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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.18327 of 2016
and
W.M.P.No.16033 of 2016

S.Suganthi

...Petitioner

-Vs-

1.The State of Tamil Nadu,
Represented by its Principal
Secretary to Government,
Health & Family Welfare Department,
Chennai - 600 009.

2.The Director Medical Education,
No.162, EVR Periyar Salai,
Kilpauk, Chennai - 600 010.

3.The Director of Medical and
Rural Health Services,
Teynampet, Chennai - 600 006.

4.The Dean/Principal,
Government Stanley Medical
College Hospital,
Chennai - 600 001.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the 4th respondent in his proceedings Ref.No.10851/E1/2/2015 dated 10.05.2016 and quash the same and consequently direct the respondents to permit the petitioner to continue in the post of ECG Technician by transfer of service as per promotion order made by the 4th respondent in Ref.No.10851/E1/2/2015 dated 24.08.2015 and to grant all attendant and monetary benefits to the petitioner in the cadre of ECG Technician.



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For Petitioner : Mr.M.Saravana Kumar

For Respondents: Mr.Vadivelu Deenadayalan,
Addl. Government Pleader

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner herein, who was working as a Sanitary Worker, was temporarily promoted as an ECG Technician on 24.08.2015. The mode of promotion was on the basis of the Circular dated 22.07.2015, whereby he was transferred from other category and promoted as an ECG Technician. The procedure for filling up the post of ECG Technician is prescribed under G.O.Ms.No.1176, Health and Family Welfare Department, dated 17.06.1986, which reads as follows:-



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- Mode of appointment : By Direct recruitment; or by transfer from any other class or category; or by recruitment by transfer from any other service.
- Educational qualification : 1) By transfer from any other class or category or by recruitment by transfer from any other service
(i) Must have completed S.S.L.C or a pass in Xth Standard under new regulation.
(ii) Must have undergone training in Government Institution or in a private institution recognized by the Government of Tamil Nadu or Government of India in the subject of operating and maintaining ECG apparatus for a period of not less than six months and should possess a certificate of proficiency in ECG Technique.
- 2) By direct recruitment:
(i) Must have passed P.U.C., under old regulations
(or)
(ii) A pass in plus 2 course with eligibility for University Course of study
And
(iii) Must have undergone training in Government Institution or in a private institution recognized by the Government of Tamil Nadu or Government of India in the subject of operating and maintaining ECG Apparatus for a period of not less than six months and should possess a certificate of proficiency in ECG Technique.

3. However, in the Circular dated 22.07.2015, the fourth respondent herein had chosen to fill up the post of ECG Technician by transferring the petitioner from the post of Sanitary Worker and promoted her as an ECG Technician, which is clearly an abuse of the procedure contemplated under G.O.Ms.1176, dated 17.06.1986. In this background, the impugned order of reversion seems to be correctly done.

4. The learned counsel for the petitioner would submit that the reversion order was passed without prior notice to the petitioner.



5. In normal circumstances, this Court may interfere with such a ground. However, when the fact remains that the fourth respondent herein has deviated from the procedure for filling up the post of ECG Technician, even if the petitioner is put on prior notice, there is no possibility for her to substantiate that the procedure for filling up the post of ECG Technician, as prescribed under G.O.Ms.No.1176 dated 17.06.1986, should not be followed. As such, non issuance of prior notice may not be fatal in the present case.

6. The learned counsel for the petitioner would also submit that though the petitioner was promoted and has been serving as an ECG Technician till date, she was not paid with the salaries of an ECG Technician.

7. It is seen that the petitioner was promoted on 24.08.2015 and after the impugned reversion order was passed on 10.05.2016, this Court, by an interim order dated 25.05.2016, had stayed the reversion order and in this background, the petitioner has been continuing to serve as an ECG Technician. Though her promotion may not be in conformity with the prescribed regulations, the fact remains that the respondents have extracted her work as an ECG Technician. While that being so, it would not be proper to say that the petitioner would not be entitled for the salaries due to an ECG Technician.

8. In the light of the above observations, I do not find any infirmity in the impugned reversion order dated 10.05.2016. Accordingly, the prayer to quash the reversion order is rejected. Insofar as the salaries due to the petitioner for the period she had worked as an ECG Technician from the date of the reversion order till today is concerned, the same shall be disbursed to her, after deducting the salaries already paid during this period, within a period of four (4) weeks from the date of receipt of a copy of this order. Since this Court has directed for disbursement of the salaries for the post of ECG Technician in the peculiar circumstances of this case, this portion of the order shall not stand as a precedent for any other case.

9. The Writ Petition stands disposed of, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar



To:

1.The Principal Secretary to Government,
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+1 CC to Mr.M.Saravana Kumar, Advocate sr 2611
+1 CC to The Government Pleader sr 3060.

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MT(CO)
SP(04/02/2022)