



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 08.03.2019

CORAM:
THE HONOURABLE MR.JUSTICE **R.MAHADEVAN**

WP (MD) No.697 of 2019
and
WMP (MD) Nos.584, 585 and 3176 of 2019

Tamil Nadu Health Employees Welfare Associations
Represented by its Secretary,
R.Karthick ... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Health and Family Welfare Department,
Secretariat, Fort St George,
Chennai - 600 009.

2.The Director of Medical Education,
Directorate of Medical Education
State of Tamil Nadu,
162, EVR Periyar Salai,
Keelpauk, Chennai.

3.The Director of Medical and Rural Health Services,
Directorate of Rural and Health Services,
State of Tamil Nadu,
258, Second Floor,
DMS Complex,
Anna Salai, Teynampet,
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of proceedings in Ref. No.1093/N2/2/2019 dated 07.01.2019 on the file of the respondent No.3 and quash the same as illegal, consequently directing the respondents to conduct the counselling for transfers of Nurses strictly in accordance with the provision of G.O(2D) No.131 dated 20.11.2007 issued by the first respondent.

For Petitioner	: Mr.S.Malaikani
For Respondents	: Mr.S.R.Rajagopal
	Additional Advocate General
	Assisted by Mrs.J.Padmavathy Devi
	Special Government Pleader

**ORDER**

This writ petition has been filed seeking to quash the proceedings in Ref. No.1093/N2/2/2019 dated 07.01.2019 issued by the 3rd respondent and consequently, to direct the respondents to conduct the counselling for transfers of Nurses based on G.O(2D) No.131 dated 20.11.2007 issued by the 1st respondent.

2.The petitioner questioning the impugned proceedings, issued in respect of the counselling for transfer of Nurses, on the ground that it is bereft of details such as numbers and place of vacancies and further, no sufficient time is given, in order to get a service certificate, which is mandated in the impugned proceedings for participation in the said counselling, is before this Court, and prayed to quash the same and to direct the respondents to conduct the counselling, by strictly following G.O(2D) No.131 dated 20.11.2007 issued by the 1st respondent.

3.The learned Additional Advocate General appearing for the respondents, at the outset, questioned the maintainability of the writ petition, which has been filed by the Association and further submitted that without basic materials and necessary documents, the writ petition has been filed. He also submitted that the transfer and posting of Nurses would be done only by following the conditions stipulated in the GO passed in this regard.

4.The learned Additional Advocate General also filed a typed set of papers, which contains GO(2D) No.131, dated 20.11.2007, the relevant portion whereof is extracted hereunder;

"5.Who is not eligible to participate in Counselling:

5.1 In the case of teaching institutions, the staff from the specialities where the vacancies in the post are 10% or more:

5.2.In the case of medical institutions under the control of Director of Medical and Rural Health Services, the staff from the Districts where the total vacancies for that post are 20% or more or the staff from an institution where the total vacancies in that category are 20% or more even if the total vacancies in that category in the District are less than 20%.

5.3.In the case of Primary Health Centres, (a) staff from a District where the total vacancies in that category are 10% or more: (b) staff from a Primary Health Centre where there is already vacancy: (c) a lady Medical Officer from a Primary Health Centre where the posts of all other Medical Officers



5.4. Medical Officers/ Staff who were transferred earlier but had gone on leave without joining there.

5.5. Medical Officers/Others para Medical Staff/ Staff Medical /Staff Nurses/and other Staff who have been transferred on disciplinary grounds and those who are getting transfer as opted earlier and subsequently cancelled the posting on transfer for their own reason. They are not eligible to attend for 3 years (or) till the disciplinary case is over, whichever is earlier.

5.6. Medical Officers whether appointed through Tamil Nadu Public Service Commission or through Employment Exchange who have not completed one year of service.

5.7. Medical Officers, Para Medical Staff and Nurse who have not completed one year after their last counselling, excluding the period spent on leave. The Staff Nurses, who were appointed on contract basis, shall be allowed to participate in the next counselling as they were posted in far of placed at the time of initial appointment

5.8. Medical Officers with Post Graduate/Diploma Qualification /Super specialities shall not be considered for posting in ESI Dispensaries.

5.9. Medical Officers and Para Medical Staff who are newly recruited as all as the Medical Officers who report for duty on completion of Post Graduate Degree Course should be posted only in the Districts where there are more vacancies, viz., more than 15% in the case of Directorate of Medical and Rural Health Services and more than 10% in the case of Primary Health Centres.

5.10. As pointed in para 5.7 above, any person who is posted to a particular place after counselling will have to work there for a minimum period of one year excluding any leave period and he or she is not eligible to attend any counselling till that period is over. However, due to administrative exigencies, the Government may transfer any persons, even prior to completion of two years, if need arises.

5.11. In the interest of maintaining the quality of the Medical Education and the Medical services, the Government reserve the right to interchange (or) transfer person occupying in the top posts in the premier Institutions.



5.12. It is the responsibility of the Deans of Heads of Institutions or Departments to ensure that Medical Officers/Para-Medical staff Nurses ineligible to take part in Counselling as narrated in paragraphs 5.1 to 5.7 are not issued the clearance to attend the counselling.

5.13. In the case of Primary Health Centres, where there are only 2 sanctioned posts of Medical Officers, at least one Medical Officer should be available and in the case of Primary Health Centres, Non -Taluk/Taluk Hospitals and ESI Dispensaries, where there are 3 sanctioned posts of Medical Officers, minimum 2 Medical Officers should be available. Wherever, there are no lady Doctors available in Primary Health Centre, vacancies in such Primary Health Centres shall be reserved for women".

5. In the light of the above, the learned Additional Advocate General prayed for dismissal of the writ of petition. Further, he also submitted that filling up of the posts will be done in accordance with law, and such submission is agreeable to the petitioner also.

6. In view of the above submission, recording the same, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

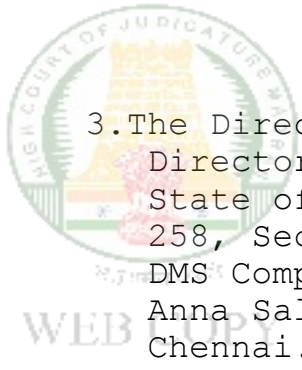
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Sub Assistant Registrar (CS-II)

To

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Chennai.

+1 CC to M/s.S.MALAIKANI, Advocate (SR-52732[F] dated 08/03/2019)

+1 CC to M/s.SPL GP (SR-53080[F] dated 11/03/2019)

WP(MD) No. 697 of 2019
08.03.2019

DSK
ES/12.03.2019/5P/6C