

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2020

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.Nos.17878 and 17882 of 2014

and

MP Nos.1 of 2014, 1 and 1 of 2015

P.Vanaja Petitioner in W.P.
No.17878 of 2014

G. Prageswari Petitioner in W.P.
No.17882 of 2014

Versus

1. The Director of Public Health
and Preventive Medicine,
Chennai - 600 006.
2. The Deputy Director of Health Services,
Tirupattur,
Vellore District. ... Respondents in both W.P.s

Prayer in W.P. No.17878 of 2014 : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the entire records of the impugned termination order in R.No.2815/A2/2014-2, dated 27.06.2014 passed by the second respondent herein and quash the same and consequently direct the respondents to re-instate the petitioner in service as Village Health Nurse at Health Sub-Centre, C.D.Seruvu with all attended benefits.

Prayer in W.P. No.17882 of 2014 : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the entire records of the impugned termination order in R.No.2815/A2/2014-1, dated 27.06.2014 passed by the second respondent herein and quash the same and consequently direct the respondents to re-instate the petitioner in service as Village Health Nurse at Health Sub-Centre, Latheri with all attended benefits.

For Petitioner in both W.P.s : Mr.A.M.Ayyadurai

For Respondents in both W.P.s : Mr.A.N.Thambidurai,
Special Government Pleader

COMMON ORDER

Petitioners in both writ petitions have filed these petitions challenging the impugned termination order in R.No.2815/A2/2014-2, dated 27.06.2014 passed by the second respondent and to re-instate the petitioners in service as Village Health Nurse at respective Health Sub-Centres, with all attendant benefits.

2. As the issue involved in all these Writ Petitions is one and the same, the cases are taken up together and disposed of by this common order.

3. It is the case of the petitioners that they possessed SSLC qualification i.e., equivalent to XI standard in new pattern and were initially selected and appointed on the basis of successful completion of training to the post of Community Nutritious Meal Worker with effect from 21.08.1984 at respective centres. Further taking into account of their unblemished services, they have been selected for further training to the post of Multipurpose Health Worker (F) course fixing a stipend of Rs.125/- and on completion of such training, they have been appointed as Village Health Nurse under 10 (a) (i) basis and posted at respective centres during the year 1998. While serving as such, on 19.06.2014, show cause notice was served on them stating that they have are not in possession of the requisite education qualification as per Rule 12(a) (I) of the Tamil Nadu State Sub-ordinate Services Rules. The representation culminating in proposal for relaxation of rules for educational qualification was also rejected, without even considering their past 16 years of service. Though they have submitted explanation and made requests to permit them to continue in service, the second respondent without any consideration issued the termination orders, both dated 27.06.2014, which are impugned herein.

4. Learned counsel for the petitioners submitted that though the petitioners possessed the educational qualification of S.S.L.C. failed, which is equivalent to XI Standard in new pattern as well as completed certificate course, the respondents failed to consider the same. He further submits that the respondents have not even considered the long years of service put in by the petitioners i.e., 14 years of service as

Nutritious Meal worker and 16 years of service as Village Health Nurse. He drew the attention of this Court to the Circular, dated 03.05.1991, wherein clarification has been issued by the Director of Public Health and Preventive Medicine to regularise the services of S.C. / S.T. candidates, who have failed in S.S.L.C. He further submits that the petitioner in W.P. No.17878 of 2014 has retired from service in the year 2019 and the petitioner in W.P. No.17882 of 2014 has retired from service in the year 2018. As such, he prays for regularisation and continuity of service for the purpose of availing monetary benefits on retirement due to the petitioners. He further submits that the impugned orders were issued without any application of mind, which is unsustainable and they are liable to be quashed.

5. Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents submitted that, due to non possession of the requisite qualification, the impugned orders were issued. Reiterating paragraph 4 of the counter affidavit, he submits that passing of 10th standard under the old pattern cannot be equated to the passing of 10th standard under the new pattern of study. He also submits that as the petitioners had not acquired the requisite educational qualification for the post of Village Health Nurse, they have been terminated from their services, after issuing show cause notice. He further argued that mere completion of certificate course alone cannot be claimed as a right and more so, when petitioners' appointment were on the basis of 10(a) (i). When that being so, they cannot claim relaxation as a matter of right when they are not in possession of the requisite qualification and taking all the above into consideration, the impugned orders have been passed, which does not call for any interference.

6. Heard the learned counsel on either side and perused the materials available on record.

7. It is not in dispute that the petitioner's appointment were on 10 (a) (i) basis. A perusal of records reveals that only on completion of certificate course, which is also a requisite one for the post of Village Health Nurse, the petitioners were considered for appointment to such post, i.e., petitioner in W.P. No.17878 of 2014 has been appointed to the post Village Health Nurse and petitioner in W.P. No.17882 of 2014 has been appointed to the post of Auxilary Nurse Midwife. It is evident from the Circular dated 03.05.1991, that the candidates, who have failed in S.S.L.C. are eligible for regularisation. If the said Circular is taken into account by the respondents, the claim of the petitioners for reinstatement can also be entertained. Further, it is to be pointed out that the long

years of service rendered by the petitioners were not taken into account by the respondents, which has to be borne in mind while passing the orders of termination. Without considering the unblemished service rendered by the petitioners, that too at the fag end of their service, passing of orders of termination by the respondents citing that the petitioners were not possessed of the requisite qualification does not merit acceptance as at the cusp of their retirement, such an order would cause much hardship to the petitioners. The slackness on the part of the respondents in not passing any orders on the proposal of regularisation of the petitioners cannot be put against them to their detriment, that too after extracting more than two and half decades of work from the petitioners. As has been reiterated by the Courts, the retirement benefits paid to the employees are not bounty, but only an appreciation of the services rendered by them and also to take care of them in the old age. That being the case, the termination orders passed by the respondents, that too after a long lapse of time, for which there is no explanation by the respondents, renders the termination order bad in law. Hence, this Court is of the considered view that the impugned orders, both dated 27.06.2014 are liable to be quashed.

8. For the reasons aforesaid, the impugned order R.No.2815/A2/2014- 1 & 2, dated 27.06.2014 passed by the 2nd respondent are hereby quashed and in the absence of interim order, it is made clear that the petitioners are eligible for continuity of service and other monetary benefits, except back wages on the concept of 'No Work - No pay'.

9. The writ petition is allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Director of Public Health
and Preventive Medicine,
Chennai - 600 006.

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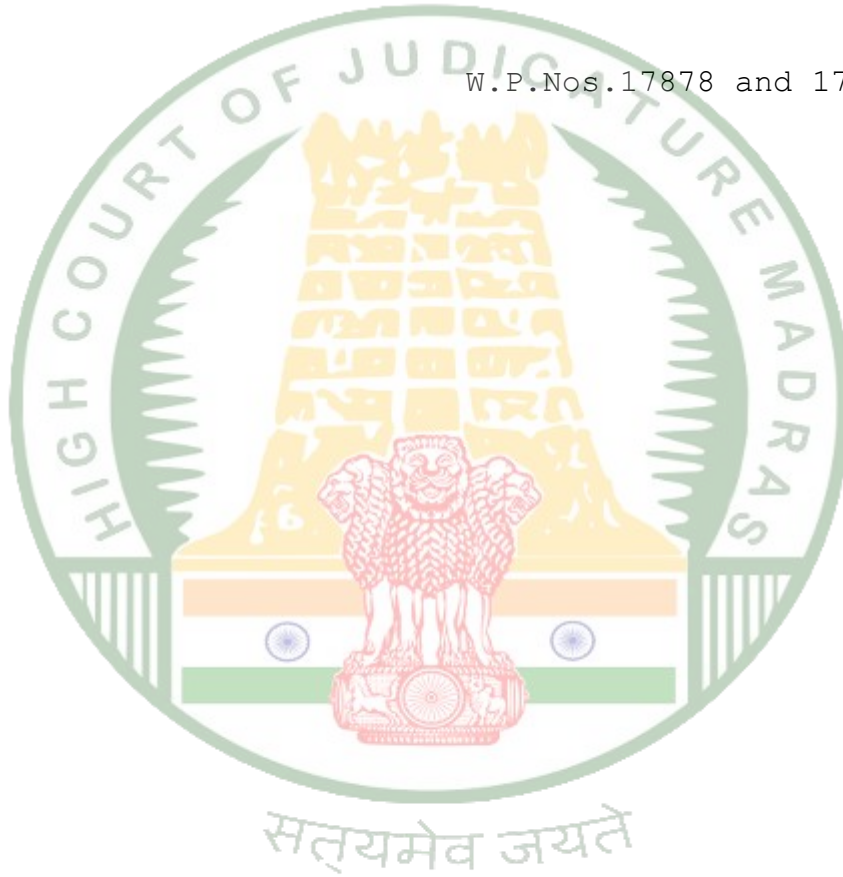
2. The Deputy Director of Health Services,
Tirupattur,
Vellore District.

+1cc to Mr.AM. AYYADURAI, Advocate, S.R.No.39724, 39725

+1cc to the Government Pleader, S.R.No.40071

SVI (CO)
SM/10/02/2021

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