

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE
AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.Nos.3608, 2082 and 2717 to 2720 of 2019
and C.M.P.Nos.14095, 17557 to 17562, 17565 and 23160 of 2019

THE PRINCIPAL SECRETARY,
GOVT. OF TAMIL NADU,
DEPT. OF HEALTH AND FAMILY WELFARE,
FORT ST. GEORGE,
CHENNAI 600 009.

... PETITIONER IN W.A.NO.3608 OF 2019

1 A.CHITRA ... PETITIONERS IN WA NO.2082 OF 2019

2 B. KALAIVANI

3 A. CATHERIN NITHYA

4 C. JAYANTHI

5 A. SAMMU

6 G. RAMALAKSHMI

7 P. GOMATHI RAJKUMAR

8 D. IVY

9 P. LALITHA

10 J. SAJITHA BEGUM

1 S.SASIKUMAR

... PETITIONERS in WA No.2717 of 2019

2 S.C.SELWYN JEBAKUMAR

3 T.L.SIVA

4 M.PONRAJ
5 N.PUSPHA
6 R.RAMADOSS
7 S.SAROPHINE
8 P.ANANDHI
9 R.SATHYAVATHY
10 S.KIRUBAKARAN
11 M.DHANALAKSHMI
12 K.KOMALA

P.PALMANI ... PETITIONER in WA No.2718 of 2019
K.GOPINATHAN ... PETITIONER in WA No.2719 of 2019
R.M.VIGNESH ... PETITIONER in WA No.2720 of 2019

-vs-

1 G.UDAYAKUMAR ... RESPONDENTS in WA No.3608 of 2019
2 THE MEMBER SECRETARY
MEDICAL SERVICES RECRUITMENT BOARD ,
7 TH FLOOR DMS BUILDING NO.359 ANNA SALAI
TEYNAMPET CHENNAI.

3 S. SALEESHA

4 G. MAHALAKSHMI

5 SEETHALAKSHMI

6 R. SOWRIRAJAPERUMAL

7 PRIVATE STUIDES NURSES ASSOC
IATION REP.BY ITS PRESIDENT S.
SENTHILNATHAN NO.31 METTU ST VELI
MADUPETTAI TINDIVANAM VILLUPURAM.

8 A.CHITRA

9 B.KALAIVANI

10 A.CATHERIN NITHYA

11 C.JAYANTHI

12 A.SAMMU

13 G.RAMALAKSHMI

14 P.GOMATHI RAJKUMAR

15 D.IVY

16 P.LALITHA

17 J.SAJITHA BEGUM

1 G.UDAYAKUMAR ... RESPONDENTS in WA No.2082 of 2019

2 THE PRINCIPAL SECRETARY
GOVERNMENT OF TAMILNADU DEPARTMENT OF
HEALTH AND FAMILY WELFARE FORT ST GEORGE
CHENNAI-600009

3 THE MEMBER SECRETARY
MEDICAL SERVICES RECRUITMENT BOARD (MRB)
7TH FLOOR DMS BUILDINGS 359 ANNA SALAI
TEYNAMPET CHENNAI-600008

4 S.SALEESHA

5 MRS.G.MAHALAKSHMI

6 MRS.SEETHALAKSHMI

7 R.SOWRIRAJAPERUMAL

8 PRIVATE STUDIES NURSES ASSOCIATION
REP. BY ITS PRESIDENT S.SENTHILNATHAN
NO.31 METTU STREET VELLI
MEDEPETTAI TINDIVANAM VILLUPURAM-604 207

1 G.UDAYAKUMAR ... RESPONDENTS in WA No.2717 of 2019

2 THE PRINCIPAL SECRETARY
GOVERNMENT OF TAMILNADU DEPARTMENT OF
HEALTH AND FAMILY WELFARE FORT ST GEORGE
CHENNAI-600009

3 THE MEMBER SECRETARY
MEDICAL SERVICES RECRUITMENT BOARD (MRB)
7TH FLOOR DMS BUILDINGS 359 ANNA SALAI
TEYNAMPET CHENNAI-600008

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5 MRS.G.MAHALAKSHMI

6 MRS.SEETHALAKSHMI

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REP. BY ITS PRESIDENT S.SENTHILNATHAN
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MEDEPETTAI TINDIVANAM VILLUPURAM-604 207

9.A.CHITRA

10.B.KALAIVANI

11.A.CATHERIN NITHYA

12.C.JAYANTHI

13.A.SAMMU

14.G.RAMALAKSHMI

15.P.GOMATHI RAJKUMAR

16.D.IVY

17.P.LALITHA

18.J.SAJITHA BEGUM

1 THE PRINCIPAL SECRETARY ... RESPONDENTS in WA No.2718 of 2019
GOVT. OF TAMILNADU DEPARTMENT OF HEALTH AND
FAMILY WELFARE FORT ST. GEORGE CHENNAI-9

2 THE MEMBER SECRETARY
MEDICAL SERVICES RECRUITMENT BOARD (MRB)
7TH FLOOR DMS BUILDINGS 359 ANNASALAI
TEYNAMPET CHENNAI-600006

3 S.SALEESHA

4 G.MAHALAKSHMI

5 SEETHALAKSHMI

6 R.SOWRIRAJAPERUMAL

7 PRIVATE STUDIES NURSES ASSOCIATION
REP. BY ITS PRESIDENT S.SENTHILNATHAN
NO.31 METTU STREET VELLI MEDEPETTAI
TINDIVANAM VILLUPURAM-604207

8 G.UDAYA KUMAR

1 THE PRINCIPAL SECRETARY ...RESPONDENT in WA No.2719 of 2019
GOVT OF TAMIL NADU DEPARTMENT OF HEALTH AND
FAMILY WELFARE FORT ST GEORGE CH-9

2 THE MEMBER SECRETARY
MEDICAL SERVICES RECRUITMENT BOARD (MRB)
7TH FLOOR DMS BUILDINGS 359 ANNASALAI
TEYNAMPET CH-06.

3 S.SALEESHA

4 G.MAHALAKSHMI

5 SEETHALAKSHMI

6 R.SOWRIRAJAPERUMAL

7 PRIVATE STUDIES NURSES ASSOCIATION
REP BY ITS PRESIDENT S.SENTHILNATHAN
NO.31 METTU ST VELLI MEDEPETTAI
TINDIVANAM VILLUPURAM 604207.

8 G.UDAYA KUMAR

1 THE PRINCIPAL SECRETARY ...RESPONDENTS in WA No.2720 of 2019
GOVT OF TAMIL NADU DEPARTMENT OF HEALTH AND
FAMILY WELFARE FORT ST GEORGE CH-9

- 2 THE MEMBER SECRETARY
MEDICAL SERVICES RECRUITMENT BOARD (MRB)
7TH FLOOR DMS BUILDINGS 359 ANNASALAI
TEYNAMPET CH-06.
- 3 S.SALEESHA
- 4 G.MAHALAKSHMI
- 5 SEETHALAKSHMI
- 6 R.SOWRIRAJAPERUMAL
- 7 PRIVATE STUDIES NURSES ASSOCIATION
REP BY ITS PRESIDENT S.SENTHILNATHAN
NO.31 METTU ST VELLI MEDEPETTAI
TINDIVANAM VILLUPURAM 604207.
- 8 G.UDAYA KUMAR

Appeals filed under Clause 15 of the Letters Patent against the order dated 25.04.2019 passed in W.P.No.26410 of 2018 on the file of this Court.

Prayer in W.P.No.26410 of 2018:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Ceritorarified Mandamus to call for the records pertaining to notice of the 2nd respondent dated 12.09.2018 in Notification No.1/MRB/2015 and quash the same and consequently direct the respondents to conduct recruitment examination afresh for the selection of nurses in the service of 1st respondent.

For Appellant in W.A.3608/2019 : Mr.R.Udhayakumar,
Addl.G.P.

For Appellant in WA. 2717/2019 : Mr.N.G.R.Prasad
for M/s.Row and Reddy

For Appellants in W.As.2718 to 2020/2019 : No appearance

For Respondent no.1
in W.A.3608/2019

: Mr.P.Pugazh Gandhi
:

For Respondent no.2
in W.A.3608/2019

Mr.S.R.Rajagopal,
Addl. Adv. General,
assisted by Mr.M.Loganathan
Mr.K.Balu

For Respondents 8 to
17
in W.A.3608/2019 and
Appellants in
W.A.2082/ 2019

For Respondents in
WA.NO.2082/2019
and
WA.NO.2717/2019

:Mr.Pugazh Gandhi for R1
Mr.R.Udhaya kumar AGP for R2
Mr.S.R.Raja Gopal AAG Assisted by
Mr.Logunathan for R3

For Respondents in
WA.NO.2718/2019

:Mr.R.Udhaya kumar AGP for R1
MR.S.R.Raja Gopal AAG Assisted by
Mr.Logunathan for R2
Mr.Pugazh Gandhi for R8

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Heard Mr.N.G.R.Prasad, learned counsel appearing for the appellants in W.A.No.2717 of 2019, Mr.R.Udhayakumar, learned Additional Government Pleader appearing for the respondent State and Mr.S.R.Rajagopal, learned Additional Advocate General, appearing for respondent no.2 / Medical Services Recruitment Board.

2.The writ petitions challenge the recruitment notification dated 12.09.2018 issued by the Medical Services Recruitment Board. The said notification related to appointment to the post of Contract Nurses. The learned Single Judge, by the impugned judgment, has proceeded to hold that the entire recruitment process was vitiated and consequently, has set aside the selections with the following directions:

"47.In view of these facts and circumstances, this Court is inclined to pass the following orders:-

- (1)The respondents are at liberty to proceed with the process of selection by strictly following the recruitment rules in force and by following the procedures contemplated to fill up the posts

of Nurses in the Service Rules.

- (2) The unsuccessful candidates of the selection process conducted during the year 2015 and appointed pursuant to G.O.(3D).No.80, Health and Family Welfare(AA1) Department dated 08.07.2016 and G.O.(3D).No.49, Health and Family Welfare (AA1) Department dated 16.10.2017 on contract basis cannot be granted with the benefit of regularization and permanent absorption in the sanctioned posts in regular time scale of pay. All these contract employees, who were appointed in violation of the Recruitment Rules by grant of illegal relaxation, shall be permitted to participate in the process of selection in the ensuing Recruitment Notification to be issued by the respondents.
- (3) The respondents are directed, not to grant regularization and permanent absorption in violation of the legal principles settled by the Constitution Bench of the Hon'ble Supreme Court of India in the case of the State of Karnataka V. Umadevi[(2006)] 4 SCC 1] are <http://www.judis.nic.in> 31 becomes the law of the land under Article 141 of the Constitution of India.
- (4) The respondents are directed to allow the contract employees appointed in the cadre of Nurses to continue in service till the sanctioned posts, are filled up by way of regular Recruitment process in accordance with the rules in force. It is made clear that soon after the regular appointments are made in accordance with the Recruitment Rules in force, the services of all those contract employees are directed to be discharged.
- (5) The respondents are directed to conduct the Recruitment for the Post of Doctors, Nurses, Para Medical Staffs etc., periodically as per the MRB Rules in force to avoid such unnecessary administrative exigencies in the matter of providing decent Medical facility to the citizen of this great Nation."

3. After we had heard the appeals on the previous occasion, we had passed the following order on 03.01.2020:-

"Heard learned counsel for the parties.

2. These appeals question the correctness of the judgment dated 25.04.2019, whereby the learned Single Judge has proceeded to set aside the recruitment on the post of nurses, the advertisement whereof was issued on

19.04.2015 in respect of 7243 vacancies subject to a variation therein as contained in the advertisement.

3.It is stated at the bar that against the said vacancies, after the publication of the list of the successful candidates, 6254 joined, as a result whereof 989 vacancies still remain, apart from 10% of the vacancies assigned under Rule 7, known as the 'reserved list'. It is not the case of either of the parties that there were no sanctioned or approved posts available and therefore, the appointments could have been made as the sanctioned posts in whatever scheme was available. It appears that in the year 2018, a notification was issued on 12.09.2018 that came to be challenged by the writ petitioner contending that such vacancies which were not subject matter of the earlier advertisement dated 19.04.2015 ought not to have been filled up and therefore, the contention raised was that this amounts to depriving an opportunity to the petitioner to compete against the said post which ought to have been included in the subsequent notification.

4.The learned Single Judge has proceeded to set aside the selections on the presumption that the selections stood invalidated on account of excess number of appointments having been made over and above the vacancies which had been advertised under the notification dated 19.04.2015 and the same being unconstitutional could not be sustained.

5.Three appeals have been filed that are before us, one by the State Government and the other two by selected candidates who contend that they have been appointed and are clearly saved on account of the procedure adopted by the State Government in proceeding to make an appointment after exercising the powers of relaxation. It is also the contention of the private appellants that their selections have been disturbed by the impugned judgment even without impleading them as parties and giving them an opportunity of hearing. The contention, therefore, is that the judgment of the learned Single Judge cannot be sustained.

6.Learned counsel for the respondent petitioner has maintained before us that so far as the writ petitioner is concerned, he cannot possibly raise a challenge nor does he have any grievance against the number of vacancies that stood advertised under the notification dated 19.04.2015 and in terms of Rule 7 thereof. But the vacancies which have also been filled up by relaxing Rule 7 later on has caused prejudice to him.

7.Learned counsel for the writ petitioner has also stated that the writ petitioner was not even eligible

on the date when the notification dated 19.04.2015 was issued and therefore, he may not have a right to question the selections which have been carried out under the said notification and in view of the aforesaid submissions raised, what we find is that the learned Single Judge has proceeded to nullify the selections which requires a scrutiny and for that, we require the learned counsel for the State to provide us with a chart relating to the number of appointments made in respect of vacancies that had remained unfilled, coupled with the 10% of the reserved list and in addition thereto, the other appointments which have been made over and above that. Let the chart be placed before us, for which the learned Additional Advocate General for the State prays for time upto 08.01.2020.

Put up on 08.01.2020."

4.Today, learned Additional Advocate General has invited the attention of the Court to the status report in respect of the appointments having already been made. The tabulated portion in the said status report are extracted hereinunder:-

Details of Nurses on Contract Basis		
Sl.No.	Period of Service	Total Candidates
1.	Recruited Candidates - 2015 (MRB) Notification issued for 7243 posts and postings orders issued for 7102 candidates only	7102
	Handicapped quota allotted and not applied for that	141
	Total	7243
	Withheld candidates in 7102	12
	Not joined in 7102	683
	Joined and UAA in 7102	87
	Joined and Resigned in 7102	66
	Joined in 7102	6254
		7090
	MRB released the 680 candidate list in two spell (498+182) and posting orders issued to 680 candidates	680

Details of Nurses on Contract Basis		
2.	Recruited candidates-2016-17 (MRB) G.O. (3D) No.80, dated 08.07.2016, Health and Family Welfare (AA1) Department for 1947 post and Posting issued for 1231 candidate in spell 1 and Posting issued for 716 candidate in spell	1231 716
	Total	1947
	Joined	1686
	Not joined	261
3.	Recruited Candidates-2018 (MRB) G.O. (3D) No.49, Health and Family Welfare (AA1) Department, dated 16.10.2017 issued to select 1170 posts but posting issued for 343 candidates only	343
	Joined	292
	Not joined	51

A perusal of the above would clearly indicate that total number of 7243 candidates were to be appointed under the notification. The Government of Tamil Nadu has issued G.O. No.36, dated 12.02.2014, which provides that in respect of open advertisements, the Medical Services Recruitment Board shall keep not more than 10% of the estimated vacancies in the reserved list. Therefore, the Government could appoint total number of 7967 medical nurses. The figures shown in the aforesaid table would show that 265 candidates over and above the total number of candidates, i.e., 7967, could have been recruited.

5.The contention of the learned Additional Advocate General is that neither the G.O.Ms.No.80, Health and Family Welfare (AA1) Department, dated 08.07.2016 nor the G.O. Ms.No.49, Health and Family Welfare (AA1) Department, dated 16.10.2017 were under challenge, whereby the State Government had proceeded to grant relaxation while proceeding to make appointments in question. Apart from this, it is also stated that the learned Single Judge, without looking into the aforesaid aspect, has overlooked the fact that the vacancies which were 7243 under the notification dated 19.04.2015 and 10% of the said figure would also be available on variation and consequently, adding the aforesaid number, the status report indicates that the appointments were not in excess of the vacancies, which were in tune with the notification, which provided for a variation in

the number of vacancies, apart from what had been advertised. His contention, therefore, is that apart from the statutory provision available for proceeding to make the appointments, the power of relaxation was also additionally available in terms of the G.Os. dated 08.07.2016 and 16.10.2017, which were not even under challenge, yet, the learned Single Judge proceeded to set aside the entire selection.

6. After we had proceeded to hear the appellants, Mr. P. Pugazh Gandhi, learned counsel for the respondent-writ petitioner, in no uncertain terms, stated before us that the challenge was only to see that in future, the notifications that are made are in conformity with the Rules and that the writ petitioner never intended to challenge the selections and appointments already concluded by the Government. The inference that we can draw from the aforesaid submission made is that even the petitioner did not plead for the reliefs that have been ultimately granted by the learned Single Judge against the appellants. In effect, therefore, there is a total consensus between the learned counsel for the parties including learned counsel for the petitioner that the impugned judgment as it stands is unsustainable.

7. We have considered all the aforesaid aspects and we find that the learned Single Judge has, on the basis of an assumption, overstepped the jurisdiction in proceeding to assume the selections to be invalid on grounds which are otherwise not available in law. The fact that the State Government had conducted the selections and the candidates had appeared in the selection process and were selected after undergoing the process as prescribed therein remains undisputed. There is no dispute with regard to the eligibility. The only grievance that was raised was that had more vacancies been available, the same would have been available for the petitioners as well in future.

8. In the light of what has transpired, we find that the State Government proceeded to fill up vacancies on account of the directions issued by the High Court itself in a Public Interest Litigation that mandated the filling up of the posts of nurses that were required urgently throughout the State. It is in the said background that the G.Os. dated 08.07.2016 and 16.10.2017 were issued. These aspects have been totally overlooked by the learned Single Judge. We do not find any fault either in the notification or in the selection process and therefore, the assumption by the learned Single Judge that the appointments had been made over and above the vacancies advertised, which vitiates the entire selection process does not stand to reason. Consequently, we find substance in the argument of the learned counsel for the appellants and we, therefore, set aside the impugned judgment.

9.We, however, direct the appellant State Government that in case it proceeds to make any further recruitments in respect of the post of contract nurses under any scheme, the State Government would be bound to specify the terms and conditions including the number of vacancies that are likely to be filled and with any indication of power of relaxation which it may propose to exercise in the advertisement itself. The State Government would be under an obligation to notify vacancies as per the scheme itself. Since health and social welfare being an exclusive subject of the State and even an obligation arising out of not only the fundamental rights guaranteed to the citizens under Article 21 of the Constitution of India, but also on account of the directive principles of State policy as contained in Article 39 of the Constitution of India, we expect that the State Government would be advertising the vacancies for the post of nurses and not let it remain unfilled for giving rise to any other Public Interest Litigation in future.

The writ appeals are, accordingly, allowed, with aforesaid observations. There shall be no order as to costs. Consequently, connected C.M.Ps. are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sra
To

1.The Member Secretary,
Medical Services Recruitment Board (MRB),
7th Floor, DMS Buildings, 359, Anna Salai,
Teynampet, Chennai 600 006.

2.The Principal Secretary,
Govt. of Tamil Nadu,
Dept. of Health and Family Welfare,
Fort St. George, Chennai 600 009.

+3ccs to Mr.M.Padmavathy , Advocate SR.No. 5261
+1 cc to Government Pleader Sr.No.5276
+1cc to Mr.K.Balu , Advocate SR.No. 4964
+1cc to M/s.Row and Reddy , Advocate SR.No. 5056
+1cc to Mr.Pugazh Gandhi, Advocate SR.No. 5069

W.A.Nos.3608, 2082 and 2717 to 2720 of 2019

SPD

A.SK(25/02/2020)