



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) .No.8109 of 2015

and

M.P (MD) .No.1 of 2015

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R.Nisha

... Petitioner

-Vs-

1. The Director,
Medical Services,
Teynampet, Chennai.
2. The Director,
Medical and Rural Health Services,
Teynampet, Chennai.
3. The Registrar,
The Tamil Nadu Nurses and
Midwives Council,
Chennai 600 004.
4. The President,
The Tamil Nadu Nurses and
Midwives Council,
Chennai 600 004.
5. The Dean,
Madras Medical College,
Chennai -3.
6. The Dean,
Madurai Medical College,
Madurai.
7. The Principal,
School of Nursing,
Madurai Medical College,
Madurai

... Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Ref.No.7425/N1/2/2014 dated 20.04.2015 passed by the second respondent and quash the same and consequently directing the second respondent to fix petitioner name in batch wise combined seniority list for the ensuing recruitment to the post of midwives and nurses above the names of the candidates who have passed out and completed their Diploma in Nursing and Midwives from the year 2008-2009 onwards and



consider the petitioner name as a preferential category for appointment.

For Petitioner : Mr.T.Selvakumaran
For Respondents : Mr.C.M.Marichelliah Prabhu
Additional Government Pleader
for R1 & R2 and R4 to R7
Mr.R.T.Arivukumar
for R3

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ORDER

The impugned order, dated 20.04.2015 stating that the petitioner did not attend the counselling for appointment to the post of staff Nurse on contract basis is under challenge in the present writ petition.

2.The learned counsel for the writ petitioner made a submission that the petitioner has completed Diploma in Nursing (3 years course) and she is fully qualified for appointment to the post of staff Nurse. The case of the writ petitioner was considered for appointment to the post of staff Nurse on contract basis and an order of appointment was issued by the Director of Medical and Rural Health Services in proceedings, dated 26.08.2008. The learned counsel for the petitioner has stated that the address of the writ petitioner has been wrongly mentioned in the list of selected candidates and therefore, she could not able to get the order and appear during the counselling. However, there is no proof to establish the said contention by the petitioner. The facts in this regard cannot be now enquired into by this Court in a writ proceedings after several years. However, the fact remains that the petitioner had not participated in the counselling and therefore, she could not able to appoint in the post of staff Nurse on contract basis.

3.Beyond all these factors, the petitioner also approached the authorities as well as the Court of law, after a lapse of many years. In fact, the Director of Medical and Rural Health Services, Chennai issued the appointment order in proceedings, dated 26.08.2008. The writ petitioner states that, she submitted representation to the authorities. However, the first writ petition was filed in W.P(MD).No.18964 of 2014, dated 22.01.2015, after a lapse of above seven years from the date of issuance of the order of appointment. Accordingly, the impugned order has been passed. The impugned order states as follows:

'1.The individual Tmt/Selvi.Nisha along with other eligible Nursing candidates were called for appointment counselling held on 30.10.2008 in this office Ref.No.76000/N1/2/2008, dated 22.10.2008. Her seniority No.1134 (copy enclosed).



to consider the representation and pass orders. However, the other part of the intention has not been taken into account by the Courts in normal circumstances. In fact, the intention of the litigants is to reopen the lapsed cause of action.

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8. The constitutional Courts across the country reiterated that any grievances must be redressed within a reasonable period of time. Even in case there is no limitation period prescribed, then also, the litigants must approach the Court of law within a reasonable period of time. In the event of allowing the claim to get lapsed, thereafter, the same cannot be reopened one way or the other by citing the representation or otherwise. Thus, the aggrieved persons, slept over their rights, cannot wake up one fine morning and knock the doors of Court of law for the redressal of their grievances. The rights are to be established at the earliest possible time or at least within a reasonable period of time. More specifically, in service matters, the employees are very much aware of their service rules and conditions. Ignorance of law can never be pleaded by the employees of the State or Union or its Organizations. Thus, the limitation period though not prescribed, the reasonable period within which, the litigations have been filed, are to be taken into consideration before admitting the writ petitions.

9. However, large number of writ petitions are filed in the High Courts, merely on the ground that the writ petitioner sent several representations to the respondents and the respondents have not considered the same, taken a decision and passed orders. Under these pretexts, arguments are advanced by stating that the authorities competent are duty bound to pass orders on the representations. The Courts also in a routine manner issuing a direction to the authorities concerned to consider the representations.

10. Such an exercise of the power of judicial review, under Article 226 of the Constitution of India, cannot be done for the purpose of providing a scope to the litigant to reopen the lapsed cause of actions. Once an aggrieved person allowed the cause of action to get lapsed, then the Courts would not entertain any writ petition thereafter under Article 226 of the Constitution of India. Mere submission of representation after number of years would not



provide any cause of action for the aggrieved persons for filing a writ of mandamus.

11. There is no provision to submit repeated appeals, so also it is not necessary that repeated representations are to be sent to the authorities concerned. One appeal or one representation with all particulars and details to be acknowledged by the authorities competent is the requirement for moving a writ petition for issuing a writ of mandamus. However, the practice of sending representations on several occasions in order to fill up the gap or time limit cannot be entertained by the Courts under Article 226 of the Constitution of India.

12. Most of the times, even these representations are not supported with any acknowledgment. The litigants are typing representations and enclosing it in the typed set of papers and filing it in the Court. In a writ jurisdiction, the High Courts are also not questioning the genuinity of these representations enclosed in the typed set of papers by the litigants. Such a conduct of the litigants amounts to abuse of judicial process. Thus, any representation sent to the authorities competent must be sealed and acknowledged by the authorities competent enabling them to deal with the appeal / representation, take a decision and pass orders by following the procedures contemplated under law. Thus, to entertain a writ of mandamus, it is a precondition that the aggrieved person should have approached the authorities competent against whom such a direction is sought for and the said representation / appeal acknowledged by the authorities competent must be available in the file of the authority concerned. This being the mandatory requirement for the purpose of entertaining a writ petition to direct the authorities concerned to consider the representation, this Court is of the considered opinion that even the legal rights regarding the claim established should also be set out in the writ petition. Once again, it is a precondition that the person approaching the High Court, under Article 226 of the Constitution of India, must establish his legal right. In the absence of establishing any such legal rights, no writ petition can be entertained under Article 226 of the Constitution of India.

13. Thus, for entertaining a writ of mandamus to



consider the appeal / representation, the following requirements are to be adhered to:

(i) The person filing a writ petition should have approached the authority concerned by preferring appeal / representation setting out all the facts and details along with the cause of action arose for filing such appeal / representation.

(ii) Such an appeal / representation must be duly acknowledged by the authority concerned.

(iii) The person, who files a writ petition, should establish that he has established the legal rights for the purpose of redressing his grievances before the competent authority. In other words, it is a precondition that the person, who files a writ petition, should establish the legal rights for the purpose of approaching the competent authority as well as the High Court under Article 226 of the Constitution of India.

(iv) Such an appeal / representation must have been preferred within the time limit prescribed in the Service Rules or at least within a reasonable period.

(v) The normal period of limitation prescribed in the Service Rules of various Departments of the State and Union is that 60 days or 90 days from the date of arising of cause of action. If there is no order affecting the rights of a person, then such an appeal / representation must be filed at least within a period of six months from the date of arising of cause of action. Thus, any appeal or representation must be submitted to the competent authority within a period of six months from the date of arising of cause of action.

(vi) On receipt of such an appeal / representation from the aggrieved person, the competent authority is bound to consider the same and pass orders within a period of six months from the date of receipt of the representation / appeal.

(vii) In the event of not passing any orders within a period of six months, then alone, a writ of mandamus should be entertained for the purpose of issuing a direction to the authority concerned to consider the representation / appeal and pass orders.



(viii) Even such procedures are contemplated in certain Special Acts, namely, Administrative Tribunal Act etc., and several other Acts prescribe time limit for the purpose of preferring appeal and even the Service Rules of various Departments of the State or Union also prescribe time limit for preferring appeal / representation. All such appeals / representations are to be filed within a time limit prescribed and in the event of filing any such appeal / representation beyond the period of limitation, then, such an appeal / representation shall be entertained by the competent authority only on filing a petition by the aggrieved person to condone the delay and the delay condonation petition is to be decided by the competent authority by considering the reasons adduced and by taking a decision on merits and in accordance with law.

14. The remedy of a writ is an extraordinary one, wherein the affected person is expected to approach the High Court soon after the cause of action. Thus, the High Court should not entertain the petitions filed beyond the reasonable period of time and based on the created cause of actions. Creating a cause of action is the recent trend being developed nowadays amongst few persons, who all are attempting to achieve their goal in an indirect manner. Once again, it is the legal brain, which provides such advise to achieve their goals in an indirect manner knowing the fact that they cannot achieve the same directly. All such writ proceedings filed with an intention to achieve the goal in an indirect manner by illegal or irregular means can never be encouraged nor be entertained. All such litigations are to be rejected with heavy costs.

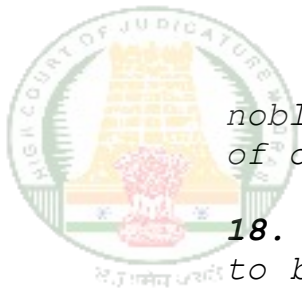
15. The precious judicial hours are to be utilized so as to provide justice to the needy people. High Court being the temple of justice must ensure that speedy justice is provided to all the needy and the persons, who are all approaching the Court with clean hands by establishing their legal rights. Therefore, by curtailing all these unnecessary litigations and by stopping these kind of litigations filed by creating cause of action in respect of lapsed claims, the High Court can utilize the judicial hours for the purpose of rendering complete justice to the poor



needy and the litigants, who all are approaching the Court of law with genuine grievances.

16. Large number of litigants, more specifically, the employees of the State and Union are approaching the Court even for subsistence allowance, monthly pension, pensionary benefits and other genuine grievances. The High Court is unable to dispose of those genuine cases on account of the fact that large number of unnecessary litigations are coming in and kept pending for years together. Even the National Litigation Policy as well as the State Litigation Policy implemented by the Union of India and the State are not effectively working out. Large number of litigations are filed vexatiously. Government appeals are filed for the sake of filing. Government appeals are filed based on some untenable opinions offered by the Government Pleaders. It is a financial loss to the State Exchequer. Even for filing an appeal, the State must ensure that adequate legal grounds are available for filing an appeal. Mechanical filing of appeal at the cost of the taxpayers' money can never be tolerated by the Courts. The State being the custodian and trustee of the taxpayers' money, is bound to spend the money diligently and based on the necessity. Mechanically appeals are filed by the Departments by spending huge money. All these expenditures are to be properly evaluated and stopped. Even though the State Litigation Policy as well as the National Litigation Policy are in force, the State Government and its officials as well as the Government Pleaders are not conscious about the letter and spirit of such Litigation Policies.

17. The High Courts are overburdened on account of such litigations, wherein the cause of actions are created. This being the factum realized and experienced by many legal luminaires and jurists, this Court is of the considered opinion that effective measures are to be taken to control such litigations, which all are consuming the valuable judicial hours and preventing the genuine litigants, who all are longing to get justice. Therefore, in all such cases, wherein the writ petitions are filed to consider the representations, these principles are to be followed even at the time of admission itself so as to allow the High Court to render a complete justice to the needy poor and so as to uphold the



noble concept of justice as adopted in the preamble of our Constitution of India.

18. Identification of vexatious litigations are also to be done by the High Courts. All such litigations are to be rejected with heavy costs so as to prevent such vexatious litigants from approaching the Court again and again. Therefore, these measures are also to be taken while entertaining the writ petitions under Article 226 of the Constitution of India and all such basic principles are to be looked into even at the stage of admission itself to avoid overburdening and preventing the High Court from rendering justice to the needy and deserving citizen of this great Nation.

19. Even recently, the Honourable Supreme Court of India, in the case of **Government of India Vs. P.Venkatesh** (Civil Appeal No.2425 of 2019), has held as follows:-

"...This 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute...."

6.As far as the present writ petition is concerned, the writ petitioner even on merits has not established that she is entitled for relief as such sought for in the present writ petition. Further, she has approached the Court of law after a lapse of more than 5 ½ years and this being the factum, the Writ Petition deserves no merits for consideration and stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

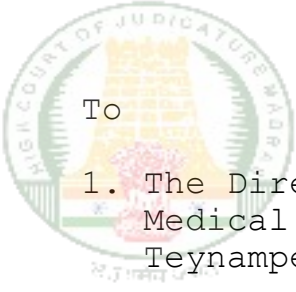
Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

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Madurai.

+1 CC to the SPL GP SR-23633.

+1 CC to Mr.T.SELVA KUMARAN, Advocate SR-23793.

W.P. (MD) .No.8109 of 2015
01.12.2020

(CO)

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