



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Thursday, the Twentieth day of June Two Thousand Nineteen

PRESENT

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The Hon`ble Mr.Justice D.KRISHNAKUMAR

WMP(MD) No.2634 of 2019

IN

WP(MD) No.1099 of 2019

1 THE PRINCIPAL SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT,
FORT.ST.GEORGE, SECRETARIAT,
CHENNAI-600 009.

2 THE DIRECTOR,
DIRECTORATE OF MEDICAL AND
RURAL HEALTH SERVICES,
DMS CAMPUS, TEYNAMPET,
CHENNAI-600 006.

... PETITIONERS/
RESPONDENTS 1 & 2/ RESPONDENTS 1 & 2

Vs

S.ROOBAVATHI

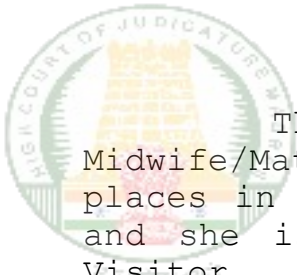
... RESPONDENT/ PETITIONER/ PETITIONER

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to vacate the interim injunction in WMP(MD) NO.920 of 2019 in WP(MD) No.1099 of 2019 dated 31/01/2019.

Prayer in WP(MD). 1099/ 2019 :

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 pertaining to the impugned proceedings issued by the 2nd respondent in Ref.No.9784 / N2/ 3/2017 dated 23.11.2018 calling for proposal for preparation of panel and also proceedings in Ref.No. 9784 /N2/ 3/2017 dated 09.01.2019 enclosing the panel list in so far as Annexure I and quash the same and consequently directing the respondents to consider the case of the petitioner for promotion to the post of Health Visitor exempting the petitioner from undergoing the Health Visitor training of Six months period.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.K.CHELLAPANDIAN, Additional Advocate General Assisted by MR.A.MUTHUKARUPPAN, Additional Government Pleader for the petitioners and of MR.B.JAMEEL ARASU, Advocate on behalf of the Respondent, the court made the following order:-



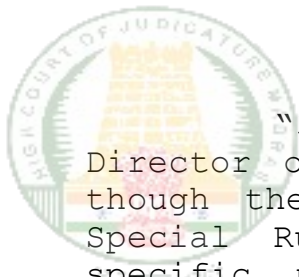
The writ petitioner was appointed as Auxillary Nurse Midwife/Maternity Assistant on 10.02.1988. She is working at various places in the same post for the last 31 years without any remarks and she is eagerly waiting for promotion to the post of Health Visitor.

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2. According to the writ petitioner, as per the Tamil Nadu Medical Subordinate Service Rules, there are two modes of appointment to the post of Health Visitor: one is, by promotion from the category of Auxillary Nurse Midwife/Maternity Assistant and the another one is, by direct recruitment. The first category is concerned, if no suitable candidates with Health Visitor's training are available, then, Auxillary Nurse Midwife / Maternity Assistant, who have put on more than 20 years of service shall be considered by virtue of seniority. While so, the Government issued Government Order in G.O.(Ms)No.185, Public Health and Family Welfare Department dated 24.08.2005 and thereby relaxed the condition with respect to Health Visitor's traning and filled up the post of Health Visitors on seniority basis. Likewise, another G.O.(Ms)No.404, Public Health and Family Welfare Department dated 03.12.2008 providing the same relaxation.

3. Subsequent to the said Government Orders, the Government issued G.O.(Ms)No.510, Health and Family Welfare (AA1) Department, dated 31.10.2018, thereby amended the mode of appointment and qualifications, prescribed for the post of Health Visitor. The grievance of the writ petitioner is that she is serving as Auxillary Nurse Midwife/Maternity Assistant for more than 31 years without any promotion and the Government Order dated 30.10.2018, changing the method of appointment to the post of Health Visitors, will certainly affect the writ petitioner's promotion. Further, subsequent to the said Government Order, the second respondent had issued two proceedings, one is dated 23.11.2018, in respect of preparation of panel for the post of Health Visitor and the another one is dated 09.01.2019, directing the Auxiliary Nurse Midwife/Maternity Assistant as mentioned in Annexures I & II, to attend the counselling, proposed to be conducted on 12.01.2019 at 11.00 am, in the office of the Director of Medical and Rural Health Services, Chennai, to decide their place of posting as Health Visitors with reference to the options for the available vacancies. Challenging the said two proceedings, the writ petitioner is before this Court.

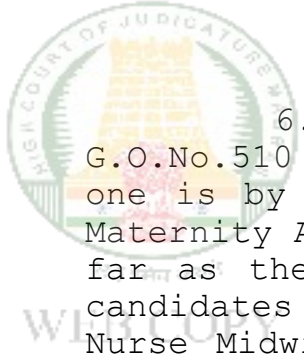
4. The learned Additional Advocate General appearing for the petitioners/respondents submitted that the Government issued G.O. (Ms)No.510, Health and Family Welfare (AA1) Department, dated 31.10.2018, changing the mode of appointment and qualifications prescribed for the post of Health Visitor, since no specific method of appointment and educational qualifications have been prescribed as per the Special Rules. It is appropriate to extract the relevant portion of the said G.O. which reads as under:



"3.The Government have examined the proposal of the Director of Medical and Rural Services in detail and found that though the post of Health Visitor has been found place in the Special Rules for Tamil Nadu Medical Subordinate Service, no specific method of appointment and feeder category has been prescribed. Further, the rules have been framed long back and therefore, the Government have decided to prescribe the following method of appointment and qualifications for the post of Health Visitor. The Government accordingly do and hereby direct that the method of appointment qualifications prescribed for the post of Health Visitor be modified as follows:

Method of appointment	1) By promotion from the category of Auxillary Nurse Midwife and Maternity Assistant. Provided that if no suitable candidates with Health Visitor's training are available, Auxillary Nurse Midwife / Maternity Assistant who have put on more than 20 years of service shall be considered by virtue of seniority. or 2) By direct recruitment Provided that the appointment to the post by promotion and direct recruitment shall be made in the ratio of 4:1.
Special Qualifications	A complete Midwifery Training preferably with General Nursing Training together with Health Visitors course at Government Training School for Health Visitors, Chennai or at Gandhigram Institute of Rural Health and Family Welfare, Ambathurai, Dindigul District or in any other institutions recognised by Government of India / Government of Tamil Nadu.

5.The grievance of the writ petitioner is that previously, there was a condition for undergoing training for the post of Health Visitor and subsequently it was relaxed by way of the two Government Orders dated 24.08.2005 and 03.12.2008 and thereafter, all of a sudden, G.O.No.510 dated 31.10.2018 has been issued, prescribing the qualifications for the post of Health Visitor, which will deprive the right of the writ petitioner from getting promotion to the post



6. Now, the learned Additional Advocate General submits that G.O.No.510 dated 31.10.2018, prescribes two methods of appointment, one is by promotion from the category of Auxillary Nurse Midwife/ Maternity Assistant and the another one is by direct recruitment. So far as the appointment by promotion is concerned, if no suitable candidates with Health Visitor's training are available, Auxillary Nurse Midwife / Maternity Assistant, who have put on more than 20 years of service shall be considered by virtue of seniority. Further, the ratio of appointment between promotion and direct recruitment is 4:1.

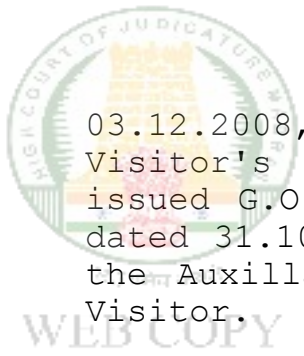
7. According to the learned Additional Advocate General, the candidates who have completed the Health Visitor's training shall be considered for appointment to the post of Health Visitor and if no suitable candidates are available, then Auxillary Nurse Midwives / Maternity Assistants, who have completed 20 years of service shall be considered for appointment to the post of Health Visitor. If sufficient candidates are available having the prescribed qualification of Health Visitor's training, then the candidates, like that of the writ petitioner cannot be considered for appointment. Normally, willingness of the candidates is invited by Statewide to undergo the Health Visitor's training programme and the willing candidates are being sent for training. But, the writ petitioner, during the tenure of 30 years of his service, has not opted to undergo the training programme.

8. Further, the learned Additional Advocate General submitted that though a communication dated 30.06.2016 was sent enabling the eligible candidates to undergo six months training programme and the same was also despatched, the writ petitioner was not opted to undergo the training programme. Further, there are 129 vacancies for the post of Health Visitor. The writ petitioner, after inviting willingness of the eligible candidates for the said post vide the proceedings dated 23.11.2018 and 09.01.2019 has come before this Court and obtained an order of injuntion. Further, the present writ petition is filed with devoid of merits.

9. At this juncture, it is apropos to look into Category - 4 of the Tamil Nadu Medical Subordinate Service Branch III - Nursing, which deals with Health Visitor. The same reads as follows:

"A complete Midwifery training preferably with General Nursing training together with the Health Visitor's Course, either at Delhi or at the Government Training School for Health Visitors, Madras."

10. According to the learned counsel for the writ petitioner, the training course conducted earlier at Delhi and Chennai was not conducted subsequently and therefore, the writ petitioner was not able to attend the training programme. However, subsequently, the Government had issued G.O.(Ms)No.185, Public Health and Family Welfare Department dated 24.08.2005 and G.O.(Ms) No.404, Public Health and Family Welfare Department dated



03.12.2008, granting relaxation in respect of undergoing Health Visitor's training course. All of a sudden, now, the Government issued G.O.(Ms)No.510, Health and Family Welfare (AA1) Department, dated 31.10.2018, imparting six months Health Visitor's training to the Auxillary Nurse Midwife, for promotion to the post of Health Visitor.

11.A perusal of the said G.O.No.510 dated 31.10.2018 and Category - 4 of the Tamil Nadu Medical Subordinate Service Branch III - Nursing, clearly prescribes the qualification of undergoing Health Visitor's training course for the post of Health Visitor.

12.The learned counsel appearing for the writ petitioner repeatedly contended that the Government issued two Government Orders in G.O.(Ms).No.185, Public Health and Family Welfare Department dated 24.08.2005 and G.O.(Ms)No.404, Public Health and Family Welfare Department dated 03.12.2008, granting relaxation in respect of undergoing Health Visitor's training.

13.This Court do not find any merit on the said contention of the writ petitioner for the simple reason that the Government would have passed the said Government Orders relaxing the condition with reference to Health Visitor's training, taking into account the fact that there was dearth of sufficient eligible hands to fill up the vacant posts at the relevant point of time. Further, it is seen from the records that the writ petitioner has challenged only the communications of the second respondent dated 23.11.2018 and 09.01.2019 before this Court and he has not challenged either the Government Order or changing the mode of appointment to the post of Health Visitor. Without challenging the said two aspects, the writ petitioner has filed the present writ petition, insisting for relaxation with reference to Health Visitor's training. Therefore, the said contention cannot be accepted and the same is rejected accordingly.

14.The learned Additional Advocate General invited the attention of this Court to the order passed by this Court in WMP.No.3263 of 2019 in W.P.No.2987 of 2019, dated 29.04.2019, wherein, the issue involved in this writ petition has already been dealt with. It is relevant to extract hereunder the paragraph Nos.5 to 6:

"5.The only test is to be applied is that, whether an opportunity was provided to the employees to undergo the training or not. In the present case on hand, the notifications were properly issued by the respective institution and the same was displayed in the office notice board, enabling the employees to opt to undergo the Nursing training course. For the reasons bets known, the writ petitioners have not opted or there is a possibility of not even noticed the notice board at all.

<https://hcservices.ecourts.gov.in/hcservices/>

6.However, the facts remains that the opportunity was provided to all the employees including the writ petitioners. This



apart, the institutions also admitted the willing students who opted to undergo the training as recommended by the authorities competent. 7. This being the factum, the writ petitioners cannot now say that no opportunity was given to them to undergo the Nursing training and in the event of completion of the Nursing training course, their names would be considered for promotion to the post of Health Visitor. However, continuing the interim order under these circumstances is not preferable as the writ petitioners have not established any prima facie case for the purpose of continuance of the interim order. Accordingly, the interim order granted by this Court dated 01.02.2019 in WMP.No.3263 of 2019 in W.P.No.2987 of 2019 stands vacated and connected miscellaneous petitions stand dismissed."

15. At this juncture, in order to sustain his contention, the learned counsel appearing for the writ petitioner, placed reliance upon the order passed by this Court in W.P.Nos.28666 and 30475 of 2012, dated 14.02.2013. The relevant paragraphs of the order is extracted as under:

"6. The grievance of the petitioners is that they were serving as Typists in the Revenue Department and joined duty on 07.08.2009 having recruited through the Tamil Nadu Public Service Commission and were allotted to the Villupuram Revenue District. They have completed their departmental tests and training with the Tamil Nadu Land Survey Training Centre, Orathanadu on 12.12.2011 and 20.10.2011 respectively. They have also completed their probation and are eligible to be promoted as Assistants. Their probations were declared on 7.8.2011. By the order of the third respondent dated 09.02.2012, these petitioners were promoted and they were given consequential posting order by another order dated 09.02.2012 by the District Revenue Officer. Pursuant to the said posting order they have been working as an Assistant in various offices. In the meanwhile, the third respondent, viz., the District Revenue Officer, Villupuram issued the impugned order dated 09.10.2012 reverting the petitioners from the post of Assistants to that of the Typists citing G.O.Ms.No.16, Personnel & Administrative Reforms Department dated 21.02.2012 wherein it is stated that the Typists who have not undergone the training as Junior Assistant for a period of one year, shall not be given promotion to the post of Assistant.

7. The contention raised by the petitioners was that earlier the State Government has issued G.O.Ms.No.417, Personnel & Administrative Reforms (Per.B) Department dated 01.02.1993 stipulating that the vacancies need not be remained unfilled, until the typists underwent the training as Junior Assistant. The posts of typists or junior assistants are from the same source, by recruitment through the Tamil Nadu Public Service Commission and there cannot be any discrimination between the Typists and Junior Assistants in a matter of promotion.



8.

9.

10. In the light of the said rule proposition, the petitioners who have not underwent the training for a period of one year as a Junior Assistant, are not eligible for promotion. It is only, if the Typists complete their training for a period of one year, their names can be included in the panel for promotion and the probable date by which the petitioners can deemed to have underwent such training can only be in February 2013 and therefore, the promotion given to them was rightly cancelled by the Department."

16. From a perusal of the said order, it is manifest that the facts mentioned in the said case will not apply to the facts of the present case, by taking note of the facts cited supra.

17. As pointed out earlier, the writ petitioner without challenging the Government Order dated 31.10.2018 or the methods of appointment, has filed this writ petition challenging the proceedings dated 23.11.2018 and 09.01.2019, one relates to preparation of panel for the post of Health Visitor and the latter relates to calling for the candidates concerned to attend the counselling scheduled to be held on 12.01.2019.

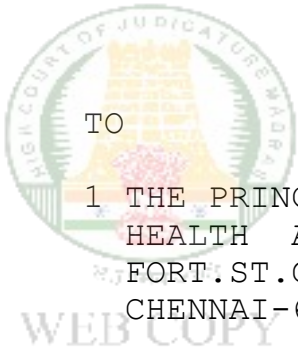
18. In so far as providing opportunity to the writ petitioner to undergo the training is concerned, the learned Additional Advocate General clearly stated that as early as on 30.06.2016, a communication dated 30.06.2016 has been sent by the competent authority, enabling the candidates to opt to undergo the training programme. Without availing the said opportunity, now, the writ petitioner cannot say, no opportunity was given to her.

19. For all the reasons mentioned above, it is not desirable for this Court to continue the interim injunction already granted by this Court. Accordingly, the interim injunction granted by this Court in WMP(MD)No.920 of 2019 in WP(MD)No.1099 of 2019 is vacated and this petition is allowed. Consequently, the injunction application in WMP(MD)No.920 of 2019 is dismissed. However, it is open to the writ petitioner to approach the authority concerned, seeking appropriate relief.

sd/-
20/06/2019

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

1 THE PRINCIPAL SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT,
FORT.ST.GEORGE, SECRETARIAT,
CHENNAI-600 009.

2 THE DIRECTOR,
DIRECTORATE OF MEDICAL AND
RURAL HEALTH SERVICES,
DMS CAMPUS, TEYNAMPET,
CHENNAI-600 006.

+1. C.C. to M/S.B.JAMEEL ARASU Advocate SR.No. 70316
+1 cc to Special Government Pleader, SR.No. 10199

ORDER
IN
WMP(MD) No.2634 of 2019
IN
WP(MD) No.1099 of 2019
Date :20/06/2019

JM/VR/SAR 4/25.06.2019/8P/5C