

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.03.2021
CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.50197 of 2006

Lakshmi Poornalingam

... Petitioner

-Vs-

- 1.The Commissioner and Secretary
Government of Tamilnadu
Health and Family Welfare Department
4th Floor, Fort St.George, Chennai-600 009.
 - 2.The Director of Medical Education
Kilpauk, Chennai - 600 010.
 - 3.The Joint Director of Health Services
Government Head Quarters Hospital
Kancheepuram.
 - 4.The Dean, Government General Hospital
Chennai - 600 003.
- ... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the Joint Director of Health Services, Kancheepuram vide Proceedings Ref.No.4164/E6/2006 dated 19.5.06 and quash the same, and consequently direct the respondents to fix the scale of pay of the petitioner at Rs.8300/- in the scale of Rs.8000-275-13500/- in the post of Nursing Tutor Grade II with effect from 24.3.2000 and issue necessary non drawal certificate and consequently fix the petitioner in appropriate scale in Nursing Tutor Grade I.

For Petitioners : Ms.Kaavya Silambanan
For Respondents : Mr.Karthikei Balan,
Government Advocate

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O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus to call for the records of the Joint Director of Health Services, Kancheepuram vide Proceedings Ref.No.4164/E6/2006 dated 19.5.06 and quash the same, and consequently direct the respondents to fix the scale of pay of the petitioner at Rs.8300/- in the scale of Rs.8000-275-13500/- in the post of Nursing Tutor Grade II with effect from 24.3.2000 and issue necessary non drawal certificate and consequently fix the petitioner in appropriate scale in Nursing Tutor Grade I.

2. The petitioner joined as a Staff Nurse on 30.10.1974. She was under probation for two years and she completed the same on 29.10.1976. Thereafter, the petitioner was conferred with selection grade in the year 1984 and special grade in 1994. Then, the petitioner was appointed as Selection Grade Nurse, which is a promoted post on 05.01.1985.

3. In this context, it is the further case of the petitioner that, as per the orders passed by the fourth respondent dated 22.05.1990, the Selection Grade Staff Nurses were allowed to draw pay to the post of Staff Nurse at Rs.1225/- with effect from 01.04.1986. In this context, the pay of the petitioner has been fixed as Rs.1,220/- per month since 05.01.1985, whereas the pay of a junior to the petitioner one Muthupandiammal, who joined in services as Staff Nurse only on 30.04.1976, was fixed as Rs.1,265/- since 30.04.1986. Like that, in the subsequent promoted post also, the petitioner compared with yet another individual viz., Kanthimathiammal and states that, when the petitioner was promoted as Nursing Tutor Grade II and subsequently as Nursing Tutor Grade I as of October 2006, she was only drawing a sum of Rs.20,065/-, whereas the other individual one Kanthimathiammal, who was working as Nursing Tutor Grade II at the same point of time, allegedly was drawing a sum of Rs.23,600/-.

4. In this context, it is the case of the petitioner that, pointing out this anomaly she had given a representation and the plea of the petitioner was rejected by the respondents by the impugned order. Even after the issuance of the impugned order dated 19.05.2006, further representations were given by the petitioner on 30.06.2006 and 05.07.2006. However, those subsequent representations given by the petitioner were not considered and since the respondents seems to have reiterated their stand through the impugned order, which they passed on 19.05.2006, the petitioner, having no other option, was constrained to file this writ petition with the aforesaid prayer, challenging the order dated 19.05.2006 and the consequential orders also.

5. Heard Ms.Kaavya Silambanan, learned counsel for the petitioner, who has reiterated the aforesaid facts and submitted that, certainly there has been pay anomaly between the petitioner and the other individuals, which the petitioner was able to compare, as they were juniors to the petitioner, both at the time of joining the services and also after promotion to the post of Nursing Tutor.

6. Per contra, Mr.Karthikei Balan, learned Government Advocate appearing for the respondents, on instructions, would submit that, insofar as the comparison with one Kanthimathiammal is concerned, the amount of Rs.23,600/- claimed to have been drawn by the said individual when she was working as Nursing Tutor Grade II, is a typographical error,

as the said Kanthimathiammal was not drawing the higher salary as alleged by the petitioner during the relevant point of time.

7. He would also submit that, insofar as the other anomaly claimed to have been occurred and continued in the case of the petitioner, as projected by the petitioner, the respondents have passed the impugned order dated 19.05.2006 only after considering all these aspects and therefore, the said order would still hold good. The learned Government Advocate further submits that, the petitioner also retired from service in the year 2007 and thereafter based on the last drawn salary, her pensionary benefits were calculated and being paid to her. Therefore, according to the learned Government Advocate, the petitioner may not have any grievance against the impugned order and hence he seeks dismissal of this writ petition.

8. I have considered the submissions made by the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents and also perused the materials placed on record.

9. On a perusal of the facts projected by the petitioner, this Court, prima facie found that, there seems to have been some pay anomaly between the petitioner and the other two individuals she compared with, even at the initial stage and subsequently at the promoted position also.

10. In this context, even though the impugned order was passed on 19.05.2006, before she attained superannuation, the petitioner on two occasions, had given representations to the respondents, first one was on 30.06.2006 and the second one was on 05.07.2006, pointing out the anomaly that the petitioner was facing.

11. However, it seems that those representations have not been considered in proper perspective by the respondents and by passing the impugned order dated 19.05.2006, the issue raised by the petitioner on the pay anomaly had been given a quietus.

12. Be that as it may. In view of the facts projected by the petitioner, this Court feels that, the issue can be remitted back to the respondents for re-consideration and the issue can be considered by the respondents based on the representations given by the petitioner in the year 2006 and if the petitioner wants to give any fresh representation, that can also be given, based on which the issue can be reconsidered by the respondents and ultimately a decision can be taken within a time frame that may be stipulated by this Court.

13. In view of the aforesaid discussions, the writ petition is disposed of with the following order. That the impugned order is quashed for the purpose of remanding the same to the respondents for reconsideration. While reconsidering the issue, the representations given by the petitioner on 30.06.2006 and 05.07.2006 shall be considered and in this regard, it is open to the petitioner to give a fresh representation with all inputs she wants to make, comparing with the individuals with regard to the pay anomaly at the various stages of the service of the petitioner and along with the fresh representation, a copy of the representations dated 30.06.2006 and 05.07.2006 shall also be annexed by the petitioner along with a copy of this order and the same shall be sent to the respondents within a period of two weeks from the date of receipt of a copy of this order. Once such representations are forwarded with a copy of this order and the fresh representation of the petitioner, on receipt of the same, the respondents, especially the second respondent is hereby directed to consider the same and pass necessary orders on merits and in accordance with law. While considering the same, the reasons stated for the alleged pay anomaly as projected by the petitioner in those representations and fresh representation to be given as indicated above in this order, shall be considered in proper perspective and a final decision be taken and communicated to the petitioner within a period of twelve weeks from the date of receipt of such representations from the petitioner. With the above directions, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

- 1.The Commissioner and Secretary
Government of Tamilnadu
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+1 cc to Government Pleader Sr.No. 16374

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