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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P. (MD) Nos. 8529 to 8541 of 2019

P.ESWARI,	... Petitioner in WP(MD). 8529/ 2019
M.ALAGUMANI	... Petitioner in WP(MD). 8530/ 2019
G.AMSAVALLI	... Petitioner in WP(MD). 8531/ 2019
M.AZEETHA	... Petitioner in WP(MD). 8532/ 2019
M.DHARMALAKSHMI	... Petitioner in WP(MD). 8533/ 2019
I.JACQUILIN MARY	... Petitioner in WP(MD). 8534/ 2019
P.JAYANTHI	... Petitioner in WP(MD). 8535/ 2019
R.KRISHNAPRIYA	... Petitioner in WP(MD). 8536/ 2019
S.PUSHPALATHA	... Petitioner in WP(MD). 8537/ 2019
N.SANDHANAMARI	... Petitioner in WP(MD). 8538/ 2019
V.SHYAMALA	... Petitioner in WP(MD). 8539/ 2019
S.SRIDEVI,	... Petitioner in WP(MD). 8540/ 2019
M.THULASI	... Petitioner in WP(MD). 8541/ 2019

VS

- 1 THE STATE OF TAMILNADU
REP. BY ITS SECRETARY,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
FORT ST. GEORGE, CHENNAI-9.
- 2 THE STATE OF TAMILNADU
REP. BY ITS SECRETARY, DEPT. OF FINANCE (PENSION),
FORT ST. GEORGE, CHENNAI-9.
- 3 THE DIRECTOR OF MEDICAL EDUCATION,
DIRECTORATE OF MEDICAL EDUCATION,
162, POONAMALLE HIGH ROAD, KILPAUK, CHENNAI-10.
- 4 THE DIRECTOR OF MEDICAL AND RURAL HEALTH SERVICES,
CHENNAI-9.



5 THE SUPERINTENDENT,

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GOVERNMENT INFECTIVE DISEASE HOSPITAL,
AUSTINPATTI, THOPPUR, MADURAI.

6 THE DEAN,

THE GOVERNMENT RAJAJI HOSPITAL, MADURAI.

..RESPONDENTS 5 AND 6 IN WP(MD)8529 OF 2019

5 THE CHIEF MEDICAL OFFICER

GOVERNMENT PRIMARY HEALTH CENTRE, DOMBUCHERY, THENI DT

6 THE MEDICAL OFFICER

GOVT. THENI MEDICAL COLLEGE HOSPITAL, THENI, THENI DT

..RESPONDENTS 5 AND 6 IN WP(MD)8530 OF 2019

5 THE CHIEF MEDICAL OFFICER,

GOVERNMENT PRIMARY HEALTH CENTRE, SHOLAPURAM, THANJAVUR DT.

6 THE DEAN

GOVT., HEAD QUARTERS HOSPITAL, KUMBAKONAM, THANJAVUR DT.

..RESPONDENTS 5 AND 6 IN WP(MD)8531 OF 2019

5 THE CHIEF MEDICAL OFFICER,

GOVERNMENT PRIMARY HEALTH CENTRE, SHOLAPURAM, THANJAVUR DT.

6 THE DEAN,

GOVERNMENT HEAD QUARTERS HOSPITAL, KUMBAKONAM, THANJAVUR DT.

..RESPONDENTS 5 AND 6 IN WP(MD)8532 OF 2019

5 THE CHIEF MEDICAL OFFICER

GOVERNMENT PRIMARY HEALTH CENTRE, SHOLAPURAM, THANJAVUR DT

6 THE DEAN

GOVT. HOSPITAL, THIRUPANANDAL, THANJAVUR DT

..RESPONDENTS 5 AND 6 IN WP(MD)8533 OF 2019

5 THE CHIEF MEDICAL OFFICER,

GOVERNMENT PRIMARY HEALTH CENTRE,

<https://hcserv01.scdns.gov.in/RSW/Asks>
GOVERNMENT HOSPITAL, KANNIYAKOVIL, THANJAVUR DT.



6 THE MEDICAL OFFICER,

GOVERNMENT RAJA MIRASUDHAR HOSPITAL, THANJAVUR DT.

..RESPONDENTS 5 AND 6 IN WP(MD)8534 OF 2019

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5 THE CHIEF MEDICAL OFFICER,

GOVERNMENT PRIMARY HEALTH CENTRE, DODDAPPANAikanur, MADURAI DT.

6 THE DEAN,

THE GOVERNMENT RAJAJI HOSPITAL, MADURAI.

..RESPONDENTS 5 AND 6 IN WP(MD)8535 OF 2019

5 THE CHIEF MEDICAL OFFICER

GOVERNMENT PRIMARY HEALTH CENTRE, ODAIPATTI, THENI DT

6 THE MEDICAL OFFICER

GOVT. THENI MEDICAL COLLEGE HOSPITAL, THENI, THENI DT

..RESPONDENTS 5 AND 6 IN WP(MD)8536 OF 2019

5 THE CHIEF MEDICAL OFFICER,

GOVERNMENT PRIMARY HEALTH CENTRE, SAMAYA NALLUR, MADURAI DTD.

6 THE MEDICAL OFFICER,

GOVERNMENT TIRUNELVELI MEDICAL COLLEGE HOSPITAL,
TIRUNELVELI DT.

..RESPONDENTS 5 AND 6 IN WP(MD)8537 OF 2019

5 THE CHIEF MEDICAL OFFICER,

GOVERNMENT PRIMARY HEALTH CENTRE, PATTESWARAM, THANJAVUR DT.

6 THE CHIEF MEDICAL OFFICER

KUMBESWARAM SOUTH URBAN PRIMARY HEALTH CENTRE,
KUMBESWARAM, THANJAVUR DT

..RESPONDENTS 5 AND 6 IN WP(MD)8538 OF 2019

THE DEAN

THE GOVT. RAJAJI HOSPITAL,

MADURAI

..RESPONDENT 5 IN WP(MD)8539 OF 2019

5 THE CHIEF MEDICAL OFFICER,

GOVERNMENT PRIMARY HEALTH CENTRE, DOMBUCHERY, THENI DT.



6 THE MEDICAL OFFICER,

GOVERNMENT THENI MEDICAL COLLEGE HOSPITAL, THENI DT.

..RESPONDENTS 5 AND 6 IN WP(MD)8540 OF 2019

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5 THE SUPERINTENDENT,

THE GOVERNMENT HOSPITAL OF THORACIC MEDICINE, THOPPUR, MADURAI.

6 THE CHIEF MEDICAL OFFICER

GOVERNMENT HEAD QUARTERS HOSPITAL, DINDIGUL

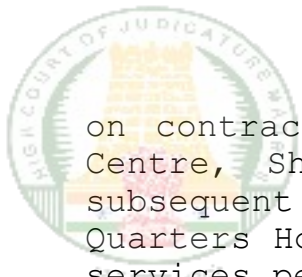
..RESPONDENTS 5 AND 6 IN WP(MD)8541 OF 2019

Prayer in WP(MD). 8529/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to place the petitioner under the Old Pension Scheme based on the initial date of appointment of the petitioner as Staff Nurse on 24.01.2002 as Temporary Appointment on contract basis in the 5th respondent Government Infective Disease Hospital, Austinpatti, Thoppur, Madurai including the petitioners subsequent joining in the Government Head Quarters Hospital, Devakottai, Sivagangai District on 03.11.2004 and subsequent entire service periods till the retirement.

Prayer in WP(MD). 8530/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to place the petitioner under the Old Pension Scheme based on the initial date of appointment of the petitioner as Staff Nurse on 20.08.2002 as Temporary Appointment on contract basis in the 5th respondent Government Primary Health Centre, Dombuchery, Theni Distict including the petitioners subsequent absorption as Regular Staff Nurse in the Government Theni Medical College hospital, Theni, Theni District on 01.09.2006 and Subsequent entire services periods till her retirement.

Prayer in WP(MD). 8531/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to place the petitioner under the Old Pension Scheme based on the initial date of appointment of the petitioner as Staff Nurse on 08/02/2001 as Temporary Appointment on contract basis in the 5th respondent Government Primary Health Centre, Sholapuram, Thanjavur District including the petitioners subsequent absorption as Regular Staff Nurse in the Government Head Quarters Hospital, Nagapattinam on 01/09/2006 and subsequent entire services periods till her retirement.

Prayer in WP(MD). 8532/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to place the petitioner under the Old Pension Scheme based on the initial date of appointment of the petitioner as Staff Nurse on 07.02.2001 as Temporary Appointment



on contract basis in the 5th respondent Government Primary Health Centre, Sholapuram, Thanjavur District including the petitioners subsequent absorption as Regular Staff Nurse in the Government Head Quarters Hospital, Nagappattinam on 17.06.2006 and subsequent entire services periods till her retirement.

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Prayer in WP(MD). 8533/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to place the petitioner under the Old Pension Scheme based on the initial date of appointment of the petitioner as Staff Nurse on 07.02.2001 as Temporary Appointment on contract basis in the 5th respondent Government Primary Health Centre, Sholapuram, Thanjavur District including the petitioners subsequent absorption as Regular Staff Nurse in the Government Raja Mirasdar Hospitaal, Thanjavur on 01.09.2006 and subsequent entire services periods till her retirement.

Prayer in WP(MD). 8534/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to place the petitioner under the Old Pension Scheme based on the initial date of appointment of the petitioner as Staff Nurse on 14/04/2001 as Temporary Appointment on contract basis in the 5th respondent Government Primary Health Centre, Sundaraperumalkovil, Thanjavur District including the petitioners subsequent absorption as Regular Staff Nurse in the Government Raja Mirasudhar Hospital Thanjavur, District on 01.09.2006 and subsequent entire services periods till her retirement.

Prayer in WP(MD). 8535/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to place the petitioner under the Old Pension Scheme based on the initial date of appointment of the petitioner as Staff Nurse on 12.03.2001 as Temporary Appointment on contract basis in the 5th respondent Government Primary Health Centre, Doddappanaikanur, Madurai Di strict including the petitioners subsequent absorption in the Government Rajaji Hospital, Madurai on 01.09.2006 and subsequent entire service periods till her retirement.

Prayer in WP(MD). 8536/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to place the petitioner under the Old Pension Scheme based on the initial date of appointment of the petitioner as Staff Nurse on 28.02.2002 as Temporary Appointment on contract basis in the 5th respondent Government Primary Health Centre, Odaipatti, theni District including the petitioners subsequent absorption as Regular Staff Nurse in the Government Theni Medical College Hospiatal, Theni, Theni District on 01.09.2006 and subsequent entire services periods till her retirement.



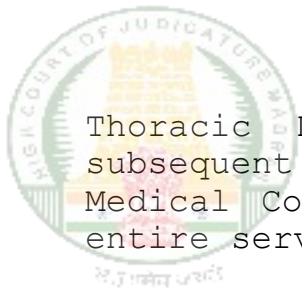
Prayer in WP(MD). 8537/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to place the petitioner under the Old Pension Scheme based on the initial date of appointment of the petitioner as Staff Nurse on 08/02/2001 as Temporary Appointment on contract basis in the 5th respondent Government Primary Health Centre, Samaya Nallur, Madurai District including the petitioners subsequent absorption as Regular Staff Nurse in the Government Tirunelveli Medical College Hospital, Tirunelveli, Tirunelveli District on 01.09.2006 and subsequent entire services periods till her retirement.

Prayer in WP(MD). 8538/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to place the petitioner under the Old Pension Scheme based on the initial date of appointment of the petitioner as Staff Nurse on 08.02.2001 as Temporary Appointment on contract basis in the 5th respondent Government Primary Health Centre, Patteswaram, Thanjavur District including the petitioners subsequent absorption as Regular Staff Nurse in the Government Head Quarters Hospital, Kumbakonam, Thanjavur District on 01.09.2006 and subsequent entire services periods till her retirement.

Prayer in WP(MD). 8539/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to place the petitioner under the Old Pension Scheme based on the initial date of appointment of the petitioner as Staff Nurse on 07.02.2002 as Temporary Appointment on contract basis in the 5th respondent Government Rajaji Hospital, Madurai including the petitioners subsequent joining in the Thanjavur Medical College Hospital, Thanjavur on 18.11.2004 and subsequent entire services periods till her retirement.

Prayer in WP(MD). 8540/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to place the petitioner under the Old Pension Scheme based on the initial date of appointment of the petitioner as Staff Nurse on 03/03/2001 as Temporary Appointment on contract basis in the 5th respondent Government Primary Health Centre, Dombucery, Theni District including the petitioners subsequent absorption as Regular Staff Nurse in the Government Theni Medical College Hospital, Theni District on 01.09.2006 and subsequent entire services periods till her retirement.

Prayer in WP(MD). 8541/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to place the petitioner under the Old Pension Scheme based on the initial date of appointment of the petitioner as Staff Nurse on 25.01.2002 as Temporary Appointment on contract basis in the 5th respondent Government Hospital of



Thoracic Medicine, Thoppur, Madurai including the petitioners subsequent absorption as Regular Staff Nurse in the Thanjavur Medical College Hospital, Thanjavore on 16.11.2004 and subsequent entire service periods till her retirement.

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For Petitioners : Mr.S.Xavier Rajini
in all WP's

For Respondents : Mr.S.Angappan
Government Advocate
in all WP's

COMMON ORDER

These writ petitions have been filed seeking a direction to the respondents to place the petitioners under the Old Pension Scheme based on their initial date of appointment as Staff Nurse on 24.01.2002, 20.08.2002, 08.02.2001, 07.02.2001, 07.02.2001, 14.04.2001, 12.03.2001, 28.02.2002, 08.02.2001, 08.02.2001, 07.02.2001, 03.03.2001 and 25.01.2002 in the fifth respondent hospital respectively, on contract basis.

2.The learned counsel appearing for the petitioners submitted that the petitioners made representations to the respondents seeking to place them under the Old Pension Scheme and such request was not considered by the respondents. Hence, the petitioners are before this Court. The learned Counsel further submitted that the issue involved in these writ petitions is squarely covered by the earlier order of this Court in **S.Fancy Janet Vs. The Accountant General, Office of the Accountant General, Chennai, Tamil Nadu, 261, Anna Salai, Channei - 600 018 and 5 others [W.P(MD)No.5800 of 2015, decided on 10.12.2018]** and prayed for passing similar orders in these writ petitions also.

3.Heard the learned counsel appearing for the petitioners and the learned Government Advocate for the respondents.

4.In similar circumstances, this Court, in W.P(MD)No.5800 of 2015, decided on 10.12.2018 (stated supra) has held as under:

5.The case of the petitioner that she was appointed as a Staff Nurse on a contract basis and by following the communal rotation on 25.09.2001 is not in dispute. The only ground, on which the petitioner was denied Old Pension Scheme is that cut off date is prescribed in G.O.Ms.No.259 dated 06.08.2013, by which the New Pension Scheme was introduced. The question regarding which of the two Pension Schemes should apply to the persons like that of the petitioner is no longer res integra in view of the decision of the Hon'ble Division Bench of this Court in **Union of India Vs., K.Punniyakoti**



reported in **2014(2) CTC 777**. While considering the similar provisions of the Central Pension Rules had held as follows:-

"17. The word "new entrant" has got a definite meaning, "a person, who enters recently". A person already in service either as contingent staff or temporary staff continuously and absorbed in permanent establishment on or after 01.01.2004, cannot be termed as "new entrant" into service. The New Pension Scheme can be applied only to persons appointed for the first time as casual or temporary or permanent employee on or after 01.01.2004."

6. The Hon'ble Division Bench also referred to the earlier Division Bench Judgment in W.P.Nos.26933 and 26934 of 2007 dated 23.04.2008, wherein the Hon'ble Division Bench has considered the very Government Order dated 06.08.2004 introducing the New Pension Scheme with effect from 01.04.2003. The similar question was also considered by Hon'ble Mr. Justice. N. Paul Vasanthakumar in W.P(MD).No.14369 of 2010, wherein, the contention of the State that since the petitioner was absorbed into regular service only after cut off date namely 01.04.2003, he will not be entitled to the Old Pension Scheme, was rejected.

7. In view of the above decisions, the Writ Petition has to succeed and the Writ Petition is therefore allowed. The respondents are directed to include the petitioner in the Old Pension Scheme and calculate the Pension as per the said Scheme by applying the Rule 11(2) of the Tamil Nadu Pension Rules. No costs. Consequently, connected M.P(MD).No.1 of 2015 is closed.

5. Following the same, these writ petitions are allowed and the respondents are directed to include the petitioners in the Old Pension Scheme and calculate Pension as per the said Scheme by applying the Rule 11(2) of the Tamil Nadu Pension Rules. No costs.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar (CS)

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1. THE SECRETARY,
STATE OF TAMIL NADU,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
FORT ST. GEORGE,
CHENNAI - 600 009.
2. THE SECRETARY, STATE OF TAMIL NADU,
DEPARTMENT OF FINANCE (PENSION),
FORT ST. GEORGE, CHENNAI - 600 009.
3. THE DIRECTOR OF MEDICAL EDUCATION,
DIRECTORATE OF MEDICAL EDUCATION,
162, POONAMALLE HIGH ROAD,
KILPAUK, CHENNAI - 600 010.
4. THE DIRECTOR OF MEDICAL AND RURAL HEALTH SERVICES,
CHENNAI - 600 006.
5. THE SUPERINTENDENT,
GOVERNMENT INFECTIVE DISEASE HOSPITAL,
AUSTINPATTI, THOPPUR, MADURAI.
6. THE DEAN,
THE GOVERNMENT RAJAJI HOSPITAL, MADURAI.
7. THE CHIEF MEDICAL OFFICER
GOVERNMENT PRIMARY HEALTH CENTRE, DOMBUCHERY, THENI DT
8. THE MEDICAL OFFICER
GOVT. THENI MEDICAL COLLEGE HOSPITAL, THENI, THENI DT
9. THE CHIEF MEDICAL OFFICER,
GOVERNMENT PRIMARY HEALTH CENTRE, SHOLAPURAM, THANJAVUR DT.
10. THE DEAN
GOVT., HEAD QUARTERS HOSPITAL, KUMBAKONAM, THANJAVUR DT.
11. THE DEAN,
GOVERNMENT HEAD QUARTERS HOSPITAL, KUMBAKONAM, THANJAVUR DT.
12. THE DEAN
GOVT. HOSPITAL, THIRUPANANDAL, THANJAVUR DT



13. THE CHIEF MEDICAL OFFICER,
GOVERNMENT PRIMARY HEALTH CENTRE,
SUNDARAPERUMALKOVIL, THANJAVUR DT.

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14. THE MEDICAL OFFICER,
GOVERNMENT RAJA MIRASUDHAR HOSPITAL, THANJAVUR DT.

15. THE CHIEF MEDICAL OFFICER,
GOVERNMENT PRIMARY HEALTH CENTRE, DODDAPPANAIKANUR, MADURAI DT.

16. THE CHIEF MEDICAL OFFICER
GOVERNMENT PRIMARY HEALTH CENTRE, ODAIPATTI, THENI DT

17. THE MEDICAL OFFICER
GOVT. THENI MEDICAL COLLEGE HOSPITAL, THENI, THENI DT

18. THE CHIEF MEDICAL OFFICER,
GOVERNMENT PRIMARY HEALTH CENTRE, SAMAYA NALLUR, MADURAI DTD.

19. THE MEDICAL OFFICER,
GOVERNMENT TIRUNELVELI MEDICAL COLLEGE HOSPITAL,
TIRUNELVELI DT.

20. THE CHIEF MEDICAL OFFICER,
GOVERNMENT PRIMARY HEALTH CENTRE, PATTESWARAM, THANJAVUR DT.

21. THE CHIEF MEDICAL OFFICER
KUMBESWARAM SOUTH URBAN PRIMARY HEALTH CENTRE,
KUMBESWARAM, THANJAVUR DT

22. THE SUPERINTENDENT,
THE GOVERNMENT HOSPITAL OF THORACIC MEDICINE, THOPPUR, MADURAI.

23. THE CHIEF MEDICAL OFFICER
GOVERNMENT HEAD QUARTERS HOSPITAL, DINDIGUL

13CC'S TO MR. S. XAVIER RAJINI, ADVOCATE SR 60468 TO 60480
TR 22/05/2019 10P/37C

W.P. (MD) Nos. 8529 to 8541 of 2019
10.04.2019