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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.(MD)Nos.9846 to 9851 of 2019

T.NAGARANI

STAFF NURSE, GOVT. HOSPITAL,

RAMESWARAM, RAMNAD DISTRICT ... Petitioner in WP(MD). 9846/ 2019

S.JANSIRANI

STAFF NURSE, GOVT. HEAD QUARTERS HOSPITAL,

DINDIGUL. ... Petitioner in WP(MD). 9847/ 2019

A.MUTHU RAKKU

STAFF NURSE, GOVT. HEAD QUARTERS HOSPITAL,

DINDIGUL. ... Petitioner in WP(MD). 9848/ 2019

C.RANJITHAM

STAFF NURSE, GOVT. THENI MEDICAL COLLEGE HOSPITAL,

THENI, THENI DISTRICT ... Petitioner in WP(MD). 9849/ 2019

M.SAKTHIVENI

STAFF NURSE, GOVT. HEAD QUARTERS HOSPITAL,

DINDIGUL ... Petitioner(s) in WP(MD). 9850/ 2019

R.YASOTHA STAFF NURSE,

GOVT. THENI MEDICAL COLLEGE HOSPITAL,

THENI, THENI DISTRICT ... Petitioner in WP(MD). 9851/ 2019

- Vs. -

1 THE STATE OF TAMIL NADU REP. BY ITS SECRETARY,

DEPT. OF HEALTH AND FAMILY WELFARE,

FORT ST.GEOREGE, CHENNAI-9



2 THE STATE OF TAMIL NADU

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 RD, KILPAUK, CHENNAI-10

4 THE DIRECTOR OF MEDICAL AND RURAL HEALTH SERVICES,
CHENNAI-6

5 THE CHIEF MEDICAL OFFICER

GOVT. HOSPITAL, RAMESWARAM, RAMNAD DISTRICT

... Respondents in WP(MD). 9846/ 2019

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REP. BY ITS SECRETARY,
DEPT. OF HEALTH AND FAMILY WELFARE, FORT ST. GEORGE, CHENNAI-9

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CHENNAI-6

5 THE CHIEF MEDICAL OFFICER

GOVT. HOSPITAL, BATALAGUNDU, DINDIGUL DT

6 THE CHIEF MEDICAL OFFICER

GOVT. HEAD QUARTERS HOSPITAL, DINDIGUL

... Respondents in WP(MD). 9847/ 2019

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DEPT. OF HEALTH AND FAMILY WELFARE,
FORT ST. GEORGE, CHENNAI-9

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CHENNAI-6

5 THE CHIEF MEDICAL OFFICER
GOVT.RSRM LYING IN HOSPITAL, CHENNAI

6 THE CHIEF MEDICAL OFFICER
GOVT. HEAD QUARTERS HOSPITAL, DINDIGUL

... Respondents in WP(MD). 9848/ 2019

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REP. BY ITS SECRETARY,
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FORT ST.GEOREGE, CHENNAI-9

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FORT ST. GEORGE, CHENNAI-9

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CHENNAI-6

5 THE BLOCK MEDICAL OFFICER
GOVT. PRIMARY HEALTH CENTRE,
POONTHOTTAM, THIRUVARUR DT

6 THE MEDICAL OFFICER
GOVT. THENI MEDICAL COLLEGE HOSPITAL, THENI

... Respondents in WP(MD). 9849/ 2019

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CHENNAI-6

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GOVT. ANNAL GANDHI MEMORIAL HOSPITAL, TRICHY

6 THE CHIEF MEDICAL OFFICER

GOVT. HEAD QUARTERS HOSPITAL, DINDIGUL

... Respondents in WP(MD). 9850/ 2019

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CHENNAI-6

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GOVT. PRIMARY HEALTH CENTRE,

ALATHAMBADI, THIRUVARUR DT

6 THE MEDICAL OFFICER

GOVT. THENI MEDICAL COLLEGE HOSPITAL,

THENI, THENI DT

... Respondents in WP(MD). 9851/ 2019

Prayer in WP(MD). 9846/ 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 on contract basis in the 5th respondent Govt. Hospital, Rameswaram, Ramnad District, including the petitioners subsequent absorbing as regular Staff Nurse in the Govt. Hospital, pudhukottai on 25.03.2005 and subsequent entire service periods till her retirement.

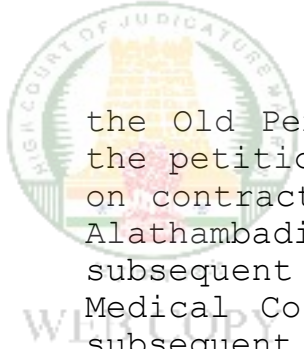
Prayer in WP(MD). 9847/ 2019 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to place the petitioner under the Old Pension Scheme based on the initial date of appointment of the petitioner as Staff Nurse on 01.02.2002 as Temporary Appointment on contract basis in the 5th respondent Govt. Hospital, Batalagundu, Dindigul District, including the petitioners subsequent absorption as regular Staff Nurse in the Govt. Hospital, Pollachi, Coimbatore District on 30.03.2005 and subsequent entire service periods till her retirement.

Prayer in WP(MD). 9848/ 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 Govt. RSRM LYING IN Hospital, Chennai including the petitioners subsequent absorption as regular Staff Nurse in the Govt. Hospital, Chennai on 17.11.2004 and subsequent entire service periods till her retirement.

Prayer in WP(MD). 9849/ 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 02.09.2002 as Temporary Appointment on contract basis in the 5th respondent Govt. Primary Health Centre, Poonthottam, Thiruvarur District including the petitioners subsequent absorption as regular Staff Nurse in the Govt. Theni Medical College Hospital Theni, Theni Dt on 01.09.2006 and subsequent entire service periods till her retirement.

Prayer in WP(MD). 9850/ 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 04.03.2002 as Temporary Appointment on contract basis in the 5th respondent Govt. Annal Gandhi Memorial Hospital, Trichy including the petitioners subsequent absorption as regular Staff Nurse in the Govt. Stanley Medical College Hospital Chennai on 31.03.2005 and subsequent entire service periods till her retirement.

Prayer in WP(MD). 9851/ 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 02.09.2002 as Temporary Appointment on contract basis in the 5th respondent Govt.Primary Health Centre, Alathambadi, Thiruvarur District including the petitioners subsequent absorption as regular Staff Nurse in the Govt. Theni Medical College Hospital, Theni, Theni District on 01.09.2006 and subsequent entire service periods till her retirement.

For Petitioner : Mr.S.Xavier Rajini

For Respondents : Mr.V.Anand
Government Advocate

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 25.02.2002, 01.02.2002, 25.01.2002, 02.09.2002, 04.03.2002 and 02.09.2002 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 appearing for the respondents, who has no objection for granting such relief to the petitioners.

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 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:-

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"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 Rule 11(2) of the Tamil Nadu Pension Rules. No costs.

Sd/-

Assistant Registrar (WRITS)

// True Copy //

Sub Assistant Registrar(CS)



To

1. THE SECRETARY,
STATE OF TAMIL NADU,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
FORT ST. GEORGE,
CHENNAI - 600 009.
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ALATHAMBADI, THIRUVARUR DT.

15.THE MEDICAL OFFICER

GOVT. THENI MEDICAL COLLEGE HOSPITAL, THENI

6CC'S TO MR.S. XAVIER RAJINI, ADVOCATE SR 62266 TO 62271

1CC TO THE SPL GOVT PLEADER SR 62439

TR

22/05/2019

9P/23C

W.P. (MD) Nos.9846 to 9851 of 2019

24.04.2019