issued in this office reference second cited for 2007-2008 with immediate effect and she is posted as Nursing Superintendent Grade III at Government Hospital Thiruthuraipoondi, Tiruvarur District.

P.NANDAGOPALSAMY
For Director of Medical and Rural Health Services

5. Heard the counsel for the parties.

6. The learned counsel for the petitioner would submit that there was no concealment of facts and misrepresentation of fact when the order dated 11.11.2008, was passed promoting the petitioner from Nursing Superintendent Grade-III to Nursing Superintendent Grade-II. According to the learned counsel for the petitioner the petitioner cannot be found fault with as the petitioner did not get this order of promotion by playing any fraud. It is contended that once the petitioner has been promoted to Nursing Superintendent Grade II the petitioner could not be reversed to Nursing Superintendent Grade III as the rules do not postulate such reversion. The learned counsel for the petitioner would therefore state that reversion cannot be dehors the rules, and therefore the order reversing the petitioner from Nursing Superintendent Grade II to Nursing Superintendent Grade III is bad in law.

7. On the other hand, the learned counsel for the respondent would contend that the petitioner was not entitled to be promoted from Nursing Superintendent Grade III to Nursing Superintendent Grade II as she has not obtained the seniority in Nursing Superintendent Grade III. The order promoting her to Nursing Superintendent to Grade II, is an inadvertent mistake and on realising the mistake the petitioner was reverted back. It is not as if, the petitioner's right to get promoted has been taken away. The learned counsel for the respondent therefore says that the inadvertent mistake cannot enure to the benefit of the petitioner.

8. The petitioner has not shown as to whether the junior of the petitioner had been promoted to Nursing Superintendent Grade II before the petitioner. Promotion to a post has to be done in accordance with law and the rules. The rules for promotion to Nursing Superintendent Grade II postulates that the promotion is on the basis of seniority from the feeder category of Nursing Superintendent Grade III. Since the petitioner had not attained of the seniority in Nursing Superintendent Grade III she could not be promoted as Nursing Superintendent Grade II. The impugned order cannot be found fault with. However, the petitioner was not responsible for getting promotion from Nursing Superintendent Grade III to Nursing Superintendent Grade II, and the reversion of the petitioner therefore cannot result in any recovery of salary which has been paid to her as Nursing Superintendent Grade II. After having served for the period of two years i.e., from 11.11.2008 to 22.03.2010 as Nursing Superintendent Grade II there cannot be any recovery of salary. The respondent is therefore directed not to recover the salary from the petitioner for the period in which she had rendered service as Nursing Superintendent of Grade II. For other pensionary

benefits she has to be considered only as Nursing Superintendent Grade III and pension has to be fixed accordingly.

9.It is submitted that due to the pendency of this writ petition, the petitioner has not got any pensionary benefits. The respondent shall calculate the pensionary benefits as if she remained as Nursing Superintendent Grade III and disburse the same to the petitioner forthwith within a period of four weeks from the date of receipt of copy of the order.

10. With the above observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP
To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Health and Family Welfare Department,
Chennai.
- 2.Director of Medical and Rural Health Services,
DMS Compound,
Chennai-6.
- 3.The Hospital Superintendent,
Government District Headquarters Hospital,
Mannargudi-614 001.
Tiruvarur District.

+1cc to Mr.R.Thirunanam, Advocate SR.77862
+1cc to the Government Pleader SR.77742

SS(CO)
CB(22/10/2019)

W.P.No.6911 of 2010

WEB COPY