



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.Nos.23690 and 23691 of 2009

Tmt.K.Nivethitha

..Petitioner in both W.Ps.

vs.

1. The Union of India represented by the
Secretary to Government of Union Territory
of Puducherry, Education Department,
Puducherry.
2. Mother Theresa Post Graduate & Research
Institute of Health Sciences, Rep. by
Chairman cum Chief Secretary to Government,
Chief Secretariat, Government of Puducherry,
Puducherry-605 001.
3. The Vice-Chairman,
Mother Theresa Post Graduate & Research
Institute of Health Sciences cum
Secretary to Govt. (Health), Chief Secretariat,
Government of Puducherry,
Puducherry-605 001.
4. Dean-cum-Member Secretary,
Mother Theresa Post Graduate & Research
Institute of Health Sciences (Society),
Indira Nagar, Gorimedu, Puducherry-605 006.
5. Dr.V.Balu, Dean,
Mother Theresa Post Graduate & Research
Institute of Health Sciences (Society),
Indira Nagar, Gorimedu, Puducherry-605 006.
6. Tmt.E.Premila,
W/o.Thiru.Thamizhvanan,
Mother Theresa Post Graduate & Research
Institute of Health Sciences (Society),
Indira Nagar, Gorimedu, Puducherry-605 006.
7. Indian Nursing Council, represented by its
Secretary, Kotla Road, Temple Lane,
New Delhi-110 002. ..Respondents 1 to 7 in both W.Ps.



8. The Under Secretary to Government,
Health Department,
Government of Union Territory of Puducherry,
Puducherry. ..Respondent No.8 in W.P.No.23690 of 2009

9. Tamil Nadu State Nursing and Midwifery Council,
Represented by its Registrar,
Jayaprakash Narayan Building,
140, Santhome High Road,
Chennai-600 004. ..Respondent No.8 in W.P.No.23691 of 2009

Prayer in W.P.No.23690 of 2009: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 8th respondent dated 08.08.2006, bearing Ref. G.O.Ms.No.40 and the resolution of the second respondent bearing resolution No.19.4 passed in XIX Governing Body meeting dated 03.12.2007 and quash the same.

Prayer in W.P.No.23691 of 2009: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration declaring the impugned resolution No.20.4.3. Passed in the 20th Governing Body Meeting dated 08.05.2009 by the 2nd respondent as illegal in as much as it upgrades the post of Principal Nursing Officer as "Reader" and consequently, forbear the respondents 1 to 4 from treating the technical posts of Principal Nursing Officer/Chief Nursing Officer or such other posts as common with the teaching cadre of Lecturer or Reader or Professor in the college of Nursing.

For Petitioner	: Mr.Saravanan
In both W.Ps.	For Mr.T.Sai krishnan
For Respondents	: Mrs.G.Djearany
In both W.Ps.	Government Advocate (Puducherry)
	for R1 to R4,
	Mr.V.Manohar for R5
	No Appearance for R6
	Mr.M.T.Arunan for R7
	Mr.A.Nixon for R8

COMMON ORDER

The petitioner, being aggrieved by the action of the respondents in appointing the sixth respondent as Principal Nursing Officer by way of deputation and absorbing her in the said post permanently, has filed these writ petitions, praying



for the aforesaid relief.

2. According to the petitioner, two posts of Principal Nursing Officer were created - one for Pondicherry and another for Karaikkal and the fifth respondent had filled up the post at Pondicherry alone and left the post of Karaikkal vacant during the last three years. The sixth respondent was working as Public Health Nurse on deputation basis with effect from 29.04.2004 for about 9 months and the fourth respondent has called for applications for appointment as Principal Nursing Officer on deputation basis. The contention of the petitioner is that the recruitment rules are very clear that applications should be called for from the holders of posts in the cadre of Nursing Superintendent and similar cadre, but willfully and wantonly, even though the fifth respondent was only a staff nurse, the fourth respondent had called for applications from among the staff working in the Health Department, in violation of the recruitment rules. It is further averred by the petitioner that the very appointment of the sixth respondent as Principal Nursing Officer is illegal and further, the fourth respondent in flagrant violation of the rules and the Government Order, allowed the sixth respondent to submit a joining report, as if she is appointed as a Principal Nursing Officer/Lecturer in Nursing and also issued an order dated 30.08.2006, terming the appointment of the sixth respondent as Lecturer/Principal Nursing Officer.

3. It is further contended by the petitioner that the sixth respondent, who is all along working in the Multi Purpose Health Workers Training Course and the petitioner is working in the College of Nursing and having more teaching experience than her and she could not be promoted as Reader in Nursing, overlooking the petitioner's seniority and in order to promote the sixth respondent to the level of Reader, the fifth respondent in the capacity of the fourth respondent has misled the Governing Body and got approval of the Governing Body on 08.05.2009 for upgradation of the post of Principal Nursing Officer at Puducherry Institute as Chief Nursing Officer / Reader in Nursing, exclusively for managing Multipurpose Health Workers Training Institute and in violation of the seniority position, now the fifth respondent is attempting to be brought as reader over and above the petitioner and therefore, aggrieved over the same, the petitioner has filed the present writ petitions.

4. The fourth respondent has filed a common counter affidavit on behalf of the respondents 1 to 4 and in para 6 of the counter affidavit it has been stated that as per the seniority list maintained in their institute, the petitioner is senior to the sixth respondent and as per the hierarchy, both of them are in the feeder category for promotion to the post of



Professor in Nursing and being the senior, the name of the petitioner will be considered for promotion to the post of Professor in her turn and the sixth respondent, who is junior in the grade, will not overlook the petitioner's seniority by any means. It is also stated in para 7 of the said common counter affidavit that there is no relevance in connection with the decision of the apex policy making authority of the Governing Body, consisting of top slots of Health Departments and bureaucrats of Union Territory of Puducherry administration for the creation of the post of Principal Nursing Officer / erstwhile Lecturer in Nursing, now redesignated as Assistant Professor in Nursing in which the sixth respondent was accommodated by absorption and the claim of seniority of the petitioner is based on mere illusion and the apprehension of the petitioner that the sixth respondent could be promoted earlier overlooking the petitioner's seniority is nothing but mere allegation against the administration and prayed for dismissal of this writ petition.

5. Recording the stand taken by the respondents 1 to 4 in the common counter affidavit, W.P.No.23690 of 2009 shall stands closed. Accordingly, W.P.No.23691 of 2009 shall stands dismissed as infructuous, as no further adjudication is necessary in the said writ petition. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Jvm

To

1. The Secretary to Government of Union Territory
of Puducherry,
Union of India,
Education Department,
Puducherry.
2. The Chairman cum Chief Secretary to Government,
Mother Theresa Post Graduate & Research
Institute of Health Sciences,
Chief Secretariat,
Government of Puducherry,
Puducherry-605 001.



3. The Vice-Chairman,
Mother Theresa Post Graduate & Research
Institute of Health Sciences cum
Secretary to Govt. (Health), Chief Secretariat,
Government of Puducherry,
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4. Dean-cum-Member Secretary,
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Puducherry.
9. The Registrar,
Tamil Nadu State Nursing and Midwifery Council,
Jayaprakash Narayan Building,
140, Santhome High Road,
Chennai-600 004.

+1cc to Mr.T.Saikrishnan, Advocate, S.R.No.59579

+1cc to Mr.A.R.Nixon, Advocate, S.R.No.58950

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AJS (CO)
RGA (01/12/2021)