



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:	16.02.2021
DELIVERED ON:	02.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD)No.14691 of 2019

and W.M.P. (MD) No.11131 of 2019

(Through Video Conference)

S.Umaieaswaranpillai

... Petitioner

Vs.

1) The Director of Medical
and Rural Health Services,
Chennai.

2) The Joint Director of Health Services,
Tenkasi,
Tirunelveli District.

3) The Medical Officer,
Government Hospital,
Melapalayam,
Tirunelveli District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 2nd respondent in his proceedings in Na.Ka.No.5374/NiBi3/2019 dated 26.06.2019 and quash the same and direct the respondents to permit the petitioner to continue in service till 30.06.2021 with all consequential benefits.

For Petitioner : Mr.V.Pannneerselvam

For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader

O R D E R

The petitioner herein, was originally appointed as a Hospital Worker, on temporary basis, under the Tamil Nadu Basic Services and after undergoing the Nursing Assistant training for a period of one year, he was posted as Nursing Assistant Grade-II, at Government Hospital, Boothapandi, Kanyakumari District, by transfer of service from Hospital worker.



2. The retirement age of a Nursing Assistant Grade-II is 58 years. By placing reliance on G.O.Ms.No.325, Health and Family Welfare (F2) Department, dated 20.11.2012, wherein the vacant posts of Nursing Assistant Grade -II were filled with the Hospital Workers, after extending appropriate training to them and whose age of retirement was fixed at 60 years, the petitioner seeks for a direction to the respondents to permit him to continue his services till the completion of 60 years of his age. By the impugned order dated 26.06.2019, the petitioner's request to permit him to continue in services till the completion of 60 years was rejected. Hence, the petitioner has filed the present writ petition.

3. The learned Special Government Pleader raised objections stating that the petitioner was posted as a Nursing Assistant Grade-II on his own willingness and that he cannot claim the benefit of G.O.Ms.No.325, Health and Family Welfare (F2) Department, dated 20.11.2012, which will have only a prospective effect and will apply to such of the Hospital Workers, who were converted therein to the post of Nursing Assistants Grade-II.

4. This Court is not in agreement with the objection raised by the respondents. It is not in dispute that the post of Hospital Worker and Nursing Assistant Grade-II, come under the Tamil Nadu Basic Services. While the retirement age of a Hospital Worker is 60 years, the retirement age of the Nursing Assistant Grade-II is 58 years. By G.O.Ms.No.325, Health and Family Welfare (F2) Department, dated 20.11.2012, the Government had unified the Hospital Workers, Sanitary Workers and Nursing Assistants as 'Multipurpose Hospital Workers' on daily wages. Therefore, it was ordered that the vacant posts of Nursing Assistant Grade -II are to be filled up by giving appropriate training to the Hospital Workers, who are to be posted to officiate as Nursing Assistant Grade-II by retaining their age of retirement for these persons, who are in Basic Service as 60 years.

5. The respondents are now attempting to discriminate on the age of superannuation between these two Basic Services. The attempted justification is that, while the Nursing Assistants had expressed their willingness to join the post, for which the retirement age is 58 years, they cannot claim the benefit of such of those Nursing Assistants, who were converted from Hospital Workers, owing to the large vacancies of Nursing Assistants, which prevailed at that point of time. It is further stated that G.O.Ms.No.325, Health and Family Welfare (F2) Department, dated 20.11.2012, would have a retrospective effect and therefore, its benefit cannot be claimed by the petitioner.



6. This Court, in the case of **P.Chakarapani vs. Tamil Nadu Khadi & Village Industries Board and others** in W.P.No.16323 of 2019, had deprecated such discrimination in two inter-changeable posts of Helper Grade-II and Office Assistant and adopted a yardstick of uniform retirement age of 60 years. The relevant portion of the order reads as follows:-

"8. As rightly contended by the learned counsel for the petitioner that the issue is no more res integra for this Court to adjudicate the claim of the petitioner herein afresh. The Division Bench has clearly held that the post of Helper Grade II being interchangeable with the post of Office Assistant and both the posts carry the same pay scale. The post of Helper Grade II is to be treated as last grade service and therefore, the petitioner who is working as Helper Grade II, which post being last grade service, is entitled to serve till he attains the age of 60 years.

9. In fact, a learned Judge of this Court also in a similar writ petition, after taking cue from the order passed by the learned Division Bench has granted interim injunction, restraining the Board from retiring the employee therein, on his attaining the age of 58 years. When identically placed Helpers Grade II were allowed to serve till they attained the age of 60 years, this Court is unable to appreciate as to how the Board could adopted a different yardstick in retiring the present petitioner on his attaining the age of 58 years. Once the post of Helper Grade II is interchangeable with the post of Office Assistant which admittedly belongs to last grade service and their pay scale being equal, the resistance put by the respondent Board through the learned Addl.Advocate General appears to be preposterous and the same is not acceptable. When identically placed persons among the same posts are treated as belonging to last grade service, such treatment cannot be denied to the petitioner as that would only result in violation of Articles 14 and 16 of the Constitution of India. Although an attempt has been made by the learned Addl.Advocate General on a specious plea that the post of Helper Grade II is a superior grade service, this Court is unable to comprehend as to how the post of Helper Grade II can be treated as superior grade service when admittedly it can be interchangeable with the post of Office Assistant and carries the same pay scale which is identified as last grade service."



7. The aforesaid order is self-explanatory. By applying the ratio held in **P.Chakrapani's case** (cited supra), the facts of which is almost similar to that of the present case, it can be said that the attempt on the part of the respondents to differentiate the services of these Basic Servants, insofar relating to the age of superannuation, is totally discriminatory. Such discrimination is not only illegal but also unconstitutional.

8. By taking note of the fact that, one set of Basic Servants in the same category of Nursing Assistants Grade-II are retiring at the age of 60 years and the petitioner herein, who also holds the same post is required to retire at the age of 58 and applying the ratio held in the aforesaid decision, this Court is of the view that the petitioner would be entitled to serve the respondent Department till he attains the age of 60 years.

9. Before parting with the case, it would be relevant to mention that, after this Court had heard the respective counsels and reserved pronouncement of orders on 16.02.2021, and at the time of pronouncement of this order, the Government had taken a policy decision to extend the service of all Government servants to 60 years, owing to the COVID 19 pandemic situation prevailing in the State of Tamil Nadu. In this situation also, the petitioner would be entitled to complete his services till he completes the age of 60 years.

10. For the foregoing reasons, the impugned order passed by the second respondent in Na.Ka.No.5374/NiBi3/2019 dated 26.06.2019 is quashed and consequently, the respondents are directed to permit the petitioner to continue in his services as Nursing Assistant Grade-II, till he completes the age of 60 years.

11. The writ petition stands ordered accordingly. However, there shall be no order as to costs. Consequently, connected W.M.P.(MD) No.11131 of 2019 is closed.

Sd/-

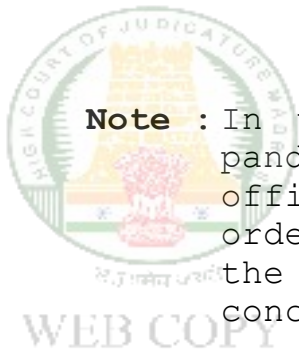
Assistant Registrar(AD-II)

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To:

- 1) The Director of Medical
and Rural Health Services,
Chennai.
- 2) The Joint Director of Health Services,
Tenkasi,
Tirunelveli District.
- 3) The Medical Officer,
Government Hospital,
Melapalayam,
Tirunelveli District.

+1 CC to M/s.SPL GP (SR-5671[F] dated 17/02/2021)

+1 CC to M/s.V.PANNEER SELVAM, Advocate (SR-8510[F] dated 03/03/2021)

Order made in
W.P. (MD)No.14691 of 2019
Dated: 02.03.2021

KMK (CO)
TR(03.03.2021) 5P 6C